AN APPRAISAL OF THE PROTECTION OF THE RIGHTS OF A CHILD IN NIGER STATE

BY

Paul Aliyu ADAMA
(LLM/LAW/4491/2010-2011)

APRIL, 2016

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BEING AN LL.M DISSERTATION SUBMITTED TO THE SCHOOL OF POSTGRADUATE STUDIES, AHMADU BELLO UNIVERSITY, ZARIA, IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF MASTER OF LAWS DEGREE - LL.M

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DECLARATION

I declare that this work in this dissertation entitled AN APPRAISAL OF THE PROTECTION OF THE RIGHTS OF A CHILD IN NIGER STATE has being carried out by me in the Department of Public Law. The information derived from the literature has being duly acknowledged in the text and a list of references provided. No part of this dissertation was previously presented for another degree or at this or any other institution.

_____ _____

Paul Aliyu ADAMA Date

CERTIFICATION

This dissertation entitled AN APPRAISAL OF THE PROTECTION OF THE RIGHTS OF A CHILD IN NIGER STATE by Paul Aliyu ADAMA, meets the regulations governing the award of the Master of Laws Degree of Ahmadu Bello University Zaria, and is approved for its contribution to academic knowledge and literary presentation.

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DEDICATION

I am dedicating this dissertation to my loving wife and my beautiful daughter Barr. Martha H. Adama and Rebecca Adama Dufia CinwonSoko Adama for their unending love and support.

ACKNOWLEDGEMENTS

I am most grateful to God almighty for given me the life and good health to write this thesis from its beginning to its completion. May His name forever be praise.

My sincere gratitude goes to the Chairman, Supervisory Committee of this research work in person of Dr. (Mrs.) I.F. Akande who was an understanding teacher that guided me throughout my research work without getting tired of my numerous mistakes and inadequacies and she is also responsible for making this work a success. May the Lord reward her more abundantly.

My sincere gratitude also goes to the Member, Supervisory Committee in person of Dr. K.M. Danladi who is also a pillar in the success of this research work I am most thankful for the assistance rendered to me, may God bless him and all the Faculty lecturers most especially Dr. A. M. Madaki.

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ABSTRACT

There are various legislations under the Nigerian legal system that seeks to protect the rights of the child. Majorly, the 1999 Constitution of the Federal Republic of Nigeria provided for human rights, Nigerian Children's Trust Fund Act, Penal Code, Criminal Code, Children and Young Persons Act, Child Rights Act, which all have provisions for the protection of a child. The guiding principle on the issue of child protection is in the best interest of the child, the Child Rights Act 2003 and Niger State Child Rights Law 2010 affirmed this principle and provided various rights for the child and the mechanism for the enforcement of these rights. However, despite the existence of these various law that provided for the protection of the rights of a child, the children's rights are been abused on daily basis, therefore, the dissertation appraised the protection of the rights of a child in Niger State by considering the Niger State Child Rights Law, and other related legislations. The Doctrinal and Empirical research methodology were used to source for information relied upon for this dissertation. It is the findings of this dissertation that there are inconsistencies in Niger State Child Rights Law 2010, and lack of commitment on the part of government to adequately enforce the laws that protect the child. It makes recommendations to the area of the inconsistency or defect in the law and also commitment on the part of the government constituted authorities in charge of the implementation of the Child Rights Law.

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background of the Research

The general frameworks within which human rights are protected in Nigeria include the rights of a child which are in Chapter IV of the 1999 CFRN. The Rights to fair hearing and the right to life, the rights to personal liberty and the right to freedom of movement among others, Section 42[1] prohibits unjustifiable discrimination on basis of ethnic group, place of origin, sex, religion or political opinion[2].

We have other legislations that seek to protect the rights of a child, like, Children and Young Persons Act, Criminal Code, Penal Code, Child Rights Act 2003.

In 1996, Nigeria submitted its first report on the implementation of the Child Rights Convention to the United Nation Committee on the Rights of the Child. One of the major recommendations made by the Committee was to finally ensure the domestication of the Child Rights Convention, as this is necessary for its full implementation in Nigeria[3].

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[1] 1999 Constitution of the Federal Republic of Nigeria
[2] http://scholarship.law.cornell.edu/ijl; 2nd April, 2015
[3] Ibid

The United Nation Convention on the Rights of the Child came into force on 2nd September, 1990[4] and The African Charter on the Rights and Welfare of the Child came into force in 1999, while Nigeria domesticated the United Nation Convention on the Right of the Child and African Charter on the Rights and Welfare of a Child in 2003. Subsequent upon the domestication of Child Rights Act 2003, the following states passed their Child Rights Law:

Anambra State 2004[5], Taraba State 2005[6], Imo State 2004[7], Kwara State 2005[8], Nasarawa State 2005[9], Plateau State 2005[10], Abia State 2006[11], Ekiti State 2006[12], Oyo 2006[13], Osun State 2007[14], Ogun State 2006[15], Ondo State 2007[16], River State 2009[17], Kogi State 2007[18], Jigawa State 2007[19], Lagos State 2007[20], Edo State 2007[21], Akwa Ibom State 2008[22], Delta State 2008[23], Benue State 2009[24], Cross

[4] United Nation Convention on the Rights of a Child
[5] www.womenaffairs.gov.ng/...6th%20Nigeria%20cedaw%20report%20fi... 1st August, 2015
[6] http://disnaija.com/.../unicef-worries-over-merging-of-children-with-criminals... 1st August, 2015
[7] www.allafrica.com/stories/200408040683.html 1st August, 2015
[8] www.salvationchambers.com/102.pdf 1st August, 2015
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[10] https://plateaunewsonline.wordpress.com/.../the-plateau-state-ministry-of- 1st August, 2015
[11] www.unicef.org/nigeria/protection_2169.html 1st August, 2015
[12] www.ekitistate.gov.ng 1st August, 2015
[13] www.childdevelopmentconcern.com/popularization%20%of%20child's%20... 1st August, 2015
[14] www.sunnewsonline.com 1st August, 2015
[15] www.unicef.org/nigeria/child_rights_legislation_in_Nigeria.pdf 1st August, 2015
[16] http://www.unicef.org/nigeria/protection_2169.html 1st August, 2015
[17] www.thetidenewsonline.com/.../domesticating-child-rights-law-...the-riv... 1st August, 2015
[18] www.punchng.com 1st August, 2015
[19] www.jigawastate.gov.ng/staticpage.php?id=154 1st August, 2015
[20] www.lagosstate.gov.ng/childrightslaw.pdf 1st August, 2015
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[22] www.aksonline.com.ws033.alentus.com/child_rights_law.aspx 1st August, 2015
[23] www.deltastate.gov.ng/index.php/template/.../896-ministry-of-justice 1st August, 2015
[24] www.dailytimes.com.ng 1st August, 2015

River 2009[25] and Ebonyi State 2010[26] and Niger State being the focus of this research passed the Child Rights Law in 2010.

Although Niger State has passed the Child Rights Law since 2010 but the prevalence level of child abuse within the state is alarming, which shows that either there are fundamental defect in the law or the lack of commitment from those having the responsibility of implementing the law.

The Child Rights Law principally seek to protect the child from all forms of abuses and create an enabling environment for the proper growth of a child. Niger State Child Rights Law provided that "every government, person, institution, service, agency, organization and body responsible for the care and welfare of a child shall, at all times, ensure adequate opportunities for the child in the enjoyment of the rights provided for the child[27].

Moreover, Niger State Child Rights Law provides that every child is entitled to enjoy the best attainable state of physical, mental and spiritual health[28].

It is interesting to know that the law provides that every child has the right to free and compulsory universal basic education and it shall be the duty of the government to provide such education[29].

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[25] www.thetidenewsonline.com/.../domesticating-child-rights-law-...the-riv... 1st August, 2015
[26] www.dailyindependentnig.com/.../ebonyi-children-marked-broadcasting-day/ 1st August, 2015
[27] Section 4 (2) Niger State Child Rights Law, 2010
[28] Section 4 (1) Ibid

Too many children are considered to be the property of adults, and are subjected to various forms of abuse and exploitation. We cannot claim that we live in a world where children's best interests are the primary consideration in all decision affecting them. In fact, the contrary is evidenced by the way human kind allocates its resources, the limited attention given in ensuring that it is in the best interest of the children and the way it conduct its war[30].

The survival and continuity of the human society depends upon the protection, preservation, nurture and development of the child. Providing the child with a good start in life and ensuring that their material and emotional needs are adequately met is very important.

The Child Right Act 2003[31] and Child Right Law 2010[32] define a child to mean: *"A person under the age of eighteen (18) years"*.

However Children and Young Persons Act section 2 provide that a "child means a person under the age of fourteen years."[33] Also Children and Young Persons Law of Niger State define a child in section 2 to mean "any person who has not yet attained the age of fourteen years".[34]

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[29] Section 7 (1) Ibid
[30] http://www.unicef.org/rightsite/237.htm 12th February, 2013.
[31] S. 277, Child Rights Act 2003, Laws of the Federation of Nigeria 2004 Volume 5 Chapter C50
[32] Section 2, Niger State Child Rights Law, 2010.
[33] Children and Young Persons Act 1958
[34] Children and Young Persons Law of Niger State

Furthermore, Article 1 of Convention on the Right of the Child defines the holder of Rights under the child Convention as "every human being below the age of 18 years unless under the law applicable to the child, Majority is attained earlier"[35]. The convention clearly specified the upper age limit for childhood as eighteen (18) years, but recognizes that majority may be obtained at an earlier age under laws applicable to the child. The Article thus accommodates the concept of an advancement of majority at earlier age either according to the federal or laws within that country.

Another definition of a child by Oxford dictionary is "A young human being below the age of puberty or below the legal age of majority"[36]. The Nigerian Children's Trust Fund Act defines "A child as the person who has not attained the age of sixteen years".[37]

Furthermore, Ayua and Okagbue in their book define a child under the customary definition that it "varies from ethnic group to ethnic group due to the lack of a uniform system of customary law in Nigeria".

[35]The United Nation Convention on the Rights of the Child
[36]www.oxforddictionaris.com/definition/english/child. 1st April, 2012
[37] S 1 (3) Nigerian Children's Trust Fund Act 1990 Laws of Federation 2004 Volume II.

In some ethnic groups a boy remains a child until initiated into an age grade society or until he is old enough to contribute financially to community development. In others, childhood terminates at puberty"[38].

Black's Law Dictionary defines a child to mean "a person under the age of maturity".[39]

In *Okon* vs. *The State* it was held that "under section 2 (1) of the Criminal Procedure Act, a 'child' means any person who has not attained the age of fourteen years and this definition is exhaustive".[40]

Also in *Solola and Anor vs. State*[41] "A child is defined by section 2 (1) of the Criminal Procedure Law[42] as a person who has not attained the age of 14 years".

Similarly, in the case of *R.* vs *Carton*, it was held that the meaning of the word child "must in every case depend on the content in which it appears".[43]

These definitions clearly show the contradiction in the definition of a child under various laws in Nigeria. But for the purpose of this research, the Child is a person under the age of 18 years. The reason being that the Child Right Act 2003 and Niger State Child Right Law 2010 definition is the same which also tally with the

[38]Ayua I.A, and Okagbue I, The Rights of the Child in Nigeria, Intec Printer Limited, Ibadan,(1996) P.30
[39]Garner B.A, Black's Law Dictionary Ninth Edition, P. 271.
[40]*Okon vs. State* (1988) 1 NWLR Pt 69 at 173
[41] (2005) 5 SCNJ 139
[42] Criminal Procedure Law (CAP 30) Laws of Ogun State 1978
[43]*R. vs Carton* (1945) 1 CH Div 372

United Nation Convention on the Right of the Child and African Charter on the Right and Welfare of the Child meaning it is an acceptable international definition.

1.2 Statement of the Research Problem

Nigeria has enacted various laws for the protection of the right of a child. Niger State in particular has also promulgated the child right law in the state for the protection of the right of a child. Similarly, there are various institutions like the courts, Ministry of Women Affairs, Borstal and Orphanage homes for enforcement of the right of a child. Also successive government in Nigeria has at various times initiated and established programmes, schemes and initiative for the progressive realization of children rights.

Despite these arrays of laws, policies and institutions realization and enforcement of child rights in Nigeria and more particularly in Niger State here been very low. Consequently, the research examines the following questions.

1. How has the law protected the right of a child in Niger State?
2. What is the efficacy of the implementation mechanisms for the protection of child rights in Niger State?
3. What are the challenges in the protection of child rights?

1.3 Aim and Objectives of the Research

The aim of this research is to appraise the protection of the rights of a child in Niger State, in order to achieve the following objectives.

i. To analyze the protection of the right of a child.
ii. To examine the efficacy of implementation. Mechanisms for the protection of the right of a child.
iii. To identify the challenges in the protection of the rights of a child.
iv. To provide recommendations to the challenges.

1.4 Scope of the Research

The scope of the research is confined to the examination of following:

(i) The protection of the Rights of the Child in Niger State with reference to the Niger State Child Rights Law.
(ii) Identifying possible problems that maybe encountered in the course of implementing the Child Rights Law 2010 to protect the rights of the child.
(iii) Providing viable options in terms of general and specific recommendation on how to protect the rights of the child in Niger State in particular and Nigeria at large.

1.5 Significance of the Research

This research is to locate the extent to which the implementation of the Niger State Child Rights Law 2010 addresses the issue of protection of the rights of the child in Nigeria and Niger State. It will serve as an additional literature to the existing one and when people read it, it will create awareness for the protection of the rights of the child and prevention of child abuses, by so doing the public will be better informed and it will in turn contribute to guaranteeing lasting respect for and the enforcement of child rights in Niger State and Niger at large. This research will be useful as a source of material to legislators, executives, the judiciary, lawyers, student engaging in related studies and the general public.

1.6 Research Methodology

The research methodologies adopted here are doctrinal and empirical research methodology.

Doctrinal method means "theorizing without considering the practical consequences. It is called a visualized research, imaginative research, unpractical research, a visionary research or conceptual research"[44]. The researcher went

[44] *Aboki, Y. Introduction to legal research methodology.* 2nd edition, Tamaza publishing company limited Zaria (2009)

through volumes of books, statutes, and cases in the area of the law this research covers.

Empirical Method "involves the collection of fact and data through interviews, questionnaires from target groups. The fact and data are later analyzed or experimented upon, from which result are obtained. It is also called field-oriented method of research"[45]. It include visit to Governmental and non- Governmental organizations based in Niger State relevant on the general issue of child protection and implementation of Child Rights Law 2010, of Niger State to interview individuals and administer questionnaire.

1.7 Literature Review

This involves review of some authors who have written on this topic. Authors have discussed extensively on the child rights law but only few articles have been written on the Child Rights Law, 2010 of Niger State, which was enacted by Niger State House of Assembly in March 2010.

Bainham wrote on the children – The Modern Law, which he considered the United Nations Convention on the Rights of the child, the author emphasis on the

[45] *Ibid*

important of the implementation of the rights contain in the UN convention, which is one of the most important international instrument which was domesticated in Nigeria as Child Rights Act 2003. However, the analysis in the book was based on the United Nation Convention on the Rights of the child which to some extent does not bring the peculiarities of Niger State Child Rights Law 2010.[46]

Aliyu wrote on Shariah and the Child Rights Act 2003; A case of incompatibility, the author brought the inconsistencies with the religion belief of some Nigerians which the law did not put into consideration. The analysis of the author was based on the Child Rights Act 2003, which the Child Rights Law 2010 has taken care of some issues raised by the author which of course could not probably have not come to the notice of the writer as the law was passed the year the book was published.[47]

Meron wrote on Human Rights in international Law; legal and policy issues, the author dwell on the international protocols which addresses the human rights, children inclusive, which although relevant to this dissertation do not bring the

[46] *Aboki, Y. Introduction to Legal Research Methodology.* 2nd Edition, Tamaza Publishing Company Limited, Zaria (2009)

[47] Aliyu I.A. Sharia and the Child Rights Act 2003: A case of incompatibility In: Aliyu I.A. (ed) *Alternative Dispute Resolution and Some Contemporary Issues*, Advocate Chambers, Faculty of Law, ABU Zaria, 2010

rights and responsibilities of children as contain in Niger State Child Rights Law 2010.[48]

Alemika, etal, in their report on Rights of the Child in Nigeria[49]discussed the Children and Young People's Law, although this have been over taking by event but it helps in the understanding of the rights of the child before the enactment of Child Rights Act 2003 and Niger State Child Rights Law 2010.

