

# Legal Protection of Child's Rights in Nigeria

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## Abstract

This study explores the legal protection of children's rights in Nigeria, examining the definition of a child under customary and statutory laws, the historical evolution of child rights protection in Nigeria, and the legal frameworks governing children's protection in Nigeria. It analyses international and regional instruments, including the Universal Declaration of Human Rights (UDHR), the United Nations Convention on the Rights of the Child (UNCRC), and the African Charter on the Rights and Welfare of the Child (ACRWC). Additionally, it reviews national laws such as the 1999 Constitution, the Child Rights Act 2003, the Criminal Code Act, and the Violence Against Persons (Prohibition) Act 2015. Despite these legal provisions, significant challenges hinder the full realization of child rights in Nigeria, including weak enforcement, socio-cultural resistance, inadequate resources, and conflicting legal systems. Many children still face abuse, exploitation, and lack of access to basic needs such as education and healthcare. This research underscores the need for enhanced implementation mechanisms, greater public awareness, and stronger institutional frameworks to ensure that child protection laws are effectively applied. Addressing these issues is crucial to bridging the gap between legal provisions and the actual protection of children's rights in Nigeria.

**Keywords:** Child Rights, Legal Protection, Nigeria, Child Rights Act, Human Rights Instruments

## 1.1. Introduction

Children, as the most vulnerable and dependent members of society, require special care and protection due to their limited ability to provide for themselves in various situations. Without adequate governmental support, they are exposed to challenges such as early child marriage, street hawking, poor healthcare, and restricted access to quality education. Nigeria has committed to safeguarding children's rights by ratifying two major international treaties. The first is the United Nations Convention on the Rights of the Child (CRC) of 1989, which Nigeria ratified in March 1991 and later incorporated into the Child's Rights Act of 2003. The second is the African Charter on the Rights and Welfare of the Child of 1990, ratified in February 2003. By endorsing these treaties, Nigeria must implement their provisions. The concept of human rights, regarded as inalienable, has undergone significant transformation since the adoption of the Universal Declaration of Human Rights (UDHR) in 1948.<sup>1</sup>

First-generation rights cover political and civil liberties, while second-generation rights include economic, social, and cultural entitlements,<sup>2</sup> and collective-developmental human rights as the third generation of rights.<sup>3</sup> The UDHR 1948 recognizes children's socio-economic rights, emphasizing their entitlement to special care and assistance.<sup>4</sup> The UDHR is reinforced by two major treaties: the ICCPR and the ICESCR, both adopted in 1966.<sup>5</sup> The ICESCR serves as the cornerstone of international law for economic, social, and cultural rights. Article 2(3) grants developing countries the discretion to determine the extent to which they can uphold socio-economic rights for non-nationals, based on their available resources. This provision assumes that the ICCPR will provide the legal framework for civil and political rights, which many states recognize as justiciable. The ICESCR envisions a world where individuals live free from fear and want, achievable only when conditions allow for the full enjoyment of both socio-economic and

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<sup>1</sup>UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217A (III).

<sup>2</sup>Diala A C, 'Realising the Right to Adequate Housing in Nigeria' [2012] (1) (2) *Madonna University Law Journal* 155-173.

<sup>3</sup>(fn2).

<sup>4</sup>The preamble to the UDHR, 1948 para 5.

<sup>5</sup>(fn3).

civil-political rights. As such, state parties have a duty to uphold these rights for all individuals within their jurisdictions, with special consideration for children. As the most vulnerable group, children require strong socio-economic protections to support their development and well-being, ensuring access to essential resources for their growth.<sup>6</sup> This chapter discusses the legal protection of child's rights in Nigeria.

## 1.2. Meaning of a Child under Nigerian Laws

In everyday English, childhood refers to the stage or period of life when one is a child.<sup>7</sup> Rather than directly defining a child, this definition shifts the responsibility of determination to another process.<sup>8</sup> The definition of childhood is inherently linked to the definition of a child. However, childhood is generally understood as the early stage of a person's development, characterized by immaturity and marked by innocence, trust, and ingenuity.<sup>9</sup> It is primarily defined by an undeveloped state of mind, which explains society's willingness to accept and tolerate a child's shortcomings, mistakes, and limitations.<sup>10</sup>

### 1.2.1. The Meaning of a Child under Customary Law in Nigeria

In an informal setting, childhood is defined by the customary norms of the community. The Nigerian legal system operates as a pluralist system, incorporating both statutory and customary laws. Consequently, under Nigerian customary law, the informal system of social control diminishes the effectiveness of age as a determinant of childhood, as age is not typically regarded as a measure of capacity within customary traditions.<sup>11</sup> In Nigerian customary law, childhood is defined more by circumstances than age. Mental capacity is a key factor, particularly in assessing responsibility for customary crimes and civil wrongs. Adulthood is reached when an individual can independently handle life's challenges and is held accountable for their actions.<sup>12</sup> Under Nigerian customary law, childhood is determined by factors beyond age, including property inheritance, financial independence, marriage, and initiation into an age grade. In Southeastern Nigeria, the eldest male child remains a "child" until the father's death. However, practices vary, with childhood ending at different ages across regions. Customary Courts handle disputes on childhood status, applying local laws based on the customs of the area.<sup>13</sup>

