

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 constitute the most vulnerable and dependent segment of society, requiring special care due to their inherent inability to provide for themselves in certain situations. Without adequate government support for their well-being, they face numerous challenges, including early child marriage, street hawking, inadequate healthcare, and limited access to quality education. Nigeria is among the nations that have ratified two key international instruments on children's rights. The first is the United Nations Convention on the Rights of the Child (CRC), 1989, which Nigeria ratified in March 1991, incorporating most of its provisions into the Child's Rights Act, 2003. The second is the African Charter on the Rights and Welfare of the Child, 1990, which was ratified in February 2003. As a signatory to both instruments, Nigeria is obligated to uphold their provisions. The concept of human rights, recognized as inalienable, has undergone significant evolution since the adoption of the Universal Declaration of Human Rights (UDHR) in 1948.¹

This evolution is categorized into different generations of rights. First-generation rights encompass political and civil liberties, while second-generation rights include economic, social, and cultural entitlements² and collective-developmental human rights as the third generation of rights.³ The UDHR 1948, as an important source of human rights, is useful in analysing the socio-economic rights of children, and under this Declaration, the United Nations has proclaimed that childhood is entitled to special care and assistance.⁴ The UDHR is supported by two key instruments: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), both adopted in 1966.⁵ The ICESCR serves as the primary international legal framework for economic, social, and cultural rights. Article 2(3) of the ICESCR mandates that developing countries determine the extent to which they can guarantee

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

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

³(fn2).

⁴The preamble to the UDHR, 1948 para 5.

⁵(fn3).

socio-economic rights to non-nationals, based on available resources. This provision operates on the premise that the ICCPR will serve as the legal foundation for civil and political rights, which many countries recognize as justiciable.

Under the ICESCR, the vision of free individuals living without fear and want can only be realized if conditions are established that enable everyone to fully enjoy their economic, social, and cultural rights, alongside their civil and political rights, without restriction.⁶ Accordingly, the socio-economic rights enshrined in the ICESCR impose an obligation on state parties to uphold economic, social, and cultural rights for all individuals within their jurisdictions, with particular emphasis on children. As the most vulnerable segment of the population, children require these rights to ensure their proper development and growth. Therefore, they must have access to essential socio-economic provisions.⁷

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.⁸ Rather than directly defining a child, this definition shifts the responsibility of determination to another process.⁹ 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.¹⁰ 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.¹¹

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.¹² In Nigeria, childhood under various customary laws is determined more by circumstance than by age. Under Nigerian customary laws, childhood is, at best, a vague concept. Various criteria are used to determine childhood, one of which is mental capacity, particularly about sanctions for customary crimes and civil wrongs. This is based on an individual's ability to confront and solve problems independently, without adult supervision. A person is considered to have reached adulthood if they are mentally and socially capable of addressing life's issues on their own. Such an individual can be held accountable for violating customary norms or committing crimes.¹³

Other criteria for determining whether a person is considered a child under customary law are specifically linked to issues such as the devolution of property and symbols of authority, beyond the determination of wrongful conduct. In many cases under Nigerian customary law, factors such as financial independence, marriage, and initiation into an age grade are used to define childhood.

⁶(fn5).

⁷ (fn6).

⁸Webster's New Encyclopedia Dictionary, (Federal Street Press, Massachusetts, 2002) 310.

⁹M A Aja Nwachukwu, 'A Legal Analysis of the Nebulous Concept of Childhood in Nigeria' *Beijing Law Review* (2016) (7) (2) 122-126.

¹⁰(fn9).

¹¹(fn10).

¹²(fn11).

¹³P Oloko, *Introduction: Protection and Violation of Child Right in Nigeria* (Jeromelaiho & Associates Ltd Lagos 1986) 1.