Another distinguished author that has written on the child right in Nigeria is Oshio. The author discussed the Legal Rights of the Child in Nigeria under the Constitution[50]. The author did a good job by outlining the rights Nigerian child possess under the constitution. However, the rights in the constitution are not exhaustive as it relate to the child, which the Child Rights Act 2003 and Child Rights Law 2010 provide an additional rights to the child.

Bekink in his book titled 'A Child Divorce', "A break from parental responsibilities and rights due to the traditional socio-cultural practices and belief of the parents. Work on the parental responsibilities and duties, which should be exercised in the interest of the children".[51] The emphasis of the author on the interest of a child is essential as the Child Rights Act 2003 and Child Rights Law

[48]Meron T., Human Rights In International Law: Legal And Policy Issues, Clarendon Press, Oxford. (1984)
[49] http://hdi.handle.net/10500/12171 28th December, 2012
[50]www.nigerialawguru.com/-/human%20rights%20law,15th March, 2012
[51]http://hdl.handle.net/10500/12171 28th December, 2012

2010 are guided under the principle of best interest of the child which the research work considered important, although the rights of the children were not spelt out by the authors.

Fredrick in first star's National report card on legal representation for children titled "A Child's Right to Counsel"[52] examined the rights of a child to counsel which is an important segment of this research work. However, the author dwells on the rights to counsel while this research work considers other rights.

Ayua and Okagbue, wrote on "The Rights of the Child in Nigeria"[53] which considered majorly the Rights has contained in the Children and Young Persons Act and other various laws which were written before the enactment of the Child Rights Act 2003 and Niger State Child Rights Law 2010, therefore could not have been able to write on the Rights as provided in the Child Right Act and Child Right Law and the challenges therein.

Abdul wrote on the legal aspect of child protection in Niger State[54] therefore the work is relevant. However, the author did not identify the challenges with the implementation of the rights provided in the law.

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[52] www.caichildlaw.org/misc/3rd_Ed_chi... 28th July, 2012

[53] Ayua I.A and Okagbue .I, *The Rights of the child in Nigeria, Intec Printers Limited, Ibadan, (1996) P.30.*

[54] Abdul M.B. The Legal Aspect of Child Protection. A Critical Appraisal, Paper Presented at the Workshop on Procedure and Child Related Issue. Organized by Niger State Child Right Implementation Committee held at Abdulsalam Youth Centre, Minna. 24th May, 2013.

Ahmed A.B. wrote on "An Appraisal of the Legal Rights of the Child in Nigeria",[55] the author did an intelligent work by establishing the fact that the child rights is part of the fundamental rights as contain in 1999 constitution which is the basis for the legislation of other laws including the Niger State Childs Law 2010.

1.8 Organizational Layout

This research work is divided into six chapters. Chapter one examines the general introduction of the dissertation. It provides for the aim and objectives, justification of the research, literature review.

Chapter two discusses the development of children's rights under international law, that it considered the United Nation Convention on the Rights of the child, African Charter on the Rights and welfare of the Child, and the various rights provided for by these two international instruments.

Chapter three examines the rights of the child under Nigerian laws and in achieving this, the provisions of the Constitution, Criminal Code and Penal Code, Children and Young Persons Law, Child Rights Act, Trafficking in Persons (Prohibition) Enforcement and Administration Act and National Drug Law Enforcement Act were considered as they relate to the child protection.

[55] Ahmed A.B. "An Appraisal of the Legal Rights of the Child in Nigeria", *Bayero Journal of Private and Commercial Law Journal* (2015) Vol. 1, No. 1.

Chapter four Analyses the Rights of the Child under the Niger State Child Right Law.

Chapter five deals with the Enforcement Mechanism as provided by the law.

Chapter six concluded the research by outlining the summary, observations and stating suggestions thereto.

CHAPTER TWO

DEVELOPMENT OF CHILDREN'S RIGHT UNDER INTERNATIONAL LAW

2.1 Introduction

The United Nations Convention on the Rights of the Child now constitutes the most authoritative and comprehensive statement of fundamental rights of children containing civil, political, social, economic, cultural, recreational and humanitarian rights.

The United Nations Convention on the Rights of the Child consist of 54 Articles that set out children's rights and how governments should work together to make them available to all children.

Since it was adopted by the United Nations in November, 1989; 194 countries have signed up to the United Nations Convention on the Rights of a Child. All countries that signed up the United Nations Convention on the Rights of a Child are bound to ensure it is implemented. This is monitored by the Committee on the Rights of the Child[56].

[56] www.savethechildren.org.uk. 18th May, 2015

2.2 The Rights under the United Nations Convention on the Rights of the Child

2.2.1 The Right to Life and Development

Article 6 provides that:

1. "States parties recognize that every child has the inherent right to life".
2. "States parties shall ensure to the maximum extent possible for the survival and development of the child". When a child is born, the right to life is guaranteed under United Nation Convention on the rights of a child.
3. "The obvious reason for the protection of life is because life is sacred, the source and nature of which is beyond human comprehension".[57] Right to life is the foundation upon which all other rights are predicated and that is why it is usually the first of all rights guaranteed under the United Nation Convention. More so, life is considered as the most precious gift to the children.

2.2.2 The Right to an Identity

Article 7 provides that:

> "The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents".[58]

[57] United Nations Convention on the Rights of a Child
[58] Ibid

> "Identity encompasses the family name, the surname, date of birth, gender and nationality of the individual will hold rights and obligations specific to their status (woman, man, child…)".[59]

From birth, each individual has the right to have an identity. The identity of an individual is the assertion of his or her existence in a society. It is also a matter of recognition of their individuality and what differentiates them from their peers.

2.2.3 Separation from Parents

Article 9 provides that:

> States parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to Judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interest of the child. Such determination maybe necessary in a particular case such as one involving abuse or neglect of the child by the parents or one where the parents are living separately and a decision must be made as to the child's place of residence.[60]

Where the child is separated, the state must respect the right of the child to maintain personal relations and different contact with both parents on a regular basis, except if it is contrary to the best interest of the child.

[59] www.humanium.org/../identity. 1st July, 2015.
[60] United Nation Convention on the Rights of a Child

2.2.4 The Right of the Child to Express Views

Article 12(1) states that:

> "States parties shall assure to the child who is capable of forming his or her own views, the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child".[61]

Sub section (2) provides that:

> "For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law".[62]

Furthermore, Article 13 provides that:

> "The child shall have the right to freedom of expression, this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice".[63]

[61] United Nation Convention on the Rights of a Child
[62] Ibid
[63] Ibid

Children can form and express views from the earliest age, but the nature of their participation and the range of decisions in which they are involved, will necessitate increase in accordance with their age and evolving capacities. Young children's participating will be largely limited to issues relating to their immediate environment, within the family, care facilities and their local communities. However, as they grow older and their capacities develop get more involved in wider range of issues that affect them from their immediate family to issues outside their immediate environment but which decisions will affect them directly. It is required here that children be recognized as citizens, as participants and as active contributors both to decisions that affects them and for the wide society where they lives.[64]

The child is free to hold opinions, receive and impart ideas and information without interference.

2.2.5 Civil Rights

Articles 13 to 17 deal with some of the classic civil liberties recognized by liberal democracies and expressly apply these to children. Thus, subject to certain qualifications. Articles 14 require states to respect the right of the child to freedom of thought, conscience and religion but this is qualified by the rights and duties of

[64] Ahmed A.B. "An Appraisal of the Legal Rights of the Child in Nigeria", *Bayero Journal of Private and Commercial Law Journal* (2015) Vol. 1, No. 1, p. 158.

parents to give direction to the child. Article 15 upholds the rights and duties of parents to give direction to the child and also upholds the right of the child to freedom of association and to freedom of peaceful assembly. Article 16 protects the child against interference with his or her privacy, family, home or correspondence, while Article 17 requires states to ensure that the child has access to information on arrange of material especially that aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.[65]

Various international conventions have provisions protecting these rights, the United Nations recognized the importance of freedom of religion or belief as a human right in the 1940 Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations.

Religious freedom is understood as the freedom to exercise any or no religion as defined by the relevant declarations of the United Nations. Many are of the view that freedom of religion also includes having the right to choose not to believe or belong to a religion or religious group.[66]

The rights to freedom of peaceful assembly and association are among the most important human rights protection and peoples' ability to come together and work for the common good. They are a vehicle for the exercise of many other civil,

[65] United Nations Convention on the Rights of the Child (1989)
[66] www.thelawyerschronicle.com/understandi... 1st July, 2015.

cultural, economic, political and social rights, allowing people to express their political opinions, engage in religious observances, form and join trade unions, elect leaders to represent their interests and hold them accountable. Today, the rights of freedom of peaceful assembly and of association are enshrined in international law as fundamental freedoms. But their philosophical origins are not cultural, or specific to a particular place and time. Rather, these rights are born from our common human heritage, rooted in the simple fact that every civilization is built upon cooperation and collaboration, from many and not one. It is human nature and human necessity that people come together to collectively pursue their interests. Vibrant assembly and association rights are a prerequisite not only for a legitimate democracy but also for a just society.[67]

2.2.6 Child Protection

Articles 19 to 24 provided for preventive measures. Article 19 requires states to take all appropriate legislative, administrative, social and educational measures to protect them from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment or exploitation including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who as the care of the child.' 'Article to provide that a child temporary or permanently deprived of his or her family environment shall be entitled to special protection or assistance provided by

[67] www.freeassembly.net/about/freedoms 13th June, 2015

the state'. It also state that, when considering solution due regard shall be paid to the desirability and continuity in a child upbringing and to the child ethnic, religious cultural and linguistic background.

Article 21 regulates various aspects of adoption of children with the requirement that states which recognize and/or permit the system of adoption shall ensure that the interest of the child shall be the paramount consideration.

Article 24 deals with protection of the child's health, and requires states to recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. This and several other articles have major resource implications and the states obligations must be viewed as programmatic or progressive.[68]

Child maltreatment means an adult's action or failure to take action that results in the physical abuse, sexual abuse, emotional abuse, neglect and medical neglect of a child or presents a risk to seriously harm a child. Emotional abuse is one of the most common and harmful forms of child maltreatment and can have a lifelong impact affecting children's ability to feel safe and loved, the way they relate to others and their self-esteem. Decades of research have shown that effective parenting is the most powerful way to prevent behaviour problems in the

[68] United Nations Convention on the Rights of the Child (1989)

adolescence year. We also know that the early years are a critical period in a child's life when children learn basic interpersonal skills, problem-solving, and self-control.[69]

2.2.7 Social Welfare

Articles 26 to 31 are articles dealing with the right of the child to receive various forms of social welfare. Article 26 protects the child's right to social security while taking into account in particular the resources and the circumstances of the child and person having responsibility for the maintenance of the child. Article 27(1) requires states to recognize 'the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. However this is then qualified by references to the abilities and Financial Capabilities of the child's careers and the national conditions and means of states. Subject to this, states are required to assist care givers to implement the child's right by providing material assistance and support programmes directed, in particular, towards nutrition, clothing and housing. Article 27(4) it requires states to take all appropriate measures to secure the recovery of maintenance for the child…Article 28 provide States parties to recognize the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular (a) make primary free to all. (b)

[69] www.apa.org>home>publicinterestdirectorate>violencepreventionoffice>programsandservices. 6th July 2015

encourage the development of different forms of Secondary Education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need.

Article 30 deals with rights of minority groups and provide that in those states in which ethnic, religious origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language. Article 31 (1) uphold the child's recreational rights. It requires States to 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 arts.[70]

The right to social security ensures that everyone, regardless of age or ability to work, is guaranteed the means necessary to procure basic needs and services, several key human rights principles are fundamental to guaranteeing the right to social security.

Social security implicitly covers all the risks involved in the loss of means of subsistence for reasons beyond a person's control.

[70] United Nations Convention on the Rights of the Child (1989)

Social security must be provided without discrimination (in intent or effect based on health status, race, ethnicity, age, sex, sexuality, disability, language, religion, national origin, income or social status.[71]

2.2.8 Protection against Exploitation

Article 32 to 35 recognize the child's right to protection from various forms of exploitation including economic exploitation, protection against narcotic, sexual exploitation and trafficking in children. Other articles protect child against torture or other cruel in-human or degrading treatment or punishment, the article require States to abide by the value of international humanitarian law regarding children and armed conflicts place, also states under rehabilitative duties towards child victim of the kind of harms contemplated by the UN convention and regulate the treatment of children under the criminal law.[72]

Critics of international law often question its value and whether it is truly law at all, in view of the difficulties of enforcement. It is fair to say that there is much in the UN convention which can only be achieved with political will and a massive commitment of resources. Yet the UN convention, like domestic law, should not be evaluated solely on the basis of its legal enforceability. Arguably more important is the educative and symbolic effect of internationally agreed norms against which

[71] www.nesri.org/programs/what-is-the... 20th June, 2015
[72] www.nesri.org/programs/what-is-the... 20th June, 2015

domestic standard may be measured. MCGoldrick has pointed out that the UN convention is evidence thus:

(a) Make higher education accessible to all on the basis of capacity by every appropriate means.

(b) Make educational and vocational information and guidance available and accessible to all children.

(c) Take measures to encourage regular attendance at Schools and the reduction of drop-out rates.[73]

Millions of children around the world are trapped in child labour, depriving them of their childhood, their health and education, and condemning them to a life of poverty and want. Of course, there are work that children do to help their families in ways that are neither harmful nor exploitative. But many children are stuck in unacceptable work for children, a serious violation of their rights.[74]

2.3 The African Charter on the Right and Welfare of the Child

The African regional system for the protection of children's rights is the most progressive achievement of all the regional systems, as it is the only system to provide a comprehensive mechanism for the protection and promotion of

[73] Bainham A., Op. Cit.
[74] www.unicef.org/protection/57929_chi... 26th June, 2015

children's rights at a regional level. This serves as an innovation in the arena of children's rights.[75]

Adopted in 1990, the African Charter on the Rights and Welfare of the Child couches children's rights and welfare issues in familiar African language, allowing for the virtues of children's cultural heritage, historical background and the values of African civilization to be given priority. The African Charter on the Rights and Welfare of a Child recognizes children in Africa as direct bearers of rights and, in turn, children bear responsibilities to others. This may be considered a controversial addition by western thinkers, but it reflects the underpinning of African society, and positive conclusions can be drawn from this addition, once one understands Africa concept of human rights.

The African Charter on the Rights and Welfare of a Child has the potential to reverse the discriminatory practices that prevail in many parts of the continent and to educate social, administrative and judicial institutions about the way in which the child should be viewed and treated within society. It obliges states to ensure all domestic legislation and customary practices comply with the enshrined provisions.

[75] www.peacepalacelibrary.nl/plinklet/... 15th July, 2015

The African Charter on the Rights and Welfare of a Child clearly defines a "child" – setting an age of 18 years and explicitly provides for the prohibition of child betrothal, children participating in armed conflicts, child labour practices and child trafficking, to name but a few dangerous situations facing children in Africa. It promotes the child's right to become a fully-fledged and active member of society.[76]

The paramountcy of children's rights in an African context has been formally recognized by the region since 1979 when the (non-binding) declaration on the Rights and Welfare of the African Child (declaration) was adopted by the Assembly of Heads of State and Government of the Organization of African Unity (OAU) and its 16th ordinary session in Monrovia.

The Secretariat of the OAU had also displayed an interest in developing protection mechanisms for children's rights before the adoption of the African Charter on the Rights and Welfare of a Child. It had been active regarding children's matters, such as child labour, child trafficking and children in situations of armed conflict with regard to child labour, OAU worked closely with the international labour organizing international programme for the elimination of child labour, as well as the OAU labour and Social Affairs Commission, which continuously discussed this issue.