In *Labinjoh v Abake*,<sup>14</sup> The Court ruled that under Yoruba customary law, childhood ends at puberty. In this case, an 18-year-old girl purchased goods for trading but refused to pay, citing the Infants Relief Act, 1874. The Police Magistrate Court sided with her, interpreting "infant" under common law as under 21. On appeal, the Divisional Court found that customary law applied, defining adulthood by puberty, and ruled in favor of the plaintiff. The defendant appealed to the Full Court, which sent the case back to the trial court to determine the relevant customary law.

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<sup>6</sup> (fn6).

<sup>7</sup> Webster's New Encyclopedia Dictionary, (Federal Street Press, Massachusetts, 2002) 310.

<sup>8</sup> Aja Nwachukwu MA, 'A Legal Analysis of the Nebulous Concept of Childhood in Nigeria' *Beijing Law Review* (2016) (7) (2) 122-126.

<sup>9</sup> (fn9).

<sup>10</sup> (fn10).

<sup>11</sup> (fn11).

<sup>12</sup> P Oloko, *Introduction: Protection and Violation of Child Right in Nigeria* (Jeromelaiho & Associates Ltd Lagos 1986) 1.

<sup>13</sup> Anyua I A and Okagbue I, *The Rights of a Child in Nigeria* (Nigerian Institute of Advanced Legal Studies Lagos 1996) 10.

<sup>14</sup> (1924) 5 NLR 33.

### 1.2.2. Definition of a Child under Nigerian Statutory Law

Similar to customary law, statutory law in Nigeria presents a complex view of childhood, defining it differently based on the specific law and the circumstances of each case.<sup>15</sup> Under the Criminal Code Act<sup>16</sup> for instance, childhood is defined as a conviction for unlawful carnal knowledge to the age of 12 years.<sup>17</sup> Any male person below that age, in the eyes of the law, is incapable of having carnal knowledge, more so unlawfully.<sup>18</sup>

The Penal Code,<sup>19</sup> On the other hand, delimits childhood by age rather than circumstances. The Code provides, for conviction for an offence, that childhood ceases at the age of 7 years.<sup>20</sup> Thus, a person who commits an offence and is shown to be above 7 years is criminally liable to trial and conviction under the Code applicable in the northern part of Nigeria.

Beyond the two Codes, other civil statutes define childhood based on age rather than circumstances. For instance, Section 59(2) of the Nigerian Labour Act prohibits employing individuals under 14 in industrial undertakings. While an exception allows such employment under supervision in technical schools or specific sectors overseen by the Ministry of Education or a state government department, this does not shift the determination from age to circumstance. Instead, the supervision reinforces the legal presumption that the individual is still considered a child due to their mental capacity.<sup>21</sup> The Child's Rights Act 2003,<sup>22</sup> which is the comprehensive enactment on children's rights in Nigeria, describes a child as a person below the age of 18 years.<sup>23</sup> The Act has resolved statutory inconsistencies on childhood in Nigeria. As federal legislation, it considers various legal provisions to protect children from abuse. Additionally, under the doctrine of covering the field, it overrides any conflicting state laws on the definition of childhood.<sup>24</sup>

### 1.3. History of Child's Rights Protection in Nigeria

Globally, the development of child rights is part of the broader evolution of human rights. However, in Nigeria, child rights evolved earlier, preceding the establishment of any national human rights framework. The foundation of child rights protection in Nigeria can be traced back to the Children and Young Persons Act (CYPA), enacted in 1943 by the British Colonial Government as an ordinance applicable across the Nigerian Protectorate.<sup>25</sup> The advancement of child rights worldwide is closely linked to the broader evolution of human rights. However, in Nigeria, child rights developed earlier, predating the establishment of any national human rights framework. The origins of child rights protection in Nigeria can be traced to the Children and Young Persons Act (CYPA), enacted in 1943 by the British Colonial Government as a nationwide ordinance.<sup>26</sup> The CYPA, as the primary legislation addressing issues concerning children and young persons in Nigeria, was enacted to provide for the welfare and treatment of child offenders.

<sup>15</sup>(fn13).

<sup>16</sup>Cap. C. 38, Laws of the Federation of Nigeria, 2010.

<sup>17</sup>(fn17), section 357.

<sup>18</sup>(fn18), section 30.

<sup>19</sup>Cap 89, Laws of Northern Nigeria.

<sup>20</sup>(fn20), section 50 (a).

<sup>21</sup>(fn22).