For instance, in most parts of Southeastern Nigeria, the first male child of the family is considered to remain in childhood under customary law, regardless of his age, until the father's death. Such individuals are regarded as children as long as their fathers are alive. However, a study conducted by the Nigerian Institute of Advanced Legal Studies indicates that this practice varies across the country. In some regions, childhood ends at the age of nineteen, while in others, it extends up to twenty-nine years. Customary Courts in Nigeria are empowered to resolve questions of native law and custom, including matters related to childhood when these issues arise in legal cases brought before them. These courts typically apply the customary law of the region where the dispute originated. They have no difficulty in determining the applicable customary law, as the presiding officers are often natives of the area and are well-versed in its customs.¹⁴

In *Labinjoh v Abake*,¹⁵ the court held that, under Yoruba native law and custom, childhood ends upon the attainment of puberty. In this case, the defendant, a girl approximately 18 years old and still living with her parents, purchased goods for trading purposes from the plaintiff. The plaintiff sued for £48, the value of the goods sold. The defendant contested the suit, claiming she was an infant and, under the Infants Relief Act, 1874, was not obligated to pay, as the contract was for trading purposes rather than for necessities. The Police Magistrate Court in Lagos sided with the defendant, dismissing the plaintiff's claim. The court reasoned that, since the Act did not define "infant," it should be interpreted according to common law, where an infant is considered a person under 21 years old.

The plaintiff appealed to the Divisional Court, arguing that the transaction was governed by customary law, not the Act, as both parties were natives. The plaintiff asserted that the defendant was liable for payment, as she had reached adulthood by attaining puberty. The court agreed that the Act applied but noted that, since the Act did not define "infant," the determination should be made according to customary law, which defines childhood as ending with puberty. The court ruled in favor of the plaintiff, as the defendant had reached puberty. The defendant then appealed to the Full Court, which unanimously remitted the case back to the trial court to determine whether any native law or custom applied to the matter and, if so, to identify the relevant customary law.

1.2.2. The Meaning of a Child under Statutory Law in Nigeria

Like customary law, statutory law is complex on the question of childhood in Nigeria. Under statutory law, childhood is variously constituted depending on the focus of the particular law and the circumstances of each case.¹⁶ Under the Criminal Code Act¹⁷ for instance, childhood is defined as a conviction for unlawful carnal knowledge to the age of 12 years.¹⁸ Any male person below that age, in the eyes of the law, is incapable of having carnal knowledge, more so unlawfully.¹⁹

¹⁴I A Anyua and I Okagbue, *The Rights of a Child in Nigeria* (Nigerian Institute of Advanced Legal Studies Lagos 1996) 10.

¹⁵(1924) 5 NLR 33.

¹⁶(fn13).

¹⁷Cap. C. 38, Laws of the Federation of Nigeria, 2010.

¹⁸(fn17), section 357.

¹⁹(fn18), section 30.

Notwithstanding, the abandonment of age for mental capacity in the determination of childhood in this provision introduces speculative elements for the application of legal norms relating to the question of childhood, which further convolutes the concept under Nigerian statutory law.

The Penal Code²⁰ on the other hand, delimits childhood by age other than circumstances. The Code provides, for the purpose of conviction for an offence that childhood ceases at the age of 7 years.²¹ 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.

Apart from the two Codes, other statutes in civil matters also provide for the determination of childhood by age rather than circumstances. For example, section 59 (2) of the Nigerian Labour Act²² provides that for employment in Nigeria, a person under the age of 14 years cannot be employed or allowed to work in any industrial undertaking. Even though a proviso in the section allows such a person to work in the prohibited sector of industrial undertaking or technical schools under supervision by the Ministry of Education or corresponding Department of Government of a State, this does not introduce a new criterion of determination by circumstance. Supervision of a person in the circumstances mentioned in the Act confirms the presumption of the mental capacity of the person as a child by the law.²³

The Child's Rights Act 2003,²⁴ which is the comprehensive enactment on children's rights in Nigeria, describes a child as a person below the age of 18 years.²⁵ It appears that this Act has finally settled the statutory differences on the issue of childhood in Nigeria. This is so for several reasons. First, the Act is a federal legislation, which directly borders on the rights of the child in Nigeria. Therefore, the legislature must have taken into consideration the provisions on the limits of childhood in the different legal instruments before enacting the Act to protect the child from abuse. Secondly, as federal legislation enacted within the concurrent legislative powers of the National Assembly, the Act takes precedence over state legislation on the same legislative matter; this is the doctrine of covering the field. Any state legislation on the definition of a child for the application of principles of law that is inconsistent with the Child's Rights Act may be void and inapplicable.²⁶