[76] www.peacepalacelibrary.nl/plinklet/... 15th July, 2015

Africa Heads of State and Government further committed to children's rights by ratifying the Convention on the Rights of the Child, which entered into force in 1990. In order for the Convention on the Rights of the Child to satisfy the culturally diverse international community that participated during the drafting and adoption process, some substantive provisions are rather vague. This is one of the reasons for the drafting and subsequent adoption of the African Charter on the Rights and Welfare of a Child. Civil society organisations followed the international development of children's rights largely and collectively drafted the document, taking the values of the United Nation Convention on the Rights of the Child and adding African historical and cultural values. The draft was then presented to the organisation of African Unity for consideration and potential adoption. The organisation of African Unity Heads of State and Government adopted it without amendment at the 26th ordinary session in Addis Abba, Ethiopia in 1990.[77]

2.3.1 Best interests of a child[78]: Within the framework of the African Charter on the Rights and Welfare of the Child, the best interests of the child principle is paramount over the other three underpinning principles and is the primary consideration in all actions concerning the child. This is in stark contrast to Article 3(1) of the Convention on the Rights of the Child, which states that in all actions

[77] www.peacepalacelibrary.nl/plinklet/... 15th July, 2015
[78] Article 4, African Charter on the Rights and Welfare of the Child

concerning children, the best interests of the child shall be a primary consideration. The African Charter on the Rights and Welfare of the Child goes further than the Convention on the Rights of the Child by ensuring that all its provisions must be interpreted first and foremost in the child's best interests; moreover, this is contained in a binding document, rather than being predicated on non-binding, yet persuasive recommendations, made by a committee, as is the situation under the Convention on the Rights of the Child. It has been observed that the supremacy of the best interests principle in the African Charter on the Rights and Welfare of the Child, though maximizing the influence of this overriding principle over other considerations, tends to reflect Western culture rather than embracing genuine African spirit. However, it must be noted that the best interests of the child have been the paramount consideration in determining a variety of children's issues, such as custody, in both customary law and formal civil law in Africa, dating back to the late eighteenth century, and has been applied consistently since.[79]

2.3.2 Life, survival and development[80]: Life, survival and development principles ensure that children have the capacity to ascertain their rights and ensure the protection of their welfare. Furthermore, without the other provisions of the African Charter on the Rights and Welfare of the Child being read in compliance with the child's right to life, survival and development, a child will always remain

[79] www.ahrlj.up.ac.za/lloyd-a 15th June, 2015
[80] Article 5, African Charter on the Rights and Welfare of the Child

vulnerable and incapacitated. This underpinning principle refers to other overarching concepts and situations, such as poverty, disease, war and conflict, capital punishment and the disintegration of the traditional family unit.

The underlying principle of survival incorporates the inherent right to life, which by necessity, requires the eradication of the death penalty [article 5(3)], which is all the more significant considering at least 32 of 53 African states retain the death penalty (though not necessarily for children). Thus its eradication is imperative for the protection of children's rights in Africa. State parties' compliance with this obligation reflects the general policy to substitute life imprisonment for the death penalty. It is regrettable that the African Charter on the Rights and Welfare of the Child does not explicitly provide for the implications of life imprisonment for children, akin to the Convention on the Rights of the Child. However, article 5 of the African Charter on the Rights and Welfare of the Child obligates states parties to ensure, to the maximum extent possible, the survival and development of the child. Life imprisonment would clearly impinge on the development of a child, mentally and physically, and thus would contravene article 17(3) of the African Charter on the Rights and Welfare of the Child.[81]

[81] www.ahrlj.up.ac.za/lloyd-a 15th June, 2015

2.3.3 Non-discrimination[82]: The principle of non-discrimination highlights the requirement to always ensure actions, decisions, policies and legislative enactments take heed of a child's rights to 'belong' and to be considered equal, not only among their own group, but as members of the whole community. The non-discrimination principle attaches to both the child and to the child's parents or legal guardians.

The Convention on the Rights of the Child, in article 2(1), confines state parties to ensure children only 'within their jurisdiction' receive the rights in the Convention on the Rights of the Child without discrimination. The African Charter on the Rights and Welfare of the Child does not include any such restrictions or limitations, implying that states parties and individuals should ensure respect for, and realization of, children's rights without discrimination across the continent. This has far reaching consequences for the sharing and mobilization of joint efforts and ventures with African states in need of additional assistance to ensure compliance with the African Charter on the Rights and Welfare of the Child's provisions and principles.

The African Charter on the Rights and Welfare of the Child has included explicit provisions on various forms of potential discrimination, to ensure special protection to children in certain circumstances, such as discriminatory regimes,

[82] Article 26, African Charter on the Rights and Welfare of the Child

war and conflict, as well as military destabilization, which are particularly acute problems in Africa. These explicit provisions are a positive contribution by the African Charter on the Rights and Welfare of the Child, as they do not dilute the importance of non-discriminatory practices and directly confront some of the most relevant issues affecting children in Africa.

2.3.4 Participation: Participation is required for the effective realization of the other core principles and, indeed, the other substantive provisions contained in the African Charter on the Rights and Welfare of the Child. Participation ensures that children are engaged actors rather than passive beneficiaries in the fulfillment of their rights. It also ensures children are capable of accessing their rights and have a voice, as well as a stake, in the protection of their rights and welfare.

The African Charter on the Rights and Welfare of the Child contains many similar provisions of the Convention on the Rights of the Child, albeit prescribed in an African context. However, there are certain provisions which provide for a higher threshold of protection for children, and some which are not provided for at all within the Convention on the Rights of the Child. These provisions will be considered.[83]

[83] www.ahrlj.up.ac.za/lloyd-a 15th June, 2015

2.3.5 Nationality[84]: Article 6(4) of the African Charter on the Rights and Welfare of the Child is much more comprehensive, explicitly providing for citizenship from the territory or residence in which the child is born. Article 7(2) of the Convention on the Rights of the Child can be regarded as an empty provision, requiring states to turn to other international agreements and national law for the provision of nationality for an otherwise stateless child. Thus, the right to acquire nationality is worthless if there is no recognizable state to which to make an application.[85]

2.3.6 Education[86]: The African Charter on the Rights and Welfare of the Child affords a much more detailed and protective measure on education, with no corresponding provision at the international level. Article 11(3)(e) of the African Charter on the Rights and Welfare of the Child obliges states to take affirmative action and measures with regard to female, disadvantaged and gifted children. This provision attempts to address social imbalances, which can be corrected by state action.

Article 11(6) of the African Charter on the Rights and Welfare of the Child provides protection for, and the promotion of, the rights of girls who fall pregnant before the completion of their education, it provides the opportunity for such girls to complete their education, on the grounds of their individual ability, without

[84] Article 6(4), African Charter on the Rights and Welfare of the Child
[85] www.ahrlj.up.ac.za/lloyd-a 15th June, 2015
[86] Article 11, African Charter on the Rights and Welfare of the Child

interruption, and pregnancy is not a legitimate ground for any kind of discrimination.

2.3.7 Disabled children[87]: Article 13(1) of the African Charter on the Rights and Welfare of the Child ensures that a mentally or physically disabled child should enjoy a full and decent life and shall be provided with special measures, obliging the state to take the financial burden. States are also obliged to provide mobility and access to public institutions and facilities [article 13(3)]. Unfortunately, the African Charter on the Rights and Welfare of the Child did not provide for 'free of charge' assistance to the extent possible in the state, and is silent on access to rehabilitation services, health care services and education for disabled children.

2.3.8 Health and health services[88]: Article 14(2)(g) of the African Charter on the Rights and Welfare of the Child prescribes the integration of basic health service programmes into national development plans. Parents, children, community leaders and community workers have the right to be supported and informed about the basic knowledge of child health and nutrition [article 14(2)(h)]. The African Charter on the Rights and Welfare of the Child emphasizes a collegial approach by providing for the meaningful participation of the whole of society and NGOs in the planning and management of a basic health service programme for children [article

[87] Article 13(1), African Charter on the Rights and Welfare of the Child
[88] Article14(2)(g), Ibid

14(2)(i)]. Moreover, it provides for technical and financial support for the mobilization of local community resources in the development of primary health care for children [article 14(2)(j)].

2.3.9 Child labour[89]: As well as reinforcing the provisions at the international level, the African Charter on the Rights and Welfare of the Child provides for the widespread dissemination of information on the dangers of child labour, and obliges states to facilitate and organize educational campaigns [article 15(2)(d)]. It also requires states to legislate for minimum ages for admission into every form of employment [article 15(2)(a)].

2.3.10 Parental responsibilities[90]: If parents or guardians are facing difficulties in providing material assistance to their children, states parties are obliged to provide such assistance and support programmes, especially in regard to health, education, clothing and housing. This could be an invaluable addition to tackle the problem of HIV/Aids: the primary responsibility is on parents and *de facto* carers, when they are no longer able to provide, or are no longer present, the responsibility falls back onto the state [article 20(2)(a)].

[89] Article 15, African Charter on the Rights and Welfare of the Child
[90] Article 20, Ibid

2.3.11 Harmful social and cultural practices[91]: Africa is a continent rich in cultural practices which are embedded in the fabric of everyday life. Article 21 of the African Charter on the Rights and Welfare of the Child, which protects children against harmful social and cultural practices, is one of the most important of all the enshrined provisions; a concurring clause has not been included in any other treaty at any level and this is a crucial step forward for the protection of children in Africa, especially in light of the recognition of African cultural heritage and African civilization. Many discriminatory and dangerous practices in Africa emanate from custom and from heritage. It has been very difficult to eradicate harmful practices, owing to the perceived threat to cultural 'values' and a 'western imposition'. This is, therefore, a welcome inclusion. States must take *all appropriate measures* to ensure the effective implementation of this provision.

Article 21(1) of the African Charter on the Rights and Welfare of the Child is very broad: no practices or customs are expressly mentioned, leaving it open to interpretation, and it includes such practices as female genital mutilation (FGM); the African Charter on the Rights and Welfare of the Child has commented on FGM and article (21) in a number of its sessions, but has not yet provided any further analysis or interpretation of this article.

[91] Article 21, African Charter on the Rights and Welfare of the Child

Article 21(2) of the African Charter on the Rights and Welfare of the Child specifically relates to the African customary practice of child betrothal and marriage, and interrelates with other clauses in the treaty, such as article 27 on sexual exploitation, article 11 on education, article 3 on discrimination, article 5 on the right to survival and development, and article 14 on health. Child marriage and betrothal is expressly prohibited, and effective action, including legislation, is to be taken to specify the minimum age of marriage as 18 years; it is compulsory to register all marriages in an official register. This has not been expressly recognized and regulated in any other treaty and is a welcome addition. It is not clear how African states will be able to ensure compulsory marriage registration, as resources are scarce in some jurisdictions. Nonetheless, states must make every effort to allocate enough budgetary resources to ensure this provision is fully implemented.

CHAPTER THREE

RIGHTS OF THE CHILD UNDER NIGERIAN LAWS

3.1 Introduction

The United Nation's Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child enjoin that member states shall undertake to disseminate the convention principles and also African Charter principles and take all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present convention and African Charter respectively. Against this background, Nigeria being a member of the United Nation and African Union domesticated the United Nation Convention on the Rights of the Child and African Charter of the Rights and Welfare of the Child.

Following the formation of the United Nations and promulgation and adoption of the Universal Declaration of Human Rights which provided for firm foundation for the historical development and globalization of human rights, the global community has not wavered in its commitments to the global promotion and protection of human rights. The Supreme Court of Nigeria in the case of *Odogu vs. Attorney General of the Federation* held that a fundamental right is a right guaranteed in the Constitution which every person is entitled to enjoy by virtue of

being a human being. This is particularly seen in the cases of the vulnerable groups as in the case of women and children. In this, the legal rights of the Nigerian child are contained in various municipal laws and international instruments. These laws are based on certain fundamental principles relating to the promotion of human survival, prevention of harm, promotion and sustenance of human dignity and the enhancement of human development. These principles recognize the basic concept that the child is the foundation of the society and he or she assures its continuity. Accordingly, the survival and continuity of the human society depends upon the protection, preservation nurture and development of the child. So many laws in Nigeria have provisions protecting and promoting the rights of the child under the Nigerian Legal System. The constitution of the Federal Republic of Nigeria guarantees certain fundamental rights to every person in Nigeria, including children.[92]

3.2 Constitution

I. Right to Life and Development[93]

When a child is born in Nigeria, the right to life, survival and development of such a child is guaranteed under the 1999 Constitution.

[92] Ahmed A.B. Op. cit. p. 158
[93] S. 34, 1999 Constitution of the Federal Republic of Nigeria

The obvious reason for the protection of life is because life is sacred, the source and nature of which is beyond human comprehension. Right to life is the foundation upon which all other rights are predicated and that is why it is usually the first of all rights guaranteed under the constitution. More so, life is considered as the most precious gift to the citizen, so the Constitution provides that every person has a right to life and no one shall be deprived of his life intentionally.[94]

It is further argued that right to life guaranteed by the Constitution requires the state not only to abstain from taking life but to take further positive steps to protect life, like making sure that infant mortality is drastically reduced or eliminated completely, to increase life expectancy and to eliminate malnutrition and epidemics. It also imposes a duty on the state to take appropriate steps to safeguard life, which will entail promoting security, preventing murder or other crimes threatening life, prevent acts of genocide and other acts of mass violence causing arbitrary loss of life.[95]

II. Right to Dignity of Human Person

Section 311 provides that: "Every individual is entitled to respect for the dignity of his person, and accordingly

[94] Ahmed A.B. "An Appraisal of the Legal Rights of the Child in Nigeria", *Bayero Journal of Private and Commercial Law Journal* (2015) Vol. 1, No. 1, p. 159.
[95] Ibid

(a) No person shall be subjected to torture or to inhuman or degrading treatment;

(b) No person shall be held in slavery or servitude; and

(c) No person shall be required to perform forced or compulsory labour[96]

The constitution here has specifically enumerated the acts, which will be regarded as violating the dignity of the person of the child and torture as used in the constitution could be physical as in physical brutalization of the human person or mental as in agony or worry. While inhuman treatment could be a situation of deliberately causing severe pains, suffering, physical or mental which are not justifiable in law. It is argued that corporal punishment or life imprisonment; as sentences impose on a child constitute inhuman treatment.[97] By these provisions, every child in Nigeria is entitled to respect for the dignity of his person and accordingly no child should be subjected to physical, mental or emotional injury, abuse, neglect or maltreatment including sexual abuse. Also, that no child in Nigeria should be subjected to torture, inhuman or degrading treatment, particularly in form of slavery, corporal punishment, child labour or any form of torture are been prohibited.

III. Right to Personal Liberty

Section 35 provides that:

[96] S. 34 of 1999 Constitution of the Federal Republic of Nigeria
[97] Ahmed A.B. Op. Cit. p. 161

> "Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law".[98]

The constitution here provides that the child should be free from physical restraint on his body, such that he or she shall not be restricted bodily except in justifiable circumstances which are specifically recognized by the law, like restriction for education and welfare.[99] However, in practice the constitutional guarantees, in respect of cases involving children are rarely respected by the police, the police usually detained the children together with adults most at times without knowing the charges against them and without communication with their parents or legal practitioners.

IV. Non-Discrimination

Section 42 provides that:

> 1) "A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not by reason only that he is such a person
>
> (a) Be subjected either expressly by, or in the practical application of, any law in force in Nigeria or only executive or administrative action of the government, to disabilities or restrictions to which citizen of Nigeria or other communities, ethnic groups, place of origin, sex, religions or political opinions are not made subject; or

[98] S. 35, 1999 Constitution of the Federal Republic of Nigeria
[99] Ahmed A.B. Op. Cit. p. 161

(b) Be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizen of Nigeria or other communities, ethnic groups, places or origin, sex, religious or political opinions.

2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.[100]

The constitution stipulates that no child shall be discriminated against due to the circumstances of his birth, sex, religion etc. Despite this constitutional guarantee, many children in Nigeria are discriminated against particularly on the right of a girl child who is either denied her right to education or right to inheritance.[101]

In *Augustine Nwofor Mojekwu vs. Caroline Mbafor Okechukwu Mojekwu*,[102] the court decided that the 'Oli-Ekpe' Custom of Nnewi in Anambra State under which males and not females inherit their father's property is unconstitutional.