<sup>22</sup>Cap C. 50, Laws of the Federation of Nigeria, 2010.

<sup>23</sup>(fn24), section 177.

<sup>24</sup>Constitution of the Federal Republic of Nigeria, 1999 (as amended) section 1 (3).

<sup>25</sup>Emelonye U, 'Normative Evolution of Child Rights in Nigeria' [2020] (6) (9) *Journal of Advance Research in Social Science and Humanities* 1-8.

<sup>26</sup>Alemika E E and Chukwuma I C, *Juvenile Justice Administration n in Nigeria: Philosophy and Practice*, (CLEEN Foundation Lagos 2001), 16.

However, it did not explicitly reference rights in general or child rights in particular within its provisions.<sup>27</sup>

Abubakar highlights the human rights aspects of the CYPA, noting its strong emphasis on rights-based penal sanctions while also providing appropriate and mitigated responses to child offenses.<sup>28</sup> With Nigeria's adoption of a federal system, most states replicated the 1943 CYPA in their Children and Young Persons Laws. However, as international and regional human rights frameworks evolved, the limitations of the CYPA became increasingly evident.<sup>29</sup> The CYPA did not define "juvenile," nor did any related legislation. Similar to the Penal and Criminal Codes, it categorized children into two groups: those under 14 as "children" and those aged 14 to under 17 as young persons.<sup>30</sup>

Recognizing the gaps in the CYPA compared to international child rights standards, there was a pressing need to reform Nigeria's child rights legal framework to align with global human rights principles. The enactment of the Child Rights Act (CRA) was driven by the necessity for comprehensive legislation that safeguards children's rights while also outlining the responsibilities of the government, parents, and relevant authorities.<sup>31</sup> Although aligned with Nigeria's obligations under the CRC, the adoption of the CRA was highly politicized, influenced by ethnic, religious, and cultural factors.<sup>32</sup> The first attempt to establish a child rights framework aligned with international standards under General Babangida's military government failed due to opposition from religious and traditional groups. The deadlock continued until the brief interim government of Ernest Shonekan.<sup>33</sup>

Alemika and Chukwuma noted a lack of consensus on child rights legislation during the interim government. In 1995, under General Abacha, a special committee within the Ministry of Justice was formed to align the draft bill with Nigeria's religious and cultural values.<sup>34</sup> The committee was responsible for identifying obstacles to adopting a nationwide child rights framework that met international and regional standards. However, no progress was achieved during General Abacha's five-year rule (1993–1999). Internal divisions along religious and tribal lines prevented the committee from reaching a consensus, ultimately delaying the submission of a unified report for the Head of State's approval.<sup>35</sup> In 2002, under President Olusegun Obasanjo's democratic government, efforts to pass child rights legislation were renewed with a bill presented to the National Assembly. Unlike previous military-era attempts, this initiative was rooted in democracy and human rights. However, despite the progress, the National Assembly rejected the bill in October 2002.<sup>36</sup>

Ogunniran notes that the Supreme Council for Shari'a in Nigeria influenced Northern states, where Islamic law is practiced, to direct their representatives in the Senate and House of Representatives

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<sup>27</sup>Emelonye (n27).

<sup>28</sup>Fourchard L, 'Lagos and the Invention of Juvenile Delinquency in Nigeria' [2006] (47) *Journal of African History* 115-221.

<sup>29</sup>(fn30).

<sup>30</sup>Ijaiya H, 'Juvenile Justice Administration in Nigeria' [2009] (2) *NUJS Law Review* 573-546.

<sup>31</sup>Ijaiya (n32).

<sup>32</sup>(fn33).

<sup>33</sup>(fn34).

<sup>34</sup>Alemika and Chukwuma (n28).

<sup>35</sup>(fn36).

<sup>36</sup>(fn37).

to reject the proposed bill.<sup>37</sup>It was reported that the Supreme Council for Shari'a in Nigeria opposed the draft bill, fearing it would undermine the foundation and principles of Sharia and Islamic culture.<sup>38</sup>The Council opposed the bill, citing its provisions for equal inheritance rights for male and female children and the establishment of family courts, which they believed encroached on Sharia court jurisdiction over child-related matters.<sup>39</sup>Ojielo notes that opposition to the draft child rights bill was rooted in religious concerns, with some Islamic groups arguing that Nigeria, as a federal state, must uphold its cultural and religious diversity in its laws and institutions.<sup>40</sup>The unexpected failure of the 2002 child rights bill, despite being introduced under a democratic government, disappointed both national and international stakeholders. Civil society groups and development partners voiced their dissatisfaction, using media campaigns to pressure the National Assembly into reconsideration. In response to public outcry and the challenge of creating a culturally and religiously acceptable framework, the 5th National Assembly swiftly enacted the Child Rights Act (CRA) in 2003 under Section 299(a) of the 1999 Constitution. However, its impact was weakened from the outset due to constitutional constraints on the National Assembly's authority to enforce it nationwide.