1.3. History of Child's Rights Protection in Nigeria

The evolution of child rights at the global level is included in the normative evolution of human rights, but the case is different in Nigeria because the normative evolution of child rights is earlier and predates the articulation of any national human rights instrument. Arguably, the history of child's rights protection in Nigeria is embodied in the Children and Young Persons Act (CYPA) passed in 1943 by the British Colonial Government as an Ordinance applicable throughout the Protectorate of Nigeria.²⁷ A specific instrument in the country was the CYPA and its amendments. It was originally intended to apply to Lagos but was later adopted as a regional law and subsequently as a state law. It was extended to the Eastern and Western Regions of Nigeria in 1946 and the Northern Region of Nigeria in 1958 through the Order-in-Council of 1945 and 1958

²⁰Cap 89, Laws of Northern Nigeria.

²¹(fn20), section 50 (a).

²²Cap L. 1, Laws of the Federation of Nigeria, 2010.

²³(fn22).

²⁴Cap C. 50, Laws of the Federation of Nigeria, 2010.

²⁵(fn24), section 177.

²⁶Constitution of the Federal Republic of Nigeria, 1999 (as amended) section 1 (3).

²⁷U Emelonye, 'Normative Evolution of Child Rights in Nigeria' [2020] (6) (9) *Journal of Advance Research in Social Science and Humanities* 1-8.



respectively.²⁸ As the major piece of legislation that was dealing with matters affecting children and young persons in Nigeria, the CYPA although promulgated to provide for the welfare and treatment of child offenders did not mention rights in general or child rights in particular in any of its provisions.²⁹

Abubakar aptly alludes to the human rights ingredients of the CYPA when he states that it has a very strong focus on right-based penal sanctions and at the same time articulates appropriate and mitigated responses to child offenses.³⁰ On the introduction of a federal system of government with a state structure in Nigeria, most states of the federation enacted their Children and Young Persons Law which was almost an identical reprinting of the 1943 CYPA. With the passage of time and more specifically, with the advancement in the better and clearer articulation of child rights in international and regional human rights instruments and laws, the inherent weaknesses of the CYPA began to emerge more visibly.³¹ The CYPA did not define the word juvenile nor was the word defined in any other piece of legislation simultaneously applicable to the CYPA. Like the penal and criminal codes applicable in Northern and Southern Nigeria, respectively, the CYPA established two categories of children. The first is a child, defined as a person under the age of 14, and the second is a 'young person', defined as a person who has attained 14 years of age but is under the age of 17.³²

Established on the inherent gaps of the CYPA *vis-a-vis* international child rights standards in general, there was a very strong need to strengthen and align the Nigerian child rights legal framework with international human rights standards. Efforts to promulgate the Child Rights Act (CRA) were informed by the need for legislation that incorporates all the rights of children as well as articulates the duties and obligations of government, parents, and other authorities.³³ While this experience accords with Nigeria's obligation under the CRC, the background to the adoption of the CRA was much politicized along ethnic, religious, and cultural lines.³⁴ The first legislative effort to entrench a strong child rights regime that is compliant with international and regional normative standards initiated by the then military government of General Ibrahim Babangida did not result in a decree due to opposition from religious groups and traditionalists across the country. The ensuing limbo and disagreements over the content of the child rights legal framework persisted until General Babangida surrendered the country to the short-lived interim government of Ernest Shonekan.³⁵

Alemika and Chukwuma observed that, during the interim government, there was a significant divide and a lack of consensus on the content of child rights legislation. Following the end of the Shonekan interim government and during General Sani Abacha's tenure as Head of State, a special committee was established within the Ministry of Justice in 1995 to reconcile the draft child rights

²⁸E E Alemika and I C Chukwuma, *Juvenile Justice Administration in Nigeria: Philosophy and Practice*, (CLEEN Foundation Lagos 2001), 16.

²⁹Emelonye (n27).

³⁰L Fourchard, 'Lagos and the Invention of Juvenile Delinquency in Nigeria' [2006] (47) *Journal of African History* 115-221.

³¹(fn30).

³²H Ijaiya, 'Juvenile Justice Administration in Nigeria' [2009] (2) *NUJS Law Review* 573-546.

³³Ijaiya (n32).

³⁴(fn33).