Nigeria is an egalitarian society where the civilized sociology does not discriminate against women. However, there are customs which discriminate against women folk which regard them as inferior to the men folk. That should not be so as all human beings (male and female), are born into a free world and are

[100] S. 42 of 1999 Constitution of the Federal Republic of Nigeria
[101] Ahmed A.B. An Appraisal of the Legal Rights of the Child in Nigeria, Bayero Journal of Private and Commercial Law Journal (2015) Vol. 1, No. 1, Page 161.
[102] *Augustine Nwofor Mojekwu vs Caroline Mbafor Okechukwu Mojekwu* (1997)7 NWLR (Pt 512) 283.

expected to participate freely without any inhibition on ground of sex. Thus any form of societal discrimination on ground of sex, apart from being unconstitutional is antithesis, a society built on the tenants of democracy.

The case of *Mojekwu vs. Ejikeme*[103] confirms the decision of the Court of Appeal and held that, it is unconstitutional in the light of the provisions of Section 41(1) of the 1999 Constitution to hold that a female child cannot inherit from her deceased father's estate in Igbo land without the performance of the Nrachi ceremony. The same decision was reached by the Supreme Court in the case of *Mojekwu vs. Iwuchukwu Mojekwu*[104]. Also in *Ukeje vs. Ukeje*[105], the Supreme Court held that the Igbo native law and custom which disentitles female child born in or out of wedlock from sharing in her deceased father's estate is void as it conflict with S. 42 (1) and (2) of the 1999 Constitution.

Also in the case of *Onyibor Anekwe and other vs. Mrs Maria Nweke*[106], it was held that: The custom and practices of Awka people upon which the appellants have relied further counter claim is hereby out rightly condemned in very strong terms. In other words, a custom of this nature in the 21st century societal setting will only tend to depict the absence of the realities of human civilization. It is punitive,

[103] *Mojekwu vs. Ejikeme* (2000) 5 NWLR (Pt 657) 402
[104] *Mojekwu vs. Iwuchukwu Mojekwu* (2004) 11 NWLR (Pt 883) 196
[105] *Ukeje vs. Ukeje* (2001) 27 WRN 142
[106] *Onyibor Anekwe and other vs. Mrs Maria Nweke* (2014) 4 SCNJ 2

uncivilized and only intended to protect the selfish perpetration of male dominance which is aimed at suppressing the right of the women folk in the given society.

One would expect the days of such obvious differential discrimination over. Any culture that disinherits a daughter from her father's estate or wife from her husband's property by reason of God instituted gender differential should be punitively and decisively dealt with. The punishment should serve a deterrent measure and ought to be meted out against the perpetrations of the culture and custom.

V. Freedom of Expression

Section 39(1)[107] provides that:

> "Every person shall be entitled to freedom of expression including freedom to hold opinions and to receive and impart ideas and information without inference".

The freedom of expression is a child right guaranteed by the constitution. "Children can form and express views from the earliest age, but the nature of their participation and the range of decision in which they are involved, will necessarily increase in accordance with their age and evolving capacities".[108] It is required here that children be recognized as citizens, as participants and as active contributors

[107] 1999 Constitution of the Federal Republic of Nigeria
[108] Ahmed A.B. Op. cit. p. 162.

both to decisions with their own lives and also for the wider society where they live.

VI. Freedom of Thought, Conscience and Religion

Section 38 (1)[109] provide that:

> "Every person shall be entitle to freedom of thought, conscience and religion, including freedom to change his religion on belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance".

Here the constitution ensures that child's right to freedom of thought, conscience and religion. Thus the child is entitled to manifest and propagate his religion or belief in worship, teaching, practice and observance.[110]

VII. Freedom of Association and Peaceful Assembly

Section 40 provides that:

> "Every person shall be entitle to assembly freely and associate with other persons, and in particular he may form

[109] 1999 Constitution of the Federal Republic of Nigeria
[110] Ahmed A.B. Op. cit. p. 163.

> or belong to any political party, trade union or any other association for the protection of his interest".[111]

The Constitution provide for the right of freedom of association and of peaceful assembly. Thus a child is entitled to assemble freely and to associate with other persons for the protection of his interest. A child can however not be a member of a political party and parents or guardians have duty to direct the exercise of this right in conformity with the laws.[112]

VIII. Right to Private and Family Life

Section 37 provides that:

> "The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected."[113]

The constitution guarantees and protects the privacy of the child, his/her home, correspondence, telephone conversations and other communications. The exercise of this right is however subject to the interest of defense, public safety, public order and public morality, the protection of the rights and freedoms of others. The section also provides the child a right to family life. This is because the family is seen as the foundation and basic unit of the society, which provides a unique

[111] 1999 Constitution of the Federal Republic of Nigeria
[112] Ahmed A.B. Op. cit. p. 158.
[113] 1999 Constitution of the Federal Republic of Nigeria

environment for the survival, protection and development of the child. It teaches moral and cultural values of the child and protects the best interest of the child.[114]

In addition to all these fundamental rights of the child, the Constitution in its chapter two makes provisions for, what is calls fundamental objective and directive principles of state policy, which are geared towards the promotion and protection of the rights of Nigerian citizens particularly children.

3.3 Criminal Code and Penal Code

The two major sources of Criminal Law in Nigeria are the Criminal Code, which applies in the southern states, and the Penal Code, which applies in the northern states. The Criminal Law as we know, it is meant to maintain law and order in the society, to protect the life, liberty and property of the citizens which the given community by making rules that will govern the conduct of the members of the community also prescribing sanctions for the breach of such rules. In doing this, some exceptions are provided to take care of special circumstances, which are executable by the law. These are technically called defenses to criminal liability

[114] Ahmed A.B. Op. cit. p.163.

and they apply to both adults and children. In addition to these defenses, the criminal law makes special provisions dealing with children either as offenders or as victims. The basis of these special provisions or treatment of children is the immaturity of the child, which naturally deprives the child the ability to make rational decisions.[115]

Section 30[116], "A person under the age of seven years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had capacity to know that they ought not to do the act or make the omission. A male person under the age of twelve years is presumed to be incapable of having carnal knowledge".

Also section 50[117] provides that: "No act is an offence which is done

(a) By a child under seven years of age; or

(b) By a child above seven years of age but under twelve years of age who has not attained sufficient maturity of understanding to judge the nature and consequence of such act".

As an offender it is provided that a child under the age of seven years is not criminally responsible for any act or omission and a child under the age of twelve years is not criminally responsible for any act or omission unless it is proved that

[115] Ahmed A.B. Op. Cit. p. 169
[116] Section 30 Criminal Code Act, Cap. 77 Laws of the Federation of Nigeria, 1990
[117] Section 50, Penal Code Law Cap 89, Laws of Northern Nigeria, 1963

the time of doing the act or making the omission he had the capacity to know that he ought not to do the act or make the omission.

The effect of this provision is to fix an age limit below which a child can never be held guilty of a crime. He is not criminally responsible for his acts or omissions if he is below the age of seven years, while those who have attained the age of seven years but are below twelve years are not criminally responsible unless it is established that, at the time of committing the offence, they had the capacity (or sufficient maturity of understanding) to know that they ought not to do the act or make the omission (or to judge the nature and consequences of such act), and that children from twelve years upwards are fully criminally responsible for their crimes except if they enjoy any of the general defenses provided under the laws.[118]

As a victim of an offence, several sections of both Criminal Code and the Penal Code protect the child.

Section 228[119] provides that:

> "Any person who, with intent to procure miscarriage of a woman whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, or permits any such thing, uses any force of any kind, or uses any other means whatever, is

[118] Ahmed A.B. Op. cit. p. 169.
[119] S. 228 Criminal Code Act, Cap 77, Laws of the Federation of Nigeria, 1990

> guilty of a felony and is liable to imprisonment for fourteen years".

Also section 232[120] provides that:

> "Whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment for a term which may extend to fourteen years or with fine or with both".

If a child dies as a result of an act done or omitted to be done by any person before or during it birth, the person who did or omitted to do such act is deemed to have killed the child[121]. Also concealment of the birth of a child after delivery by a secret disposition of its dead body is an offence punishable with imprisonment for two years.[122] All these are meant to protect the child before its delivery or immediately after delivery, so that any person who is under any obligation to the child shall be legally liable if, for any reason he does or refuses to do anything which negatively affects the child[123].

The offence of infanticide is committed where a mother kills her child who is under the age of twelve months but at the time of the killing the balance of mind was disturbed by reason of her not having fully recovered from the effect of giving

[120] S. 232 Penal Code Law, Cap 89, Laws of Northern Nigeria, 1963
[121] S. 309 Criminal Code Act, Cap 77, Laws of the Federation of Nigeria, 1990 and S. 234 Penal Code Law, Cap 89, Laws of Northern Nigeria, 1963
[122] S. 329 and S. 239 Ibid
[123] Ahmed A.B. Op. cit. p. 170

birth to the child or by reason of the effect of lactation following the birth of the child.[124]

It is an offence for a person to unlawfully abandon or expose a child less than seven years of age, in such a manner that grievous harm is likely to be caused to it[125]. The law imposes a duty on every person who, as head of a family, has charge of a child under the age of fourteen years, who is a member of his household, to provide the necessities of life for the child. If he defaults in the performance of this duty, he is held to have caused any consequences which result to the life or health of the child by reason of such default whether the child is helpless or not[126]. Similar duty is imposed on anyone who has change of another who by reason inter-alia of age is unable to withdraw himself from such charge and to provide himself with the necessities of life[127]. This is meant to protect the child from any form of deprivation, so that the parent, guardian or any person responsible will be committing an offence for not providing the child with the necessities of life like food, clothing or shelter.

Furthermore, if a master or mistress has contracted to provide his servant or apprentice under the age of sixteen years necessary food, clothing or lodging, he or

[124] S. 327 Criminal Code Act, Cap 77, Laws of the Federation of Nigeria, 1990 and S. 222 Penal Code Law, Cap 89, Laws of Northern Nigeria, 1963
[125] S. 341 Ibid and S. 237 Ibid
[126] S. 301 Criminal Code Act, Cap 77, Laws of the Federation of Nigeria, 1990
[127] S. 300 Ibid

she has a duty to discharge such obligation. If there is default then he or she is held to have caused any consequences, which result to the life or health of the servant or apprentice by reason of such default[128].

Section 219 of Criminal Code provides that a person who has unlawful carnal knowledge of a girl under the age of eleven years commits a felony punishable with imprisonment to life with or without canning. An owner occupier, manager or controller of premises commits an offence, if he induces or knowingly permits a girl under a stipulated age to resort to or be on the premises for the purpose of unlawful sexual intercourse with a man while S. 222 Criminal Code provide that dealing unlawfully and indecently with a girl under the age of thirteen years is an offence punishable with imprisonment for two years, and if the girl is under the age of eleven years, the offence is punishable with imprisonment for three years.

Any person who, having custody, in-charge or taking care of a girl under thirteen years of age causes or encourages the seduction, unlawful carnal knowledge or prostitution of, or the commission of indecent assault upon such a girl, commits an offence punishable with imprisonment for two years. A person is deemed to be responsible for any of the prohibited acts with respect to such a girl if he has

[128] S. 302 Criminal Code Act, Cap 77, Laws of the Federation of Nigeria, 1990 and S. 238 Penal Code Law, Cap. 89, of Northern Nigeria, 1963

unknowingly allowed her to consort with, or to enter or continue in the employment of any prostitute or person of know immoral character[129].

If a person has custody, is in-charge or taking care of a child or young person who has attained the age of four years but is under the age of thirteen years and he allows the child or young person to reside in or fragment a brothel, he commits an offence punishable with imprisonment for six months or a fine of ₦100 or both.

Section 223 of the Criminal Code and Section 281 of the Penal Code provides that any person, who procures a girl or woman under the age of eighteen years not being a common prostitute or of known immoral character to have unlawful carnal connection with any person, commits an offence punishable with imprisonment for two years. Taking an unmarried girl under the age of eighteen years out of the custody or protection and against the will of her father, mother or person having lawful charge of her with intent that any man unlawfully and carnally knows her is an offence punishable with imprisonment for two years.

The Penal Code contains an omnibus provision dealing generally with cruelty to children and punishes it with imprisonment or fine or both[130].

[129] Ahmed A.B. Op. cit. p. 171.
[130] S. 238 Penal Code Law, Cap. 89, Law of Northern Nigeria, 1963

Section 295 criminal code provides that a blow or other force which does not extend to a wound or grievous harm, may be justified for the purpose of correction as follows:

a) A parent may correct his child under the age of sixteen years for misconduct or disobedience to any lawful command.

b) A master may correct his servant or apprentice under the age of sixteen years for misconduct or default in his duty as such servant or apprentice.

c) Guardian or teacher acting in that capacity over a child under the age of sixteen years for misconduct or disobedience for any lawful command.

Also Section of the Penal Code law provide that the age limit is eighteen years and mode of chastisement cover any act provided it does not amount to the infliction of grievous hurt.

As a child grows up, he or she would have to undergo the learning process. He has to be taught to do this correctly. His or her infractions would have to be corrected, whether by his or her parents, his or her guardians, his or her master or school teacher. Such correction may involve physical chastisement or other punitive measure. The Criminal Law permits this but regulate it[131].

3.4 Children and Young Persons Law

[131] Ahmed A.B. Op. cit. p. 172.

The welfare of children was first statutorily recognized in Nigeria in 1943, through a Children and Young Persons Ordinance. This later became chapter 31 of the Laws of the Federation of Nigeria as revised in 1948 and was retained as chapter 32 of the Laws of the Federation of Nigeria and Lagos as revised in 1946, it was extended to the Eastern and Western Regions of Nigeria in 1958. It can therefore be found in the compilation of the laws of these regions[132].

On the adoption of a state structure in 1967, many states enacted their own Children and Young Persons' Laws, which are almost identical to the original legislation as amended. The Act was therefore, omitted in the federal law revision exercise of 1990 because it has become state law. This research considered the Niger State Children and Young Persons Law.

Children and Young Persons Law makes provisions for the welfare and treatment of young offenders and the establishment of juvenile courts. The Act also makes provisions for juvenile in need of protection.

The purpose of the Children and Young Person Law is to provide for the general welfare of the young, his treatment as an offender and the establishment of a juvenile court to try him. Its general provisions can be encapsulated thus:

[132] Ahmed A.B. Op. Cit

a) **Establishment of Juvenile Courts:** A juvenile court acts in both civil and criminal capacities. As civil court, it deals with juveniles who are in need of care and protection or beyond the control of their parents. As a criminal court, it deals with juveniles charged with offences. In both capacities, the court serves three important functions. First as a social service which must at all time uphold the welfare of young persons, and secondly, it provides the general public with protection from the aggressive acts of delinquents and unruly children.

b) **Special trial and punishment procedure:** Trial of juvenile is a private affair unlike that of adults. The press is kept away and cannot pry into affairs of the court.

c) **Dealing with endangered juveniles and juveniles in need of care and attention:** The Act contains a long list of children in need of attention such as orphans, destitute, children, deserted children, children who have been neglected, ill-treated, or whose parents are undergoing imprisonment terms, children in the practice of begging, those lodging in brothels, those in mortal danger, etc.

   Such children may be sent by court order to an approved institution or committed to the care of some fit persons willing to take their care, or placed

for a specified period under the supervision of probation officers, or their parents or guardian may be ordered to enter into an agreement to exercise proper care and guardianship for them.

d) **Dealing with constricted juvenile offenders:** A constricted juvenile is not sent to prison like his adult counterpart, he is sent to houses of correction called 'approved institution'.

These are remand homes, the approved schools and bostal institutions where trained personnel are equipped to start the convicted juvenile on a course of correction and rehabilitation[133].

3.5 Child Rights Act

In 1996, Nigeria submitted its first report on the implementation of the Child Rights Convention to the United Nation Committee on the Rights of the Child. One of the major recommendations made by the Committee was to finally ensure the domestication of the Child Rights Convention, as this is necessary for its full implementation in Nigeria.

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

[133] Ahmed A.B. Op. cit. p. 174.

parliament in October 2002, again on grounds of its contents being contrary to Islamic values, traditions and culture. The main objections targeted a provision setting 18 years as the minimum age for marriage. This was said to be compatible with religious and cultural traditions in various parts of the country, where girls are given in marriage at a younger age. Many national and international non-governmental organisations as well as other sectors of the civil society of Nigeria criticized this decision and forced the legislators to reconsider its decision to oppose to the Child's Right Bill. Finally, the Child's Right Act was adopted in September, 2003[134].