#### **1.4. International and Regional Legal Instruments Protecting Child's Rights in Nigeria**

This section examines international and regional legal instruments protecting children's rights in Nigeria.

##### **1.4.1. Universal Declaration on Human Rights**

The UDHR establishes universal human rights, including key provisions relevant to children. Article 25(2) grants special care and equal social protection to all children, aligning with Section 42(2) of the Nigerian Constitution. Article 16(3) recognizes the family as a fundamental unit deserving state protection. Article 26(1) affirms the right to free elementary education, similar to Section 18 of the Nigerian Constitution. While these rights are reflected in Nigerian law, children in Nigeria do not fully experience the protections promised by the UDHR.

##### **1.4.2. International Covenant on Economic, Social, and Cultural Rights (ICESCR)**

Nigeria ratified the ICESCR on 29th July 1993.<sup>41</sup> The covenant enshrines key international legal provisions on economic, social, and cultural (ESC) rights. These include the right to fair and just working conditions, social protection, an adequate standard of living, the highest attainable standards of physical and mental health, education, and access to cultural freedom and scientific progress.<sup>42</sup>

Article 10 provides that: States Parties to this Covenant acknowledge the following obligations: The family, as the natural and fundamental unit of society, must receive the broadest possible protection and support, particularly during its formation and while responsible for raising and educating dependent children. Marriage should be based on the free consent of both spouses. Mothers are entitled to special protection before and after childbirth. During this period, working mothers should be granted paid leave or leave with sufficient social security benefits to ensure

<sup>37</sup>Ogunniran I, 'The Child Rights Act Versus Shari'a Law in Nigeria: Issues, Challenges and A Way Forward' [2010] (30) *Child Rights Journal* 62-76.

<sup>38</sup>(fn39).

<sup>39</sup>(fn40).

<sup>40</sup>(fn41).

<sup>41</sup>United Nations, 'International Covenant on Economic, Social and Cultural Rights' <<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>>accessed 17 January 2025.

<sup>42</sup>(fn42).

their well-being. All children and young persons must receive special protection and assistance, free from any discrimination based on parentage or other circumstances. They must also be safeguarded from economic and social exploitation.

Employment that endangers a child's well-being, health, or development should be legally punishable. States must set minimum age limits for child labor and enforce penalties for violations.<sup>43</sup> Chapter II of the Nigerian constitution has an all-embracing catalogue of ESC rights and is titled Fundamental Obligations of the Government.<sup>44</sup> In *Federal Republic of Nigeria v. Anache*,<sup>45</sup> the court held that the justiciability of Chapter II of the Constitution is not entirely barred, as Section 6(6)(c) is qualified by the phrase "save as otherwise provided by this Constitution." Similarly, in *SERAP v. FRN & UBEC*, SERAP filed a suit against the Federal Government of Nigeria and UBEC before the ECOWAS Court, alleging violations of Nigerians' rights to quality education, human dignity, access to natural resources, and socio-economic development as guaranteed under the African Charter on Human and Peoples' Rights (ACHPR).<sup>46</sup> The Federal Government of Nigeria and UBEC claimed that the right to education is non-justiciable, being a right under Chapter II. The ECOWAS Court held that irrespective of the non-justiciability of the right to education under the Nigerian Constitution, the government is bound by the African Charter on Human and Peoples Rights which guarantees the right to education and 'the fact that these rights are domesticated in the municipal law of the Federal Republic of Nigeria cannot oust the jurisdiction of the Court.'<sup>47</sup>

#### **1.4.3. International Covenant on Civil and Political Rights (ICCPR)**

Nigeria ratified the ICCPR on July 29, 1993, incorporating civil and political rights as fundamental rights under Chapter IV of its Constitution. These rights primarily safeguard individual freedoms from arbitrary government interference. Article 24 of the ICCPR specifically protects children's rights, ensuring they receive necessary care from their family, society, and the state without discrimination. It also mandates immediate birth registration, the right to a name, and the right to acquire a nationality.<sup>48</sup>

#### **1.4.4. United Nations Convention on the Rights of the Child (UNCRC)**

The UNCRC focuses on four key aspects of children's rights: their participation in decisions that affect them, protection from discrimination, neglect, and exploitation, prevention of harm, and the provision of essential support to meet their basic needs.<sup>49</sup> On May 25, 2000, two optional protocols to the convention were adopted. The first, known as the Optional Protocol to the UNCRC on the Involvement of Children in Armed Conflict, also called the Child Soldiers Protocol, was ratified by Nigeria on September 25, 2012.<sup>50</sup> The second, known as the Optional Protocol to the UNCRC on the Sale of Children, Child Prostitution, and Child Pornography, was ratified by Nigeria on September 27, 2010.<sup>51</sup>

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<sup>43</sup>(fn44).

<sup>44</sup>(fn45).