³⁵(fn34).

bill with the country's various religious and cultural values.³⁶ The committee was also tasked with examining the barriers to the adoption of a nationwide, universally accepted child rights framework that would comply with international and regional standards. However, no progress was made in this regard throughout General Sani Abacha's five-year tenure, which ended in 1999. The committee assigned to draft the child rights bill became deeply divided along religious and tribal lines, resulting in a lack of consensus and preventing the presentation of a unified report for the Head of State's consideration.³⁷ In early 2002, under the democratically elected government of President Olusegun Obasanjo, efforts to enact child rights legislation were revived with the preparation and presentation of a bill to the National Assembly. This bill outlined the rights and responsibilities of children in Nigeria and proposed a renewed system of child justice. The key distinction between this initiative and previous attempts was that unlike earlier efforts made during military rule—when there was no democratic foundation and little regard for human rights—the 2002 effort took place under a democratically elected government. However, despite this progress, the National Assembly rejected the first attempt to enact nationwide child rights legislation in a democratic era in October 2002.³⁸

Ogunniran states that the Supreme Council for Shari'a in Nigeria pressured states in Northern Nigeria, where Islamic law is implemented, to instruct their representatives in both the Senate and House of Representatives to oppose the draft bill.³⁹ It was also recounted that the Supreme Council for Shari'a in Nigeria opposed the draft bill because of concerns that the bill would destroy the very basis and essence of Sharia and Islamic culture.⁴⁰ The Council cited for instance the fact that the draft child rights bill accorded equal rights to male and female children on matters of inheritance, coupled with the fact that the creation of family courts under the bill impinges on the jurisdiction of Sharia court in all matters relating to children.⁴¹ Reflecting the strong opposition to the draft child rights bill on religious grounds, Ojielo recounts that other Islamic groups against the bill argued that, as a federal state, Nigeria's laws, institutions, and people must respect the cultural diversities inherent in the nation, including religious beliefs and cultural practices.⁴² The failure of the 2002 legislative efforts to adopt a child rights bill, contrary to widespread expectations of an easy passage given its introduction under a democratically elected government, was met with disappointment by both national and international stakeholders. Civil society organizations and development partners expressed dissatisfaction with the outcome of the legislative process, exerting media pressure and urging the National Assembly to reconsider its decision not to pass the bill into law. In response to the growing criticism and public outcry over the non-passage of the bill, and mindful of the challenges in crafting a child rights law that could be culturally and religiously acceptable across the federation, the 5th National Assembly acted swiftly and promulgated the Child Rights Act (CRA) in 2003, by Section 299(a) of the 1999 Constitution. However, despite the CRA's passage and the array of rights it guaranteed for children, its effectiveness was compromised from the outset due to the limitations imposed by the constitutional provision under which the National Assembly derived its authority to enact the law.

³⁶Alemika and Chukwuma (n28).

³⁷(fn36).

³⁸(fn37).

³⁹I Ogunniran, 'The Child Rights Act Versus Shari'a Law in Nigeria: Issues, Challenges and A Way Forward' [2010] (30) *Child Rights Journal* 62-76.

⁴⁰(fn39).

⁴¹(fn40).

⁴²(fn41).



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 outlines the fundamental human rights of all individuals, which are to be universally protected. While it is not specifically focused on children, its provisions are still highly relevant to their lives. Three articles are particularly significant for children. Article 25(2) explicitly mentions children, stating that "Motherhood and childhood are entitled to special care and assistance" and that all children, regardless of whether they are born in or out of wedlock, should enjoy the same social protection. This aligns with Section 42(2) of the Nigerian Constitution, which asserts that "no citizen of Nigeria shall be subjected to any disability or deprivation merely because of the circumstances of his birth." Article 16(3) recognises the family as the natural and fundamental group unit of society, entitled to protection by both society and the State. In a similar vein to the educational objectives outlined in Section 18 of the Nigerian Constitution, Article 26(1) asserts that everyone has the right to education, which should be free, at least at the elementary and fundamental stages. It further states that elementary education must be compulsory, technical and professional education should be widely available, and higher education should be accessible to all based on merit. These provisions demonstrate that the rights outlined in the UDHR are reflected in the rights granted to Nigerian children. However, despite these protections, children in Nigeria do not fully experience the benefits promised by the UDHR.