I. Right to Free, Compulsory Universal Basic Education

Section 15[135] provide for free, compulsory universal basic education, and that it is the duty of the government to provide such education, it also impose on the parent or guardian of a child who has completed his basic education to support the child to senior secondary school except where the child is made to learn appropriate trade.

The 1999 Constitution provided for education under the fundamental objectives and directive policies of government and is not listed as one of the fundamental rights of the child or individual under chapter IV of the constitution, but base on

[134] http://www.scholarship.law.cornell.edu/ijli/vol.37/i553/10 1st May, 2015
[135] Section 15, Child Rights Act, Laws of the Federation of Nigeria 2004, Volume 5, Chapter 50

the provision of Section 15 of the Child Rights Act 2003, it became mandatory and it can be argued to be justiciable.

II. Rights of a Child against Discrimination[136]

The Act recognizes the freedom of a girl child from discrimination on the grounds of belonging to a particular community or ethnic group, place of origin, sex, religion the deprivation or political opinion; and it is stated categorically that the dignity of the child shall be respected at all times. This provision is a corroboration of both constitutional provision and international conventions.

III. Right to rest, leisure and enjoyment of best attainable state of physical, mental and spiritual health[137]

The role of government in achieving this objective is imperative. The federal, state and local governments are expected to ensure a reduction in infant mortality rate, provide medical and health care, adequate nutrition and safe drinking water, hygienic and sanitized environments. The federal government is enjoined by the

[136] Section 10 Child Rights Act, Laws of the Federation of Nigeria 2004, Volume 5, Chapter 50
[137] Section 12 Ibid

Act to mobilize local communities in the development of primary healthcare for children[138].

IV. Right to Parental Care, Protection and Maintenance[139]

The Child Rights Act provided for the maintenance of a child, by his parent or guardians which can be enforced by the child in the family court and not necessary that there must be a matrimonial cause, when orders for maintenance are made it may not last beyond the child's eighteenth birthday and the court have to put into the consideration the income of the parent or the guardian of the child and the financial needs, physical and education of the child.

V. Right to Freedom of Thought, Conscience and Religion[140]

The Child Rights Act provided for the freedom of the child to freely exercise his or her religion, express his thought, without fear of intimidation and this corroborated the provision of the 1999 Constitution which gives every citizen rights of thought, conscience and religion including the child.

VI. Right to Dignity of the Child[141]

[138] http://www.scholarship.law.cornell.edu/ijli/vol.37/i553/10 1st May, 2015
[139] Section 14 Child Rights Act, Laws of the Federation of Nigeria 2004, Volume 5, Chapter C50
[140] Section 7 Child Rights Act, Laws of the Federation of Nigeria 2004, Volume 5, Chapter C50
[141] Section 11 Ibid

It provided for protection against physical, mental, emotional, injury, abuse, neglect or maltreatment including sexual abuse. The Child Rights Act re-enforce the provision of the United Nation Convention on the Rights of the Child and Africa Charter on the Rights and Welfare of a Child, which provide for against physical, mental, emotional abuse, against the children.

VII. **Right to Freedom of Movement**

Section 9[142] provides that "every child is entitled to freedom of movement subject to parental control which is not harmful to the child".

The Act provide for the freedom of movement which is also provided for in the 1999 Constitution, although the Act created a caveat that such movement is subject to the control of the parent, which mean the parent should help the child on exercising his/her right of movement so as to protect the child against avoidable dangers.

VIII. **Right to Name**

Section 5(1)[143] provide that "Every child has a right to a name and, accordingly, shall be given a name on his birth or on such other date as is dictated by the culture of his parents or guardians. Sub Section (2) "The birth of every child shall be

[142] Section 9 Child Rights Act, Laws of the Federation of Nigeria 2004, Volume 5, Chapter C50
[143] Section 9 Child Rights Act, Laws of the Federation of Nigeria 2004, Volume 5, Chapter C50

registered in accordance with the provisions of the birth, death, etc Compulsory Registration Act, 1992".

The Act has given every child the right to identity which is crucial to the personality of a child, it is given a child the sense of belonging.

IX. **Right to Survival and Development**[144]

The Child Rights Act corroborated the provision of Section 33 of the 1999 Constitution which provide for the right to life, survival and development. Without life all other rights provided for are meaningless therefore, the government has a duty to ensure the protection of life.

There is also a provision for the less privileged as well as those mentally or physically challenged under the Act. Street children are also protected in a manner that would enable them to achieve their fullest possible social integration, and moral development. The law also anticipates the interest of those who would probably be responsible for the care of the set of children that are orphans, abandoned or violated. Thus, expectant and nursing mothers shall be cared for. Every parent or guardian has a legal duty to prevent mental or emotional injury abuse or neglect, maltreatment, torture, inhuman, or degrading punishment, or attacks on his/her child's honour or reputation.

[144] Section 4 Child Rights Act, Laws of the Federation of Nigeria 2004, Volume 5, Chapter C50

Nigeria operates a federal system of government in which each of the thirty-six states of the federation is autonomous and equal to the others. Each state has its legislative system as stated by the constitution. Until the Childs Right Act is enacted into law in each of these legislative systems, it is not binding on the states. Hence, no court can prosecute violations of the Child Right Act in states that have not enacted it. There had been write ups and various debates on the issue to no avail[145].

Although, Dr. I.A. Aliyu in his article said:

The Child Rights Act 2003 is based on some principal instruments of the United Nations, that is, the Convention on the Rights of the Child which was adopted on 20th November, 1989 and came into force on 2nd September, 1990 and the African Charter on the Rights and Welfare of the Child which was adopted in July, 1990 and came into force in November, 1990. However, since international conventions/treaties are not binding laws upon member states of the U.N, any state that wants the conventions/treaties to be so, it needs to ratify or domesticate it. In Nigeria, Section 12 of the 1999 Constitution provides that for a treaty to have the force of law, the majority of all the State Houses of Assembly in the federation must ratify it. This is probably the reason why there is so much pressure by the international community, through their multi-literal organisations and agencies, on

[145] http://www.scholarship.law.cornell.edu/ijli/vol.37/i553/10 1st May, 2015

the state to adopt and pass the conventions (for child's rights which was enacted into national law in 2003 without complying with the provision of section 12)[146].

With due respect to the opinion of the learned scholar, the law as it is, is valid until it is proved otherwise by a court of competent jurisdiction which is open for lawyers to challenge its validity in the court.

3.6 Trafficking in Persons (Prohibition) Enforcement and Administration Act

While considering the implementation of the rights of the children in Nigeria, the researcher considered this Act to be relevant as it compliment the enforcement of this Child Right Act as it is its function as provided in section 5(b) to "coordinate and enforce all other laws on trafficking in persons and related offences"[147].

Section 15 provides that any person who-

> a. by the use of deception, coercion, debt bondage or any means, induces any person under the age of 18 years to go from one place to another to do any act with intent that such person may be, or knowing that it is likely that the person will be forced or seduced into illicit intercourse with another person, or
>
> b. keeps, details or harbours any other person with intent, knowing or having reason to know that such a person is likely to be forced or induced into prostitution or other forms of sexual exploitation with or by any person or an

[146] Aliyu I.A. Sharia and the Child Rights Act 2003: A case of incompatibility In: Aliyu I.A. (ed) *Alternative Dispute Resolution and Some Contemporary Issues*, Advocate Chambers, Faculty of Law, ABU Zaria, 2010

[147] Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2003

> animal, commits an offence and is liable on conviction to imprisonment for 5 years and a fine of N500,000.00.[148]

Also section 16(1) provides that;

> any person who procures or recruits any person under the age of 18 years to be subjected to prostitution or other forms of sexual exploitation an offence and is liable on conviction to imprisonment for a term of not less than 7 years and a fine of not less than N1,000,000.00.
>
> (2) any person who procures or recruits any person under the age of 18 years to be conveyed from his usual place of abode, knowing or having reasons to know that such a person may be subjected or induced into prostitution or other forms of sexual exploitation in any place outside Nigeria, commits an offence and is liable on conviction to imprisonment for a term of not less than 7 years and a fine of not less than N1,000,000.00.

Section 17(1) provides that any person who –

> (a) Procures, recruits, uses or offers any person under the of 18 years for the production of pornography or for pornographic performances;
>
> (b) Allows a person under the age of 18 years to be harboured in a brothel, commits an offence and is liable on conviction to imprisonment for a term of not less than 7 years and a fine of not less than N1,000,000.00
>
> (2) Notwithstanding the punishment prescribed in subsection (1) of this section, a convicted person under this section shall, in addition to the prescribed punishment, be liable to a term of not less than 1 year imprisonment where

[148] Ibid

he administered or stupefied the victim with any drug substance.[149]

While section 23(1) provide that any person who-

(a) Employs, requires, recruits, transports, harbours, receives or hires out a child under the age of 12 years as domestic worker, commits an offence and is liable on conviction to imprisonment for a minimum term of 6 months and not exceeding 7 years;

(b) Employs, requires, recruits, transports, harbours, receives or hires out a child to do any work that is exploitative, injurious or hazardous to the physical, social and psychological development of the child, commits an offence and is liable on conviction to imprisonment for a minimum term of 2 years but not exceeding 7 years without an option of fine.

(2) Notwithstanding the punishment prescribed in subsection (1) of this section, a convicted person under this section shall, in addition to the prescribed punishment, be liable to-

(a) a term of not less than 2 years imprisonment where the child is denied payment or reasonable compensation for services rendered; or

(b) a term of not less than 3 years where the child is defiled or inflicted with bodily harm.[150]

It is also important to state here that when trafficking became a national embarrassment due to its sophistication and external element, the Federal Government was compelled to start taking action to combat it. The Trafficking in Persons Act created various offences against the exportation of children out of

[149] Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2003
[150] Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015

Nigeria and their importation for forced or seduced prostitution, the procurement of children through deception, coercion, debt bondage with intent to use them for forced labour or prostitution, causing or encouraging the seduction or prostitution of any child, and enticing or kidnapping a child or a person of unsound mind out of custody for the lawful guardian.

3.7 National Drug Law Enforcement Act

The provision of this act as it relates to the provision of Niger State Child Rights Law is keyed to the protection of the child against drug abuse.

Section 14 provide that: "no person shall

(a) Expose or involve a child in the use of narcotic drugs and psychotropic substances or

(b) Expose or involve a child in the production or trafficking of narcotics drugs or psychotropic substances".[151]

99% of the answers to the questionnaire were of the view that the children are seriously exposed to narcotic drugs and that if urgent steps are not taken to address the situation, the future of children in Niger State and Nigeria at large is doom. The way and manner children are expose to drug abuse call for urgency on the part of the government and the stakeholders so as to bring to justice the perpetrator of such abuses and to create a safe environment for children.

[151] National Drug Law Enforcement Act, CAP N30, Law of the Federation of Nigeria, 2004

CHAPTER FOUR

PROTECTION OF THE RIGHTS OF A CHILD IN NIGER STATE

4.1 Introduction

Prior to 2010, Niger State Children and Young Persons Law was enacted to protect children. But as a result of the agitation for the protection of the right of the child by UNICEF and other international organizations, the National Assembly ratified the United Nations Convention on the Right of the Child and the African Charter on the Right and Welfare of the Child which Niger State being a State in the Federal Republic of Nigeria also implement the Child Right Act into law which have it's own provision that are suitable to the tradition and religious beliefs of it citizens so as to make it acceptable and effective.

The House of Assembly passed the bill into law in 2010 and was assent to in the same year by the governor.

4.2 Rights Establish under the Niger State Child Rights Law

4.2.1 Right to Rest, Leisure, Play, Sport, Recreational Activities and Cultural Activities

Section 3 of Niger State Child Right Law provides for the child's right to rest, leisure and to engage in play, sport and recreation activities and cultural activities. Play and sport are not luxuries reserve for only a few, they are every child's right. Play teaches children important life saving lessons and gives them the skill they need to live together peacefully[152].

Therefore, the child have the right to rest and leisure, to engage in sport, play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

Given a child this privilege will help in reducing the problem of religion, ethnic and tribal conflict we have in Nigeria and it will promote the spirit of collaboration, team work which will help in building a society that tolerate one another.

As beautiful as this provision is which the writer agrees with but it is also the opinion of the writer that if these rights to rest, leisure, play, sport, recreational activities and cultural activities are not monitored by the parent, it will cause a serious problem in the future because many children are lazy and with the digital age we are now in, they pay little or no attention to their studies which if allow

[152] www.unicef.org/crc/idex_7387html 15th of May, 2015

unchecked it will lead Nigeria to a dark age. The Holy Bible says that we should train a child the way he should go and when he is old he will not depart from it.

Section 11 provides that:

> Every parent, guidance instituting person, and authority responsible for the care, maintenance, upbringing, educating, training, socialization, employment and rehabilitation of a child has the duty to provide the necessary guidance, discipline, education and training for the child in his care such as to equip the child to secure his assimilation, appreciation and observance of the responsibilities set out in this law[153].

This provision of Section 11 has helped in addressing the excesses that may occur while exercising these rights.

4.2.2 Right to Health and Health Services

Section 4 Child Right Law 2010 which deal with health states:

Sub-section (1) "Every child is entitled to enjoy the best attainable state of physical, mental and spiritual health"

[153]Niger State Child Rights Law 2010

Sub-section (2) “Every Government, Parent, Guardian institution, service Agency, or Organization or body responsible for the care of a child shall Endeavour to provide for the child the best attainable state of health”.

Sub-section (3), the State Government shall:

a) Endeavour to reduce infant and child mortality rate

b) Ensure the provision of necessary medical assistance and health care services to all children with emphasis on the development of primary health care.

c) Ensure the provision of safe drinking water and adequate nutrition.

d) Ensure the provision of good hygiene and environmental sanitation

e) Combat disease and malnutrition within the framework of primary health care through the application of appropriate technology.

f) Ensure appropriate health care for expectant and Nursing Mother, financial mobilization of National and local community resources in the development of primary health care for children.

More so, the law provided in section 5 that "Government shall ensure that a child below the age of six is immunized against the six communicable diseases (Polio, measles, whooping cough, etc)."[154]

The law seeks to protect children against the earlier mentioned diseases so as to prevent disability in children.

However, there are different opinion like *Prof. I.A. Aliyu* in his article, disagree with this provision of section 13(4) which is the same with section 5 of Child Rights Law of Niger State 2010 which provides that:

> "Every parent, guardian or person having the care of and custody of a child under the age of two years, shall ensure that the child is provide with full immunization." The implication of this sub-section is that immunization is compulsory especially because sub-section (5) provides for the punishment of failure in the 'imposed duty'. And beside the punishment, "the court may make an order compelling the parent or guardian of a child to get the child immunized"[155].

This compulsion is oppressive especially because there are enough evidences, to show that immunization or vaccination is dangerous. One of such evidences is the testimony of the American center for disease control and prevention in its newsletter 'polio news' of 1/01/2000 in which it declares that:

[154] Niger State Child Rights Law 2010
[155] Child Rights Act 2003, Laws of the Federation of Nigeria 2004 Volume 5 Chapter C50

> "The use of OPV (oral polio vaccine) is no longer worth the risk. This is because OPV causes polio and it is no longer recommended in the USA today and it is still used in other parts of the world".

What was reported in leadership that international health officials have said the polio outbreak in Nigeria which has left at least 69 children paralyzed was caused by the vaccine designed to stop it (i.e. OPV). This is not surprising because according to a virologist at the U.S. centre for disease control and prevention (CDC). "This vaccine is the most effective tool we have against the virus, but it is like fighting fire with fire".

In yet another report on this by the associated press carried in daily trust, World Health Organization issued a warning in July, 2009 that so far 124 Nigerian children have been paralyzed in 2009 about twice those afflicted in 2008. It was discovered by WHO that the outbreak was caused by the polio vaccine itself because it mutates. Thus, Dr. Bruse Aylward, head of the Polio Department at WHO admitted that it's very disturbing[156].