<sup>45</sup>(2004) 14 WRN 1 (SC).

<sup>46</sup>ECW/CCJ/APP/08/08.

<sup>47</sup>(fn49).

<sup>48</sup>United Nations Human Rights Office of the High Commissioner (OHCHR), 'Ratification Status for Nigeria' <[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=127&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=127&Lang=EN)>accessed on 17 January 2025.

<sup>49</sup>Zeldin W, *International Laws: Children's Rights*, (Law Library of Congress, Texas, 2017) 2.

<sup>50</sup>(fn52).

<sup>51</sup>(fn53).

#### 1.4.5. African Union Charter on the Rights and Welfare of the Child (ACRWC)

The African Charter was adopted by the OAU on July 11, 1990, and officially came into force on November 29, 1999.<sup>52</sup> In the preamble to the ACRWC, member states reaffirmed their commitment to upholding children's rights and welfare as outlined in various declarations, conventions, and instruments from the Organization of African Unity (OAU), the United Nations, and specifically the UNCRC. They also acknowledged the OAU Heads of State and Government's Declaration on the Rights and Welfare of the African Child. The African Children's Charter closely aligns with the rights enshrined in the UNCRC, while also codifying the responsibilities of the state, community, and individuals in safeguarding children. Through this framework, the ACRWC establishes a robust legal foundation for children's rights across the continent.<sup>53</sup>

### 1.5. National Legal Instruments for the Protection of Child's Rights in Nigeria

#### 1.5.1. Constitution of the Federal Republic of Nigeria 1999(As Amended)

The Constitution of the Federal Republic of Nigeria 1999 (as amended)<sup>54</sup> is the supreme law that reigns over other laws and its provision is binding on all persons and authorities in Nigeria.<sup>55</sup> The constitution provides a plethora of fundamental rights in Chapter IV, they are the right to life and development of the Nigerian child provided for in the constitution.<sup>56</sup> The reason for the protection of the life of all persons is based on the fact that life is sacred, a divine gift from God which must be guided with utmost care, for without the right to life all other rights become meaningless and unrealisable.<sup>57</sup> But in Nigeria, children are exposed to various forms of child abuse in the form of domestic violence, forced child labour early child marriages, and child trafficking among others which are detrimental to the enjoyment of fundamental rights to life and survival of children.<sup>58</sup>

Children must be protected from torture, inhuman or degrading treatment, and forced labor. However, work essential for a child's development and training is not classified as forced labor. Every individual, including children, has the right to personal liberty, though this may be lawfully restricted in executing court orders or ensuring compliance with legal proceedings. Matters involving children should be addressed promptly through the family court, and children in conflict with the law have a constitutional right to a fair hearing. Such cases must be conducted privately, preferably within a family court, as stipulated by the Child Rights Act.<sup>59</sup>

#### 1.5.2. The Criminal Code Act

The Criminal Code Act applies exclusively to the southern region of Nigeria and contains provisions for the protection of children. According to the Act, a child under the age of seven is deemed incapable of committing an offense.<sup>60</sup> A child older than seven but younger than twelve may be held criminally liable for an offense if it can be demonstrated that they comprehend the nature and consequences of their actions.<sup>61</sup> Additionally, children above the age of 12 but below

<sup>52</sup>The Charter was ratified by Nigeria on 23 July 2001.

<sup>53</sup>Ofodile U E, 'The Universal Declaration of Human Rights and the African Child Today: Progress or Problems?' [2009] (25) (37) *American University International Law Review* 53-60.

<sup>54</sup>(fn56).

<sup>55</sup> Constitution of the Federal Republic of Nigeria (1999 as amended), section 1(1).

<sup>56</sup>(fn58).

<sup>57</sup>(fn57).

<sup>58</sup>Gbobo P I and Igwe O W, 'Child Rights Law and Practice in Nigeria: A Lesson from South Africa' [2021] 17 (1) *UNIZIK Law Journal* 97-113.

<sup>59</sup> (fn61).

<sup>60</sup>Cap C 38 Laws of the Federation of Nigeria, 2004 section 18.

<sup>61</sup>(fn63), section 30.

18 are accountable for their criminal acts or omissions; however, they are prosecuted under the Children and Young Persons Law (CYPL) rather than the conventional justice system.<sup>62</sup>The CYPL defines a child as an individual under the age of 14 and a young person as someone between 14 and 17 years old.<sup>63</sup>

### 1.5.3. The Penal Code Act

The Penal Code Act applies to all the States in the Northern part of Nigeria. The Penal Code Act<sup>64</sup> includes specific provisions aimed at safeguarding children, whether as offenders or victims, akin to those found in the Criminal Code Act.<sup>65</sup>The PCA provides protective measures for children from the moment of conception, as it criminalizes the act of procuring an abortion to terminate the life of an unborn child.<sup>66</sup>The Act acknowledges the rights of an unborn child and mandates that parents, guardians, or individuals acting in loco parentis ensure the provision of necessities for the survival, growth, and nourishment of children under the age of 14.<sup>67</sup>However, the PCA does not contain any provisions criminalizing the Amangiri system, where children wander the streets begging for daily sustenance. Consequently, no one can be held accountable for the failure to provide for the basic survival needs of children in northern Nigeria.<sup>68</sup>Islamic teachings support the Amangiri system, which is regarded as a form of child labor and contravenes the provisions of the CRA and the Constitution that safeguard the right to life and the dignity of individuals.<sup>69</sup>The PCA also allows for the chastisement of children under 18 years, provided there is no grievous bodily harm. This provision conflicts with the regulations of the CRA 2003 against corporal punishment.<sup>70</sup>

### 1.5.4. Children and Young Persons Act

The Children and Young Persons Act (CYPA) classifies a child as anyone under 14 years old, while a young person is defined as an individual between the ages of 14 and 17.<sup>71</sup>The varying definitions of childhood create inconsistencies that subject children to harsher punitive measures, particularly in Nigerian states that have yet to adopt the CRA as state law.<sup>72</sup>The CYPA focuses more on punitive measures than on the principle of the Best Interest of the Child, placing less emphasis on the child's welfare. For example, Section 27 of the CYPA mandates that a child be placed under the supervision of a Probation Officer, a provision that contrasts with the CRA's child justice system, which prioritizes care, protection, and development.

Additionally, under the CYPA, cases involving children in conflict with the law can be handled in any court, and such children are sent to approved schools. This differs from the CRA, which establishes Children's Residential Centres and Child Correctional Homes, offering a more rehabilitative approach. While the CYPA ensures the swift dispensation of justice and grants bail except in cases of homicide or serious crimes, it also permits the imprisonment of young persons aged 14 to 17 in remand homes or borstal institutions. This contrasts with the CRA, which

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<sup>62</sup>(fn62).

<sup>63</sup>Children and Young People Act, section 2.

<sup>64</sup>Penal Code Act (hereinafter referred to as PCA).

<sup>65</sup>(fn67).

<sup>66</sup>(fn68), section 232.

<sup>67</sup>(fn69).

<sup>68</sup>Owasanoye B and Adegunle A, 'An Overview of the Rights of the Child in Nigeria' in Ayua A I and Okagbue I E, (eds), *The Rights of the Child in Nigeria* (Nigerian Institute of Advanced Legal Studies Lagos 1996), 41.

<sup>69</sup>(fn71).

<sup>70</sup>(fn72).

<sup>71</sup>Children and Young Persons Act, section 2.

<sup>72</sup>(fn72).

promotes non-custodial measures in line with the Tokyo Rules, emphasizing rehabilitation over punishment.<sup>73</sup>

### 1.5.5. Nigeria Labour Act 2004

The Nigeria Labour Act<sup>74</sup> controls the appointment, contract and protection of persons including children in employment. The Act has several protective provisions for children as it states that no young child should be employed in a job that is unsafe for his/her health or immoral in nature<sup>75</sup> or a job where he will be unable to return home to his parents/guardian on a daily basis.<sup>76</sup> The exception to this provision is an approval from an authorized labour officer with regards to the contract of employment.<sup>77</sup> Furthermore, a child below the age of sixteen (16) cannot be employed in underground work, operating a machine, in industry work on public holidays, or employed without the express consent of parents or guardians.<sup>78</sup> However, children in technical schools or similar institutions can work in industries as part of the educational training, but are subject to supervision by the Ministry of Education or other relevant institutions.<sup>79</sup> A child could be employed by family members but on light duty only in agricultural or domestic character, subject to the approval of the minister.<sup>80</sup>

### 1.5.6. The Child Rights Act 2003

Enacted in 2003, the Child Rights Act (CRA) stands as Nigeria's foremost legislation dedicated to children's rights and welfare. It draws its foundation from the 1989 United Nations Convention on the Rights of the Child and the 1990 African Charter on the Rights and Welfare of the Child.<sup>81</sup> The CRA affirms that all children's rights are fundamental and must be safeguarded and upheld. It emphasizes that the best interests of the child should always take precedence in all matters concerning them.<sup>82</sup> In Nigeria, the responsibility for enacting the CRA as state law rests with individual states, as matters relating to children fall under the Residual List, granting states exclusive legislative authority. While some states have adopted the CRA, several, particularly in the northern region, have yet to domesticate it.<sup>83</sup>

According to Umar, the refusal to adopt the CRA as state law stems from its perceived conflict with Islamic law, particularly regarding child marriages, making it inconsistent with Islamic principles and practices. He asserts that for children's rights to be effectively upheld in northern Nigeria, the CRA must be harmonized with Islamic law.<sup>84</sup> The CRA grants children a range of rights, including survival, protection, development, and participation rights. Among these, survival rights encompass the fundamental right to life,<sup>85</sup> this right is the most fundamental of all, serving

<sup>73</sup>United Nations Standard Minimum Rules for Non-Custodial Measures, 1990 rule 1.5.