With due respect to the opinion of the learned professor, the impact of the polio which was alarming most especially in Kano State as a result of the discouragement on the reasons stated by the professor and the declaration of polio

[156] *Aliyu I.A Op. Cit.*

free Nigeria in the year 2015 actually showed the efficacy of the polio vaccines as quoted below while people were discourage not to use the vaccine, there were high records of polio casualties but as a result of sensitization and consultation, today it has become history which means the vaccine can be said to be effective.

> Kano's decision to vaccinate children against polio comes at a critical time in the polio eradication programme. Sub-Saharan Africa is on the verge of the largest polio epidemic in recent history. Cases recorded in the region are five times that for the same period in 2003 (483 compared to 95), due to the outbreak originating from Kano and surrounding states.
>
> The resumption of immunization activities in Kano, the first round of which began on 31 July and ends today, is one of several measures needed to stop polio transmission in Nigeria and to halt the international spread of the virus. Thirty of 36 states in Nigeria are infected. High quality campaigns across the country and particularly in Kano and surrounding states during National Immunization Days from September to November will be central to broader efforts to prevent the further spread of polio. Key to success will be rebuilding community confidence in the safety of oral polio vaccine to ensure all children are reached.
>
> On 30 June 2004, WHO reinforced that all international travelers to Nigeria protect themselves by being up-to-date with vaccination against poliomyelitis as outlined in WHO's International Travel and Health. WHO has also undertaken a consultative process with experts to evaluate additional measures that might be required to prevent the further international spread of wild poliovirus to polio-free countries and areas in the future.

> As of 3 August 2004, Nigeria has reported 430 cases of polio and poses the highest risk to the end-2004 target for the global eradication of polio.[157]

President Muhammadu Buhari, on Saturday, 28th of July, 2015 at the Presidential Villa personally administered the oral polio vaccine on one of his grandchildren.

The vaccination was part of a brief ceremony held at the Villa to mark Nigeria's successful completion of one year without any reported case of the wild polio virus, and to demonstrate Buhari's commitment to eradicating the virus from the country as well as the safety and efficacy of the vaccine.

In his remarks on the occasion, the President declared that his administration would strive to ensure that no Nigerian child is ever infected with polio again.

He pledged that government would mobilise and deploy all necessary resources towards eradicating polio from Nigeria, and implored opinion leaders and parents to assist government in this task.

According to President Buhari: Today, 25th of July, 2015, Nigeria has successfully completed one year without any case reported of the wild polio virus.

[157] http://reliefweb.int/report/nigeria/global-polio-eradication-initiative-welcomes-immunization-campaign-kano-nigeria 15th July, 2015

"Achieving this feat has placed us firmly on the path to eradicating this paralyzing disease from our land."[158]

The right to health is equal to rights to education; freedom of religion, freedom of speech or any other right provided in the child right law. That is to say, every single right is equal. For an agency like UNICEF, the Convention was a kind of god send which emerged from the world summit for children in 1990, goals which were largely appropriate for health and largely generic: health, nutrition, water, sanitation, education as a bulwark for health.

These were practical and necessary goals, suffused by a kind of moral imperative. And suddenly with the convention, they become legally binding as well. So that now, all of the goals that deal with the health and nutrition aspects of the summit have the imprimatur of legitimacy, which they never had before and what used to be described as simply aspirational rights or as need, the health of children has now become part of the human right of children[159].

> The health status of the Nigerian child is not encouraging. Child hood mortality rates exceed infant mortality rates. This is attributable to socio-economic factors, poor nutrition, insufficient health education, low levels of immunization, limited access to safe water, poor sanitation and other health hazards. Some traditional practices are

[158] http://dailyindependentnig.com/2015/07/buhari-marks-one-year-polio-free-nigeria-vaccinates-grandchild/ 19th July, 2015

[159] www.hhrjournal.org/archives-pdf/4065157.pdf.bannered.pdf, 16th February,2013

> also harmful to the health of the female Nigerian child, prominent among these are early marriage, female circumcision and preference for the male child[160].

This issue of right to health and health services can be said to some extent the government has improve a little base on the questionnaire issued. Out of 100 people, 50 people are of the opinion that the government have moved from the old way of handling children health issues while 50% are of the opinion that the government need to do more. On a general note the government have taken steps but as a matter of urgency the government need to provide more hospitals and more modern facilities so that it will reduce the level of child mortality rates and improve good health services for the children.

4.2.3 Rights to Parental Care, Protection and Maintenance

The rights of children to parental care are specifically provided in section6 (1) Every child has a right to parental care, protection and accordingly no child shall unreasonably be separated from his parent except (a) for the purpose of his education and welfare or (b) in the exercise of a judicial determination in accordance with the provisions of the law, in the best interest of this child.

[160] Ayua I.A and Okagbue .I, Op. Cit

Sub-section (2) provides that every child has right to maintenance by his parent or guardian in accordance with their means.[161]

Base on the empirical research which out of 100%, 90% are of the opinion that the family system has failed in terms of the care that the children needs and the maintenance while 30% are of the view that with the number of almajiri children moving about without control it is a total failure on the part of the government, the researcher is of the view that both government and the parent have responsibility to protect and maintain the dignity of a child and the government have a higher responsibility to educate the parents and care givers.

In maintenance of a child, it was held in the case of *Theresa Timitayo Williams vs. Rasheed Ahmed Williams,* a child is entitled to the best that either parent can and will offer[162].

The implication of this decision is that the child is only entitled to the best the father can give considering his source of income; therefore, the maintenance of the child is based on the income of the parent or care giver.

The right of the child to be with his/her family for parental care, protection and maintenance cannot be severe unless for the purpose of the child education or due

[161] Niger State Child Rights Law 2010

[162] *Theresa Temitayo Williams vs. Rasheed Ahmed Williams* (1987) 4 S.C.N.J 22.

judicial process. At the heart of these principles, is the need to ensure the best interests of the child are met. In considering the maintenance of the child the law recognizes the means of the parents or guardian; it's therefore behold of the government to discharge its civil responsibility so as to empower the parents economically to alleviate poverty to enable children to enjoy this right.

4.2.4 Rights to Free and Universal Basic Education.

The right to free and universal basic education is provided for in Section 7 of Child Right Law 2010 as follows: subsection (1) "Every child has the right to free compulsory and universal basic education and it shall be the duty of the Government to provide such education"[163].

Sub-section (2) subject to the provisions of sub-sections 3 every parent or guardian shall ensure that his child or ward attends and complete his:

1. Primary school education
2. Junior secondary school education and
3. Senior secondary school education.

[163] Niger State Child Rights Law, 2010

Furthermore, the law in section 11 provides that:

> Every parent, guardian, institution, person, and authority responsible for the care, maintenance, upbringing, educating, training, socialization, employment and rehabilitation of a child has the duty to provide the necessary guidance, discipline, education and training for the child in his care such as to equip the child to secure his assimilation appreciation and observance of the responsibilities set out in this law.[164]

The law considers it a right for the child to be discipline, get the necessary guidance and proper maintenance from the parents or guardian.

It promotes individual freedom and empowerment and yields important development benefits. The right to education is a universal entitlement to education, a right that is recognized as a human right.

The Government of Niger State has educational policy tag vision 3:2020 which aim at the provision of equity and access, maintaining standards and quality assurance, provision of infrastructure, ensure teacher quality, motivation and development, ensure curriculum relevance and review and provision of adequate funding for the sector and instituting effective planning and management.

The vision is to "place Niger State system of education among the best three state systems of education in Nigeria in the provision of qualitative and functional basic,

[164] Niger State Child Rights Law, 2010

secondary, non-formal and tertiary education by the year 2020" with the objectives that

1) All school age children enroll, remain and complete education
2) Bridging gender gap
3) Reduced classroom pupil ratio to 1:4
4) Provide basic ICT facilities in all primary and secondary schools
5) Improve the ratio of sciences to arts students to 60:40
6) Improve literacy rate to 100%
7) Integrate Qur'anic and western education
8) Improve the pool of science teachers from less than 1% to 40%
9) All schools have functional basic infrastructural facilities i.e. classrooms, laboratories, electricity, libraries, water and sanitation workshops etc.
10) Expose each teacher to at least one capacity building workshop
11) All schools have adequate instructional materials and equipment
12) At least 80% of our secondary school graduates score a minimum of 5 credits and above, including English and Mathematics at one sitting.
13) Complete eradication of examination malpractices and cultism in the state at all levels of education.
14) All schools have adequate guidance counseling services
15) Full implementation of UBE laws

16) Exploits the presence of IBBU University in training large pool of unqualified teachers
17) Facilitate massive construction of classrooms and recruitment of teachers to match the student-teachers ratio.

The questionnaire administered out of 100 people that were given, 90% are of the view that the free, compulsory universal basic education is not working in Niger State, as the government policy make it free but that the charges receive from school for other purpose are more than the usual school fees and that the compulsory term use is not true that there are more children outside school than the number of children that are in school, the necessary facilities needed to aid the teaching of children are not being provided by the government and the teachers are not being motivated by way of further training and welfare.

It was also belief by these set of people that corruption is one of the factors affecting the implementation.

“The provision of basic education and vocational training to children faces daunting challenges as a result of the economic restructuring programme which has

forced the government to cut down on public spending in the social sector and also reduce, the capacity of house-holds to afford these social needs"[165].

Furthermore, the interaction with Mr. Isaac Jiya revealed that many parents removed their children from school to either get married or for other reasons and he went further to say that there are many children out there without anybody caring for them to enroll them in school[166].

As beautiful as Niger State Vision 3:2020 is at the policy making level, its beauty is yet to be seen in terms of implementation. It either the government have not shown any serious commitment in implementing it or it is the issue of corruption that has crippled the implementation process.

4.2.5 Right to Protection against Harm after Birth

In section 8 (1) "Subject to this law, a child may bring an action for damages against a person for injury caused to the child willfully, recklessly and negligently before, during or after the birth of the child."[167]

Children have the right to be protected from being hurt and mistreated physically or mentally. Government should ensure that children are properly cared for and protected from violence, abuse and neglect by their parents, or anyone else who

[165] *Ayua I.A. and Okagbue I.*, Op. Cit.
[166] *Mr. Isaac Jiya*, Principal, Maitumbi Day Secondary School, Minna, Niger State
[167] Niger State Child Rights Law 2010

looks after them. In terms of discipline involving violence is unacceptable, there are ways to discipline children that are effective in helping children learn about family and social expectations of their behavior, ones that are non-violent and are appropriate to the child's level of development and take the best interests of the child into consideration.

4.2.6 Contractual Right of the Child

The law provide in Section 9[168]

> (1) Except as provided for in this section, no child is capable of entering into a contract.
>
> (2) Any contract except a contract for necessaries entered into by a child for repayment of money lent or for payment of goods supplied to the child, shall be void.

Accordingly:

(a) No action shall be brought against a child by a person after the child has attained the age of maturity, to pay a debt contracted before maturity or ratified on maturity or any promise of contract made by the child before maturity, whether or not there was no consideration for the promises or ratification after the child attained maturity.

[168] Niger State Child Rights Law 2010

(b) If a child who has entered into a contract for a loan which is void agrees after maturity to pay the loan, the agreement in whatever form shall be void so far as it relates to money which is payable in respect of the loan.

Sagay in his book 'Nigerian Law of Contract' says:

> Thus, from the decision in *Labinjoh* vs. *Abake*, one rule is clear. In any contractual transaction governed by English law, whether statutory, common law received or local, the age of majority is twenty-one. This means that for all practical purpose, this is the contractual age in Nigeria.
>
> The position at common law was modified by the infants Relief Act of 1874 in the following manner:
>
> a) The Act specifically declares that three particular types of contracts with infants are absolutely void. These are
> i. Contracts of loan, i.e., lending money to an infant.
> ii. Contracts for goods (other than necessary goods) and
> iii. Account stated.
>
> b) Secondly, the Act stipulated that it would no longer be possible for an infant to ratify at majority, those contracts which were formerly not binding on an infant unless ratified by him after the attainment of majority. In other words, if he now ratifies such contracts, such "ratification" has no legal effect; it is nugatory.[169]

[169] *Sagay I.E. Nigerian Law of Contract*, 2nd Edition, Spectrum Law Publishing Ibadan, 2000.

Also Section 2 of the Sale of Good Act defines necessary goods as "goods suitable to the condition in life of such an infant or minor or other person, and to his actual requirement at the time of sale and delivery."[170]

In the same Section 2, the Act provide that …where necessaries are sold and delivered to an infant, or minor or to a person who by reason of mental incapability or drunkenness is incompetent to contract, he must pay a reasonable price, thereof.[171]

The law seeks to protect the child from economic exploitation, it put into consideration the mental capacity of a child to negotiate which bother on the best interest of the child being the guiding principle of this law, a child can only pay when it relate to goods consider to be necessaries, this take away any liability from a child on any contractual agreement except on necessaries.

4.2.7 Right to Counsel

Section 32 (7) provide as follows "A child has right to be represented by a legal practitioner and free legal aid in the hearing and determination of any matter

[170] Section 2 Sales of Good Act 1893
[171] Section 2 Sales of Good Act 1893

concerning the child in the court"[172]. The right to counsel is a constitutional right to every citizen of Nigeria, including the child.

When children have interest in any court proceedings that concern them, which not only determine whether they will see their parents and siblings again, but where they will live, with whom and what conditions. If there is one party in these proceedings warranting highest consideration for counsel, it is the child.

Section 36(6) every person who is charged with a criminal offence shall be entitled to: (c) defend himself in person or by legal practitioners of his own choice.[173]

In *Samaila Umaru* vs. *The State* it was held that "the effect of the non-compliance with the constitutional provisions on the right of an accused person to counsel in a criminal trial is to render the trial a nullity".[174]

This is a constitutional matter which is applicable to all citizen of Nigeria either adult or a child.

In conclusion, Section 46 of 1999 Constitution provides as follows:

> "Any person who alleges that any of the provision of this chapter has been, is being or likely to be contravened in any state in relation to him may apply to a high court in that state for redress".

[172]Niger State Child Rights Law 2010
[173] The 1999 Constitution of the Federal Republic of Nigeria as amended
[174]*Samaila Umaru* vs. *The State* (2009) 3 S.C.N.J 33

A child need not to wait until the rights are breached the law said that if his rights are likely to be breached, he can institute an action for enforcement.

The implication of the decision in *Samaila Umaru vs. The State* and the provision of Section 36 of 1999 Constitution is that any person whose alleged to have committed an offence and he is arraign before a court have a right to engage the services of a lawyer(s), and if this is denied of, it will amount to the breach of the person's right and this include children.

This provision has serves as a limitation, which means these rights are not absolute.

4.2.8 Responsibilities of a Child and Parent

The Child Rights Law 2010 provides that subject to age, ability and other legal limitations, every child in Nigeria shall work towards the cohesion of his/her family and community; respect his/ her parents and elders at all times and assist them in case of need; serve the Federal Republic of Nigeria by placing his/her physical and intellectual abilities at service, contribute to the moral well-being of the society; preserve and strengthen solidarity and achievement of Nigerian, freedom equality and justice for all persons; and to relate with other members of

the society, with different cultural values in the spirit of tolerance, dialogue and consultation.[175]

The duty to provide the necessary guidance discipline, education and training for the child in ones care in order to secure the necessary assimilation, appreciation and observance of the child's responsibilities mentioned above, lies on every parent, guardian, institution, persons and authority responsible for the care, maintenance, upbringing, education, training socialization, employment and rehabilitation of the child[176]

4.2.9 Protection against Removal of the Child from Lawful Custody

Section 12 (1)[177] "subject to the provisions of this law no person shall remove or take a child out of the custody or protection of his father, mother, guardians or such other persons having lawful care of the child".

Sub section (2) any person who contravenes the provisions of section 12(1) above commits an offence and liable on conviction to imprisonment for a period of 3 months without option of fine.