<sup>74</sup>Cap L1, Laws of the Federation 2004.

<sup>75</sup>(fn77), section 59 (6).

<sup>76</sup>(fn78), section 59 (3).

<sup>77</sup>(fn79), section 59 (4).

<sup>78</sup>(fn80), section 59 (8).

<sup>79</sup>(fn81), section 59 (2).

<sup>80</sup>(fn82), section 59 (1) (a).

<sup>81</sup>Ladan M T, 'An Overview of State Obligation in respect of Children Rights in Nigeria' (A Paper presented at the National Assembly Complex, Abuja, March, 2003).

<sup>82</sup> Child rights Act 2003, sections 1 and 2.

<sup>83</sup>(fn84).

<sup>84</sup>Umar A, 'An X-ray of the Conflict between the Child Rights Act 2003 and Islamic Law on Child Marriage and Legitimacy' [2012] 3 *International Human Rights Journal* 76-87.

<sup>85</sup>(fn85), section 4.

as a necessary foundation for the realization of all other rights.<sup>86</sup>This encompasses freedom from hunger, poverty, disease, and illiteracy. The right to survival is closely tied to identity, including birth registration and the legal right to a name at birth.<sup>87</sup>A child's health and well-being are essential to ensuring their survival rights.<sup>88</sup>This is achieved by eliminating childhood diseases and ensuring quality care to reduce child morbidity and mortality. The Act mandates the government, parents, and institutions to uphold children's protection, care, and dignity.<sup>89</sup>The Act outlines adoption procedures and establishes monitoring mechanisms to ensure the well-being of adopted children.<sup>90</sup>Protective rights safeguard children from corporal punishment, harmful cultural practices like female genital mutilation, child marriage, abuse, tattoos, and skin markings.<sup>91</sup>

Aligned with the Beijing Rules, the CRA prohibits the imprisonment of children under 18, corporal punishment, and the death penalty. It also eliminates the concept of criminal responsibility for minors, setting 18 as the minimum age for adult criminal prosecution.<sup>92</sup>Regarding a child's development rights, the CRA guarantees essential protections as they transition from childhood to adulthood. These include freedom of thought, conscience, and religion, the right to rest and leisure, and access to free and compulsory basic education. It also places a duty on both the government and parents to ensure children's education.<sup>93</sup>The Act grants children the right to participate in decisions affecting their lives, a provision reinforced by the Constitution,<sup>94</sup> and the CRA.<sup>95</sup>The CRA mandates children to contribute to the well-being of their families and communities.<sup>96</sup>

#### **1.5.7. Trafficking in Persons (Prohibition) Law Enforcement and Administration Act**

Enacted in 2003, the Act grants NAPTIP the authority to investigate and prosecute child trafficking offenders while also supporting victims through counseling and rehabilitation. It imposes strict penalties for violations, including fines, passport forfeiture, and asset seizure. Under Sections 30 and 31, individuals involved in trafficking face a ₦200,000 fine, while corporate entities risk a ₦2,000,000 fine, asset forfeiture, and closure upon conviction.<sup>97</sup>Additionally, any commercial carrier that transports a person in violation of the Act commits an offense and may face a two-year prison sentence or a fine of two million naira.<sup>98</sup>NAPTIP oversees child trafficking units within the Police, Immigration, and Customs services. Leading the fight against child trafficking, it has rescued numerous children and reunited them with their families.<sup>99</sup>

### **1.6. Challenges Confronting Child's Rights Protection in Nigeria**

The protection of child rights in Nigeria faces several challenges, reflecting a complex interplay of social, economic, and institutional factors. These challenges undermine the full realization and enforcement of the rights guaranteed to children.

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<sup>86</sup>(fn88), section 33.

<sup>87</sup>(fn89), section 5 (1).

<sup>88</sup>(fn90), section 13.

<sup>89</sup>(fn91), section 30.

<sup>90</sup>(fn92), sections 125-148.

<sup>91</sup>Umar (fn87).

<sup>92</sup>(fn94).

<sup>93</sup>(fn93), section 15.

<sup>94</sup>(fn96), section 39.

<sup>95</sup>(fn97), section 3.

<sup>96</sup>(fn94).

<sup>97</sup>Trafficking in Person (Prohibition) Law Enforcement and Administration Act, 2003 section 28.

<sup>98</sup>(fn106), section 29.

<sup>99</sup>(fn94).

### **1.6.1. Child Labour**

Child labor and exploitation continue to pose major challenges to the protection of children's rights in Nigeria. Despite national and international efforts to combat these issues, various factors sustain the practice, endangering children's well-being, education, and overall development. Child labor is widespread across multiple sectors, including agriculture, informal industries, and domestic work. Many children are involved in hazardous labor, exposing them to significant physical and mental health risks.