[175] Section 10, Niger State Child Rights Law, 2010
[176] Section 11, Ibid
[177] Niger State Child Rights Law 2010

In *Alabi* vs. *Alabi*, the court held that:

> In according the child's interest paramount, there are a number of well-settled considerations. For instance, there is no rule that a child of tender age should remain in custody of the mother. There is also no rule that when a child is female, her custody should be granted the mother. However, children who are female and in their growing or formative years are on the whole, other things being equal, better off with the mother. If the parents are separated and the child is of tender age, it is presumed that the child will be happier with the mother and no order will be made against this presumption unless it is abundantly clear the contrary is the situation, e.g. immorality of the mother, infectious diseases in the mother, insanity and cruelty to the child. These are matters to be tried. In the instant case, joint custody of the only child of the marriage, *Elizabeth Oyeronke Alabi*, was granted to the appellant and the respondent.
>
> Taking all these factors together can we fault the decision of the trial court particularly as she has ordered that the appellant has granted access to the child? I think not.
>
> From the antecedents of the appellant, even though the purports to be a man of means he cannot be in a better position to give his little girl the moral psychological and mental supervision, which she richly deserves. The respondent has said that she is a businesswoman and an N.C.E holder who is prepared to give her daughter education up to the university level. There is no evidence or suffering from any contagious disease or insanity. Rather it is the appellant whose character has been impeached and I agree totally with the learned trial Judge that he has not shown adequate love and care for the child so as to warrant his being given absolute custody of that child who is growing up".[178]

[178] *Alabi* vs. *Alabi* (2007) 9 NWLR at 309

From this case cited above, it is an established principle that the interest of the child is paramount when it comes to the custody of the child which involves many factors as enumerated in the case. The law here seeks for the safe custody of the child, so as to prevent situation where by if either of the parent of the child died leaving behind either the father or mother, the relations of the deceased struggled to take away the child from the surviving parent or also in other cases of kidnapping and other unwarranted situation whereby the child will be denied being with the person who has lawful custody of such child.[179]

4.2.10 Protection against Child Marriage

Section 13(1) "No person below the age of 18 years is capable of contracting a valid marriage. Accordingly any marriage so contracted is null and void and of no effect".

Sub section (2) a person who marries a child or promote the marriage of a child below the age of 18 commits an offence and is liable on conviction to a fine of fifty thousand (N50,000.00) Naira or imprisonment for a term of one year or both[180].

> However, *Prof. I.A. Aliyu* in his article, criticize the provision of section 21, 22 and 23 Child Right Act 2003 which provide for the prohibition of what they call "child

[179] Niger State Child Rights Law, 2010
[180] Niger State Child Rights Law, 2010

> marriage", that is marriage or even betrothal with a person below 18 years, and the punishment thereof. This does not exclude Muslim children. The implication of this is that if such marriage is contracted (even where it satisfies the condition of validity under Islamic law) the marriage held null and void and of no effect whatsoever. In addition, contracting such marriage or even its promotion or even betrothing the called child in contravention of the law imposes punishment of a fine of N500,000.00 or imprisonment for a term of 5 years or both such fine and imprisonment on a) the person who marries the child; (b) to whom the child is betrothed; (c) who promotes the marriages; or (d) who betroths the child.
>
> This limits marriageable age and puts it as 18 years without considering the divergent culture of the people and their way of life. But ironically, for example in England and Wales the minimum legal age of marriage is 16 years, even though the written consent of the parents or guardian is required for persons who have not reached 18 years old and have not been previously married.
>
> The position under the Shari'ah is totally contrary to the provision of the Act, because in all the sources of the Shari'ah marriageable age has not been limited[181].

However, the Niger State Child Rights Law being the focus of this research work provided an exception as follows: "where there is a conflict involving questions of Islamic personal law with any of the provision of this law, Islamic personal law shall prevail"[182].

[181] *Aliyu I.A* Op. Cit.
[182] Section 27, Niger State Child Rights Law 2010

Early marriage is a situation where a girl- child that is supposed to be in school is forced into early marriage, turned to children producing machine with no specific trade. More pathetically is the situation where these girl- children are introduced to sex and child birth in their early life when their body system is not matured enough, this often resulted into vescio vagina fistula (V V F) an ailment that will render that girl- child useless for the of life. VVF brings about continuous flow of urine and even feaces, which brings about continuous bad odour that does not allow for socialization etc. at times; young girls are married to much older men, some fathers or grandfathers. It leads to withdrawal from school and society.[183]

At about three years ago, a prominent Nigerian who was two-term a governor of Zamfara and presently a Senator, Sani Ahmed Yerima, married a girl-child of 13 years old which generated serious debate both national and internationally as it is the case a natural death as the former governor has this to say:

"Islamic Law allows marriage not by age but by maturity, which is attained once a girl reaches the age of puberty".[184]

4.2.11 Protection against Child Exploitation

[183] http://www.Salvationchambers.Com/102.Pdf 22nd February , 2013
[184] http://www.davidpublisher.org/Public/uploads/Contribute/55bb43bda2e6a.pdf

Section 16 and 17[185] prohibit exploitative labour. Children are not to be used for the purpose of begging for alms, guiding beggars, prostitution or unlawful immoral purposes; or as slaves debt bondage, hawking, production of pornography or used for any activity in the production or trafficking of illegal drugs and any other activities relating to illicit drugs as specified in the National law Enforcement Agency Act. Among reasons commonly adduced for child labour is family financial supplementation. However, this is a very short term gain of which the long term loss is inevitable.

Its worthy of note the provision of Section 16 (1) of Niger State Child Rights Law 2010 that "subject to the provision of this law no child shall be:

(a) "Subjected to any force or exploitative labour except where he is

(i) Employed to work by a member of his family on light work of an agricultural or domestic character.

(ii) Employed as a domestic help outside his own home or family environment."

This is very fundamental, because we have many cases of child trafficking in Niger State, and for the enforcement purposes, paragraph two of section 16 (1) will make it difficult to punish the violators of these rights because it created the avenue for the exploitation of children and the dignity of child is abused.

4.2.12 Protection against Child Trafficking and Narcotic Drugs

[185] Niger State Child Rights Law 2010

Section 14(1) provides that "no person shall;

> (a) Expose or involve a child in the use of narcotic drugs and psychotropic substances or
> (b) Expose or involve a child in the production or trafficking of narcotics drugs or psychotropic substances"

Sub section (2)

> "A person who contravenes the provision of sub section (1) of this section commits an offence and is liable on conviction to imprisonment for a term of five years (5) or an option of fine of N200,000.00[186]"

The empirical research revealed that many children are so involved in narcotic drugs which is at an alarming stage, if nothing is done to curtail it the future of many Nigerian children will be ruined.

4.2.13 Protection against Child Abuse

Section 18 (1)[187] "No person shall have sexual intercourse with a child".

Sub section (2) A person who contravenes the provision of subsection (1) of this section commits an offence of rape and is liable on conviction to imprisonment for life.

[186] Niger State Child Rights Law, 2010
[187] Ibid

Sub section (3) where a person is charged with an offence under this section, it is immaterial that the sexual intercourse was with the consent of the child.

Section 19(1) A person who sexually abuses or sexually exploits a child in any manner not already mentioned in this section of the law commits an offence.

Sub section (2) a person who commits an offence under subsection (1) of this section is liable on conviction to imprisonment for a term of fourteen (14) years[188]. While section 25(3) provide that "Any person who impregnate a female pupil or student from any school within the state before period of completion of her course shall be guilty of an offence and shall be liable on conviction to a fine of ₦50,000.00 or 12 month imprisonment or both."[189]

Section 18 (2) and 25 (3) are in sharp contradiction which for every practical purposes ridicule the efficacy of this law.

Child abuse refers to a situation in which a child suffers serious physical injury inflicted by others than accidental means. It is suffering harm by reason of neglect, malnutrition or sexual abuse, is growing without necessary basic physical care or is growing up under conditions which thereafter survival.

[188] Niger State Child Rights Law, 2010
[189] Ibid

In conclusion, the Niger State Child Rights Law can be said to be reasonably comprehensive in terms of its provision as it relate to the rights of the child, but base on the empirical research, the enforcement or the implementation is still a major challenge, because as beautiful as the provisions are, its only effective implementation that will breathe life into it.

CHAPTER FIVE

ANALYSIS OF THE ENFORCEMENT MECHANISMS

5.1 Introduction

In order to ensure the enforcement of the rights of a child, the law provided for institutional framework as mechanism for smooth implementation.

5.2 Specialized Children Police Unit[190]

It have the responsibility of prevention and investigation of child offences, section 50 (b) specifically provides for the apprehension of child offender[191].

The law seek to protect children against brutality which is a common issue most Nigerians associate Nigerian Police force with, although the writer visited police headquarter to find out if there is a specialize children unit, it was discovered that at the Headquarters in Minna, they created a desk for children related issues, and it was also discovered that in the entire state, the Nigerian Police Force only have three police children specialized units, in the following stations Paiko Road Police Station Minna, Chanchaga Police Station Minna, Bosso Police Station Minna, and the training was recently given by an NGO called justice for all.

[190] Section 50 (1) and (2) Niger State Child Rights Law 2010.
[191] Niger State Child Rights Law 2010.

Consequently, children who are arrested and are taken to any other state police aside the earlier aforementioned police stations are usually kept in the same cell with adult which negate section 22(1) which provides that "No child under the age of 18 years shall be kept in police custody. However, where a child is been tried jointly with an adult, a child shall not be kept in the same custody with adults[192].

The essence of these provisions in the law is to protect the children against negative influence by the adult and also the brutality that usually take place in the police cell by the detainees and also some police men.

However, the writer interviewed one of the police officer's under Specialize Children Unit, Paiko Road Police Station, who gave the record of so many cases of rape, indecent assault causing grievous hurt, cruelty to child, criminal conspiracy and rape, abandoned of child, domestic violence are so frequent, but that they usually settled some case which like the case of rape, and grievous hurt are usually referred to the state CID so that they can charge them to court but that they are working on the modality to enable them charge the suspects to court from their unit, she was asked if cases referred to state CID are actually taken to court she said that they don't receive any report from them[193].

[192] Niger State Child Rights Law 2010
[193] Copra Amina Yusuf, Paiko Road Police Station, Minna, Niger State

From the questionnaire that was issued, 98% of the people said they are not aware of the existence of specialize children police unit, is only 2% that admitted that they are aware but only in few police station have the specialized children unit.

And they revealed that most of the cases do not get to court even when reported to the police that this is due to the attitude of the parents, guardians, that they are shy and afraid to go against their socio – cultural and religious beliefs and to avoid the problem of stigmatization.

On this note, since the state government doesn't have control over the Nigeria Police, the writer is of the opinion that there should be a state police so that there will be effective implementation.

5.3 The Establishment of Family Court

Section 32 (1) "There shall be established for the state a court known as the family court – (in this law referred to "the court") for the purpose of learning and at determining matters relating to children"[194] and Subsection (2) provide that "The court shall be at two levels (a) the court as a Magistrate and Sharia Courts being court with original jurisdiction (b) High Court as a court with appellate

[194] Niger State Child Rights Law, 2010

jurisdiction[195] and Subsection (3) went further to provide that "Any Magistrate or Sharia Court of any grade shall have jurisdiction to try offence under this law"[196].

Family court is a court specially designed to entertain cases concerning children, the judges are trained on children issue so as to enable them preside efficiently over the court.

The composition of the court with the appellant jurisdiction is provided in section 32(6) as follows:

Judge and members of High Court shall be appointed by the Chief Judge of the State and shall consist of such members:

(a) Three Judges of the High Court and

(b) Two assessors consisting of

i. Chief child development officer from the Ministry and

ii. Person who has attributes of dealing with children and preferably in the area of child psychology education[197].

The law makes provision in Subsection (4) for the composition of the court. That other members of the court with original jurisdiction apart from the Magistrate and

[195] Niger State Child Rights Law 2010
[196] Ibid
[197] Ibid

Judge of the Sharia Court shall be appointed by the Chief Judge and Grand Khadi of the state and the court shall be duly constituted if it consists of:

a. Magistrate; or Judge of the Sharia Court; and

b. Two assessors as members, one of whom shall be woman and the other person who has attribute of dealing with children preferably in the area of child psychology education.

In view of this provision, it is clear that the number of the panel that will preside over the court with original jurisdiction must not be less than three members and the court with the appellant jurisdiction must have five member panel.

Critical investigation of this composition are far from reality, as it is in Niger State there is no family court and the court with original and appellant jurisdiction don't apply the law as to composition of presiding officers.

Section 51 provide the stages of the proceedings of the child justice administration, which includes investigation, prosecution, adjudication and the follow up of dispositions[198].This is a process of dealing with the child offender which starts from the stage of arrest to the stage of remanding such child offender in a remand

[198] Niger State Child Rights Law 2010

home. More and more children are committing crimes and if urgent steps are not taken, to address this trend then our nation and the world at large have no future.

The underline principle in the judicial procedure of child justice system is the best interest of the child and what is the best interest of the child will be determined by each fact of the case.

Section 32 (11) provides that: the proceedings in the court shall be conducive to the best interest of the child and shall be conducted in such a way to allow a child to express himself and participate in the proceedings[199].

The applicable rules in the proceedings in the court is the rule of the court[200] and Section 38 of the Niger State Child Right Law 2010 provides that the court before which the application for an order is brought will draw up time table with a view to disposing of the application without delay.

The court may order a police officer or any other person to bring the child to the court for the purpose of arraignment before the court and the court has the right to issue warrant where is reasonably suspected that the child is found on the premises or any other person who is in a position to do so to bring the child to the court[201].

[199] Niger State Child Rights Law 2010
[200] Section 32(13) Ibid
[201] Section 32 (14) Ibid

Section 32 (17) provides as follows "in any proceedings, whether civil or criminal, the evidence of a child may be given unsworn, while in Evidence Act the law provided in section 209 (2) "A child who has attained the age of fourteen years shall, subject to section 175 and section 208 of this Act give sworn evidence in all cases."[202]

The law went further to provide in section 32 (18) that:

> "*A deposition of a child's sworn evidence shall be taken for the purpose of any proceeding, whether civil or criminal, as if that evidence was given on oath"*[203].

In Ngwuta Mbele vs The State it was held that

> "Before a child of tender years is allowed to give evidence, it is duty of the presiding judge to satisfy himself as to whether or not the child is in a position to be sworn".[204]

It was held in *Sale Dagayya* vs. *The State* that:

> The procedure that every trial court should employ in determining whether a child who is presented as a proposed witness before it is a competent witness and whether the child should be permitted to give sworn or unsworn evidence is as follows:
>
> (1) Once a witness is a child, by the combined effect of sections 154 and 182 (1) and (2) of the Evidence Act, the first duty of the court is to determine first of all whether the child is sufficiently intelligent to understand the questions he

[202] Evidence Act 2011
[203] Niger State Child Rights Law 2010
[204] *Ngwuta Mbele* vs. *The State* (1990)7 S.C.N.J. 12

> may be asked in the course of his testimony and to be able to answer rationally. This is tested by the court putting to him preliminary questions which may have nothing to do with the matter before the court.
>
> (2) If, as a result of these preliminary questions, the court comes to the conclusion that the child is unable to understand the questions or to answer them intelligently, then the child is not competent witness within the meaning of Section 154(1). But if the child passes this preliminary test, then the court must proceed to the next test as to whether, in the opinion of the court the child is able to understand the nature and implication of an oath.
>
> (3) If after passing the first test, he fails this second test, then being a competent witness, he will give evidence which is admissible under Section 182(2), though not on oath. If, on the other hand, he passes the second test so that, in the opinion of the Court, he understands the nature of an oath, he will give evidence and oath.[205]

Furthermore, there is a serious inconsistency with Evidence Act, Section 32 (17) provides that "in any proceeding whether civil or criminal, the evidence of a child may be given un – sworn "but in Evidence Act the law provided in Section 209 (2) "A child who has attained the age of fourteen years shall, subject to Section 175 & 208 of this Act give sworn evidence in all cases". The terms as conviction and sentence shall not be used in relation to the child brought before the court of law that is provided for in section 22 (2) Niger State Child Right Law 2010.

The question that arose in the mind of the researcher is that whose duty is it to provide legal practitioner for a child since, the child may lack the capacity of

[205] *Sale Dagayya* vs. *The State* (2006) 1 S.C.N.J. 251

engaging a lawyer for his services. The law should have a mechanism whereby the case related to a child, the monitoring, organization will be alerted so as to ensure that the child is adequately represented by a lawyer.

Furthermore, Section 49 of the Niger State Child Right Law 2010 provide for the privacy and no disclosure of the child identity and the record of the proceedings cannot be used in adult proceedings in subsequent cases involving the same child offender. The laws provides for the exclusion of everybody from attending the proceeding in ensuring the best interest of the child except the parties to the case that are allowed.

Section 32 (8) provides as follows; No person other than

a) The members of the officials of the court
b) The parties to the case, their solicitors and counsel.
c) Parents or guardian of the child and
d) Other person directly concerned in the case shall be allowed to attend the Court, accordingly members of a press are excluded from attending the court.[206]

The research carried out revealed that there is not a single family court in Niger State and that most of the court while hearing a case that involved a child do not follow the provisions of the Child Right Law as to the protection of the interest of

[206] Niger State Child Rights Law, 2010

the child, that in practice, the realities in Niger State is that this rules are not observe and children cases are open to the public, some Judges are not even aware of the existence of this law and this make it difficult for implementation because those that are to implement are not aware of the law.

More so, still in the best interest of the child the law provided for in section 32 (9) as follows;

> "*No person shall publish the name, address, school, photography or anything likely to lead ,to the identification of the child who's matter is before the court except in so far as is required by the provision of this law"*[207]

The law makes sure that the identity of the child is not disclosed so as to help the child overcome discrimination and stigmatization which will ordinarily follow if the identity of the child is disclosed. The penalty for the contravention of provision in subsection 8 and 9 is provided for section 32 (10) which states as follows:

> "*Any person who contravene the provision of this section commits an offence and is liable on conviction to a fine of 50,000 naira or imprisonment for a term of five years or to both, such fine and imprisonment"*[208]

This punishment is to enhance the course of justice for the children and to protect their interest.

[207] Niger State Child Rights Law, 2010
[208] Ibid

It is worthy of note that Child Right Law 2010 has conferred on the magistrate and Sharia court unlimited jurisdiction ,which means these court can give maximum punishment even where it provide for life imprisonment in the case of rape. Section 32(21) provide:

> *Notwithstanding any jurisdiction limitation on the powers of Magistrate and Sharia Courts and any other court in relation to the imposition of fines or terms of imprisonment contained in any law , a Magistrate Court or any other court before which the offences created in this part of this law are tried shall have the full jurisdictional powers to impose up to the maximum penalties prescribed for the offences created in this part of this law*[209].

5.4 Child Rights Implementation Committee (CRIC)

It is a committee saddled with the responsibility of ensuring the smooth running of the Child Right Law in Niger State. The committee is established under Section 23(1) which provides as follows: "There are hereby establish a committee to be known as the state child right implementation committee"[210].

The composition of the committee is provided for in Section 23 (2) as follows:

a. *The Permanent Secretary State Ministry of Women Affairs as the Chairman.*

[209] Niger State Child Rights Law, 2010
[210] Ibid

b. *One person to represent each of the following state ministries; Government bodies and agencies;*

Women affairs, Education, Information, Health, Justice, Youth and sport, Labour and productivity, Nigerian Immigration services, Nigeria Police, Nigerian Prison Service, State Agency for mass literacy, The council of chiefs, Nigerian Union of Teachers, Civil society, Niger State Law reform commission, Two Person to represent non-governmental organizations concern with right and welfare of children, One person to represent the Nigerian Union of Journalist, One person each to represent each of the United Nations Agencies: (i) United Nation Children Education Fund as collaborating Agency, (ii) World Health Organization, as an observed agency; and Such other persons or bodies as the commissioner may from time to time appoint[211].

The functions of the state committee are as provided in section 24 (1) as follows:

i. *Initiate action that will ensure the observance of the right and welfare of the child as provided for in this law.*

ii. *The organization of African Union chartered on the right and welfare of the child.*

iii. *Paragraph iv also provide that the committee shall collect and documents information on all matters relating to the rights and welfare of the child in the state.*

90% of those that were given the questionnaire are of the view that the child right implementation committees are not doing much for the people to feel their impact as to the implementation of the right of a child in Niger State.

[211] Niger State Child Rights Law, 2010

They are of the opinion that the child right implementation committee should have their budgetary provision and that they should have similar committee at various local government for effective implementation of child rights in Niger State, more that the government should find a way of monitoring the committee and there should be an annual report from the committee.

Further interview with the deputy director child Ministry of Women and Gender Affairs Minna, who informed the researcher that the child implementation committee is underfunded, that the committee is usually given ₦10,000,000.00 annually to carry out all activities that relate to the protection of the rights of the child in the entire 26 Local Government Areas of Niger State, the writer asked if there are records of reported cases on child abuses and he said no they do not have any record[212].

Basically, the major problem is the lack of functional system to monitor the implementation of the rights of a child in Niger State, for the purpose of effectiveness and awareness, there is need to step down the Child Right Implementation Committee (CRIC) to the local government level, because for all practical purposes the committee cannot be in Minna the state capital and monitor the activities at various local government, therefore it is of utmost important to incorporate all the local government for more efficient and result oriented

[212] Mal. Mustapha Yinusa, Ministry Of Women And Gender Affairs, Minna, Niger State

implementation. This is one of the reason why family court, specialize unit are not put in place, because the monitoring body is not functioning. This law can only be fully and successfully implemented if there is a functional system where there is a budgetary allocation for the committee and a strict supervision and mechanism of given annual report and keeping proper record is enforced.

5.5 Orphanage and Community Homes

Although the law is silent about the orphanage the writer went to the Niger State Orphanage Home and confirm that it exist but in a poor condition, while the law provided for in Section 4 (1) that:

> *The state shall make such arrangement as it considers appropriate for securing the homes to be known as community homes, established with the state;*
>
> *a. For the care and accommodation of the children looked by it, and*
>
> *b. For purpose connected with the welfare of children whether or not looked after by it.*

Section 43 (3) provides as thus:

> *b. Provided, managed, equipped and maintained by the state or*
>
> *c. Provided by a voluntary organization:*
>
> *i. Proposed that in accordance with an instrument of management, equipment and maintenance shall be the responsibility of the state or*

ii. *Proposed that the management, equipment and maintenance of the home shall be the responsibility of the voluntary organization*[213]

The Community Home is a home for children within the community whose parent are dead, or children whose parent are alive but cannot take care of them or vulnerable children or children at emergency.

This provision of the community home may not be too relevant considering the cultural belief or tradition of the people of Niger State, whereby when a child lost his/her parent it becomes the responsibility of the relations to take care of the children left behind.

The non-governmental organizations advocate for community home or children institution, whereby children are separated from the community the reason for this is children separated from the community tend not to cultivate some core values of life, secondly other children or the larger society see them as not been part of the society in a negative way which is another form of discrimination and stigmatization.

The question is that has government taken any step to establish a community home? It is obvious that the law is there but the government has showed little or no

[213]Niger State Child Rights Law 2010

interest in establishing community home for children that need to be taken care of in Niger State.

5.6 Remand and Borstal Homes

Remand home is "a place where young people are sent when they are accused of a crime and awaiting for their trial".[214] "A British institution to which juvenile offenders may be committed by the court for temporary detention"[215]while borstal homes is "an informal name for an establishment in which offenders aged 15 to 21 could be detained for corrective training. Since the Criminal Justice Act 1982, they have been replaced by youth custody centres (now known as young offender institutions).[216]

> The Beijing rule provide that the objective of the institutions treatment of juveniles is to provide care, protection, education and vocational skills with a view to assisting them assume socially constructive and productive roles in society. Juveniles in institutions should also receive all the necessary assistance they require- social, educational, vocational, psychological, medical and physical- in the interest of their whole some development. The standard minimum rules on the treatment of prisoners are also applicable to the treatment of juvenile offenders in institutions.
>
> They make provisions covering various facets of institutional life including, physical environment and

[214] Hornby A.S. Oxford Advanced Learner's Dictionary, 8th Edition, Oxford University Press, Great Clarendon Street, Oxford OX2 6DP Oxford New York
[215] http://www.merriam-webster.com/dictionary/remandhome 19th October, 2013
[216] http://www.thefreedictionary.com/borstal 19th October, 2013

> accommodation, education and vocational training, recreation, religion, medical care, contact with the wider community, limitations on the use of physical restraints and the use of force, disciplinary procedures, staffing, inspection and complaints[217].

The United Nations rules for the protection of juvenile deprived of their liberty also provide specific principles that apply to all juveniles held in any form of detention and in any kind of facility. They call for the classification of juvenile by age, personality, sex and type of offence as well as by mental and physical health so as to minimize the risk of harmful influences and exposure to risk situations.

The Criminal Justice Act 1991 also amended the law relating to remands and committals of juveniles and applies essentially the same policy regarding their accommodation while in custody. Thus, where a court remands a child or young person charged with or convicted of one or more offences, or commits him for trial or sentence, and he is not released on bail the remand must be local authority accommodation. The court is required to designate the relevant authority or the authority in whose area the child resides or where one of the offences was committed. The court may require the juvenile to comply with any condition which can be imposed under the Bail Act 1976, and the relevant authority may be given the responsibility of securing compliance with the conditions imposed. On a remand or committal, the court may, after consultation with the local authority,

[217] Ayua I.A and Okagbue .I, Op. Cit.

require it to comply with a security requirement by placing or keeping the juvenile in secure accommodation. This is defined as accommodation which is provided in a community home, a voluntary home or a registered children's home for the purpose of restricting liberty, and is approved for that purpose by the secretary of state[218].

The essence of remand home is to protect the children from having contact with the adult offenders in the prison, to prevent negative influence which will make the children harder, children are usually kept in remand home pending the determination of their cases while borstal home is more of a rehabilitation and reformation centre for children who are criminals or hardened there is a formal school and vocation within the centre so as to empower them educationally and economically, at this centre the children are provided with psycho social support so as to help them overcome their addicted bad habit. Child Right Law 2010 of Niger State did not make any provision for remand home and borstal home. Instead the law provided for in Section 54 (1) that "*Detention pending trial shall: if possible be replace by alternative measure including close supervision, care and placement with a family or in an educational setting or home"*[219].

[218]Bainham A., Op. Cit.
[219] Niger State Child Rights Law 2010

CHAPTER SIX

SUMMARY AND CONCLUSION

6.1 Summary

This research work appraises the protection of the rights of a child in Niger State. In doing this, the research examines the development of children's rights under international law by considering United Nation Convention on the Rights of the Child, and the African Charter on the Rights and Welfare of the Child, and the various rights provided by these international instruments. The research also examines the Right of the child under Nigerian laws. It enumerated the various rights and protection provided by the various laws.

The researcher further examines the Rights of the child under Niger State Child Rights Law and the various rights provided for by the law. More so, the researcher examine protection of the child, and analyze their effectiveness in the protection of the Enforcement Mechanism for the Rights of the Child as provided in Niger State Child Right Law 2010. In whole, this has expose the Niger State Government on the poor attention given to the protection of the Rights of the child, in terms of the implementation of children's right and also, it revealed the inadequacies in this law.

6.2 Findings

In view of the above, the following observations are made:

(i) The inconsistencies in the law

That the law was passed hastily without proper consideration to other existing laws and also not give time for proper scrutiny of its provisions which bring about serious contradictions as follows

The law in Section 18 (1) provides that: No person shall have sexual intercourse with a child, subsection (2) A person who contravenes the provision of subsection (1) of this section commits an offence of rape and is liable on conviction to imprisonment for life. While in Section 25 (3) it provide that: Any person who impregnates a female pupil or student from any school within the state before period of completion of her course shall be guilty of an offence and shall be liable on conviction to fine of N50,000.00 or 12 months imprisonment or both.

Also Section 16 (1) provides that “subject to the provision of this law no child shall be:

(a) "Subjected to any force or exploitative labour except where he is":-

(i) Employed to work by a member of his family on light work of an agricultural or domestic character.

(ii) Employed as a domestic help outside his own home or family environment.

Furthermore, there is a serious conflict with Evidence Act, Niger State Child Rights Law 2010 section 32 (17) it provides that "in any proceeding whether civil or criminal, the evidence of a child may be given un – sworn "but in Evidence Act the law provided in section 209 (2) "A child who has attained the age of fourteen years shall, subject to section 175 and section 208 of this Act give sworn evidence in all cases."

(ii) Low Level of Awareness

There is no adequate awareness as to the existence and the provisions of this law which even some of the stakeholders e.g. Magistrates, Judges, Lawyers, Policemen are not abreast of its existence and it provisions as it relate to the protection of the Rights of the child in Niger State.

(iii) Lack of Commitment from the Government

It is also discovered that there is lack of commitment from the government and its constituted authority in charge of the monitoring for effective administration of this law (children police unit, Family Court and the child right implementation

committee) which encourage violators to take advantage and violate the rights of children in Niger State. And there is no child right implementation committee at the various local government level of Niger State.

6.3 Recommendations

(i) It is the view of the writer that Section 32 (17) of this law be amended to conform to the provision of Evidence Act Section 209 (2) and also Section 25 (3) be amended to conform to Section 18 (1) to avoid the contradiction so as to ensure smooth implementation of the law. And Section 16 (1) be amended so as the child traffickers will not use the loophole in that section to exploits the child and escape.

(ii) The government should create more awareness by way of jingles in radio and television, organize seminars and workshops and also engage in open air campaign to the public down to the local government level.

(iii) The Government should show more commitment and transparency on children issues by building a functional system and also ensuring that the specialize children police unit, and Family Court exist in all the local government areas of Niger State. The child implementation committee should be adequately funded by way of having their own budget and strictly been supervised. The government should show more commitment by ensuring that the child right

implementation committee is step down to all local government area of the state.

In conclusion the protection of rights of children is fundamental to the growth of any society, as it is now, we are faced with the challenges of abuses of children which is at the increase, the government and every stakeholder must take responsibility to ensure that the child is adequately protected against any form of abuse.

These challenges suggest that if these child abuses are not check, it may become more frequent and devastating than ever before, therefore there is need for collective responsibility. This research work has identified some of the problems and has given good recommendations for proper legal framework to ensure the protection of children. Children are the leaders of tomorrow therefore, their today must be taken care of to secure their tomorrow.

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QUESTIONNAIRE

Faculty of Law,
Ahmadu Bello University,
Zaria.

Dear Sir/Madam

I humbly ask you for help in a research I am making, I am trying to find out a few important facts in your own views on "AN APPRAISAL OF THE PROTECTION OF THE RIGHTS OF A CHILD IN NIGER STATE".

I am asking you and a cross section of people to get your opinion on the effective protection of the child in Niger State considering the Child Rights Law.

It is strictly for academic purpose. Kindly complete the questions in the next pages please, response to the question and provide comments where necessary.

Thank you.

RESEARCHER

PERSONAL DATA

Please, put a tick (√) against any option you think is appropriate.

1. Sex
   - Male ( )
   - Female ( )
2. Age
   - 18 to 29 ( )
   - 30 to 39 ( )
   - 40 to 49 ( )
   - 50 to 59 ( )
   - 60 to above ( )
3. Marital Status
   - Married ( )
   - Single ( )
4. Occupation

   Please, name your office or describe the work you do
5. Position: _____

QUESTIONNAIRE

1. Who is a child?_____
   _____

2. Do you know of the existence of Child Rights Law in Niger State?

3. Can you mention the body in charge of the implementation of the rights of a child and how effective are they?

4. How can you rate the implementation of the Child Rights Law 2010?

5. Can you say that our children are adequately protected by the provisions of the Child Rights Law?

6. Are there cases of child abuse in Niger State?

7. Do people usually report child abuse cases to the appropriate authorities, if yes, how frequent and if no, why?

8. When cases are reported to the appropriate authority. What is the percentage of the cases that get to court?

9. What are the challenges of prosecuting child abusers?

10. Do you think the government is given adequate attention that children deserve in Niger State?

11. The free and compulsory universal education policy, how effective is it?

12. Has government provided adequate health facilities for children?

13. Are children engaged in narcotic drugs?

14. What are the problems hindering the implementation of Niger State Vision 3:2020?

15. What do you think are the obstacles hindering the protection of children?

16. Does family court exist in Niger State?

17. Does specialized children police unit exist in all police stations in Niger State?

18. Have you been to the remand home, if yes, what is your valuation of the standard of the remand home for the purpose of rehabilitation of children?

19. What are the areas the government needs to improve on to ensure adequate protection of the rights of children in Niger State?