### **1.6.2. Cultural Practices and Beliefs**

Cultural practices and beliefs play a crucial role in shaping societal norms and behaviors in Nigeria. While many traditions enrich the nation's cultural heritage, some pose significant challenges to the protection of children's rights. Striking a balance between preserving cultural values and safeguarding children's well-being is essential. In some communities, harmful traditional practices, such as female genital mutilation, early initiation ceremonies, and other rituals, expose children to physical and psychological harm. Additionally, early marriage, often rooted in cultural norms, disproportionately affects young girls, depriving them of education, increasing health risks during childbirth, and perpetuating cycles of poverty. Addressing these challenges is key to ensuring children's rights are upheld while respecting cultural heritage.

### **1.6.3. Poverty and Socio-economic Inequality**

Poverty and socioeconomic inequality pose significant barriers to the protection of children's rights in Nigeria, affecting multiple aspects of their lives and limiting their access to essential rights and opportunities. Recognizing the deep connection between poverty, inequality, and child rights is vital for developing effective solutions to these widespread issues. Financial hardship often prevents families from providing quality education for their children, as they struggle to afford school fees, uniforms, and essential learning materials. Additionally, limited access to basic healthcare services leads to malnutrition, preventable diseases, and high child mortality rates, further exacerbating the vulnerability of children in impoverished communities. Addressing these challenges is crucial to ensuring that every child has the opportunity to thrive.

### **1.6.4. Education Barriers**

Guaranteeing access to quality education is essential for safeguarding and promoting children's rights. However, in Nigeria, various obstacles hinder children's ability to receive and benefit from education, posing serious challenges to the fulfillment of their rights. Limited educational opportunities, especially in rural areas, contribute to low enrollment rates and high dropout levels. Additionally, gender disparities remain a significant issue, with girls facing additional barriers that restrict their access to education. Addressing these challenges is crucial to ensuring that every child has the opportunity to learn and develop their full potential.

## **1.7. Conclusion and Recommendations**

In conclusion, the legal protection of child rights in Nigeria is shaped by a combination of customary, statutory, and international legal frameworks. The definition of a child varies across these legal systems, with customary law relying on traditional criteria such as mental capacity and social roles, while statutory law aligns with international standards, offering clearer definitions and protections. Over time, Nigeria has made significant progress in child rights protection, from colonial-era influences to the enactment of the Child Rights Act in 2003, a milestone in harmonizing national laws with global child rights standards. International and regional frameworks, including the UDHR, ICESCR, ICCPR, UNCRC, and ACRWC, establish a strong foundation for child rights in Nigeria.

These instruments safeguard fundamental rights such as survival, education, protection from exploitation, and participation in decision-making. Domestically, Nigeria has adopted key legislation, including the 1999 Constitution, the Child Rights Act, the Children and Young Persons Act, the Criminal Code, and the Penal Code, which collectively address various aspects of child protection, from health and education to preventing child labor, trafficking, and abuse. Despite these legal safeguards, challenges persist in their implementation. Weak enforcement, cultural barriers, resource constraints, and inconsistencies in judicial practices hinder the full realization of child rights. Addressing these challenges requires a collaborative approach involving the government, civil society, and the private sector to ensure that legal protections translate into tangible improvements in children's lives. While Nigeria has made notable progress, sustained efforts are necessary to overcome existing obstacles and create a safe, supportive environment where all children can fully enjoy their rights. To enhance the protection and enforcement of child rights in Nigeria, the following recommendations are suggested.

#### **1.7.1. Strengthening Law Enforcement and Implementation**

The government should ensure stricter enforcement of child protection laws by training law enforcement officers, judiciary personnel, and social workers to handle child rights cases effectively. Specialized family courts should be fully operational across all states to expedite child-related cases.

#### **1.7.2. Harmonization of Legal Frameworks**

There is a need to reconcile inconsistencies between statutory, customary, and Sharia laws regarding child rights. The federal government should collaborate with states to ensure full domestication and implementation of the Child Rights Act in all regions.

#### **1.7.3. Increased Public Awareness and Advocacy**

Civil society organizations, religious and traditional leaders, and media outlets should engage in continuous public sensitization campaigns to educate communities on child rights, especially in rural areas where cultural norms sometimes hinder legal protections.

#### **1.7.4. Addressing Socioeconomic Barriers**

Government and private sector stakeholders should invest in poverty alleviation programs, including free and compulsory education, accessible healthcare, and social welfare initiatives, to reduce child labor and exploitation driven by economic hardship.

#### **1.7.5. Enhanced Protection Mechanisms**

The government should strengthen child protection agencies, establish more shelters for abused and trafficked children, and improve rehabilitation programs for victims of child rights violations. Reporting mechanisms such as child helplines should be made more accessible and responsive.