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

Nigeria ratified the ICESCR on 29th July 1993.⁴³ The covenant contains some of the most significant international legal provisions establishing economic, social, and cultural (ESC) rights, including rights relating to work in just and favourable conditions, social protection, an adequate standard of living, the highest attainable standards of physical and mental health, education, and the enjoyment of the benefits of cultural freedom and scientific progress.⁴⁴ Article 10 provides that:

The States Parties to the present Covenant recognise that: 1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses. 2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits. 3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation.

⁴³United 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.

⁴⁴(fn42).

Employment that is harmful to a child's morals or health, poses a danger to their life or is likely to hinder their normal development should be punishable by law. States must also establish age limits below which child labor for paid employment should be prohibited and subject to legal penalties.⁴⁵ Chapter II of the Nigerian constitution has an all-embracing catalogue of ESC rights and is titled Fundamental Obligations of the Government.⁴⁶ The court, in *Federal Republic of Nigeria v Anache*,⁴⁷ however, held that since section 6 (6) (c) is qualified by the phrase, 'save as otherwise provided by this Constitution', the justiciability of Chapter II is not entirely foreclosed. In the case of *Socio-Economic Rights and Accountability Projects (SERAP) v. FRN and Universal Basic Education Commission (UBEC)*,⁴⁸ SERAP filed a suit against the Federal Government of Nigeria and UBEC before the ECOWAS Court. They alleged that there was a violation of the rights of Nigerians to quality education, dignity of the human person, and the right of peoples to their wealth and natural resources as well as the right to economic and social development guaranteed under the African Charter on Human and Peoples Rights (ACHPR).⁴⁹ 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.'⁵⁰

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

Nigeria ratified the ICCPR on July 29, 1993. Civil and political rights are enshrined in Chapter IV of the Nigerian Constitution, where they are referred to as fundamental rights. The core of civil liberties lies in the protection of an individual's freedom, ensuring it is not infringed upon by arbitrary government actions. Article 24 of the ICCPR specifically addresses the rights of children, stating: 1. Every child, without discrimination based on race, color, sex, language, religion, national or social origin, property, or birth, is entitled to the protective measures required by their status as a minor, provided by their family, society, and the State. 2. Every child must be registered immediately after birth and given a name. 3. Every child has the right to acquire a nationality.⁵¹

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

The UNCRC is mainly concerned with four aspects of children's rights namely participation by children in decisions affecting them; protection of children against discrimination and all forms of neglect and exploitation; prevention of harm to them; and provision of assistance to children for their basic needs.⁵² Two optional protocols for the convention were adopted on 25th May 2000. The first, Optional Protocol to the UNCRC on the Involvement of Children in Armed Conflict, also referred to as the Child Soldiers Protocol was ratified by Nigeria on 25th September 2012.⁵³

⁴⁵(fn44).

⁴⁶(fn45).

⁴⁷(2004) 14 WRN 1 (SC).

⁴⁸ECW/CCJ/APP/08/08.

⁴⁹Particularly under Article 17 (right to education) and Articles 1, 2, 21 and 22 of the ACHPR.

⁵⁰(fn49).

⁵¹United 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>accessed on 17 January 2025.

⁵² W Zeldin, *International Laws: Children's Rights*, (Law Library of Congress, Texas, 2017) 2.

⁵³(fn52).



The second, the Optional Protocol to CRC on the Sale of Children, Child Prostitution, and Child Pornography was ratified by Nigeria on 27th September 2010.⁵⁴

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

The African Charter was adopted by the OAU on 11 July 1990 and came into force on 29 November 1999.⁵⁵ In the preamble to the ACRWC, member states reaffirmed their commitment to the principles of children's rights and welfare outlined in declarations, conventions, and other instruments from the Organization of African Unity, the United Nations, and specifically the United Nations Convention on the Rights of the Child, as well as the OAU Heads of State and Government's Declaration on the Rights and Welfare of the African Child. The African Children's Charter lists children's rights that closely mirror those in the UNCRC. By codifying the responsibilities of the state, community, and individuals in protecting children, the ACRWC establishes a strong legal foundation for the rights of children across the continent.⁵⁶

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)⁵⁷ is the supreme law that reigns over other laws and its provision is binding on all persons and authorities in Nigeria.⁵⁸ 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.⁵⁹ 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.⁶⁰ 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.⁶¹

Children must not be subjected to any form of torture or inhuman and degrading treatment, nor engaged in forced labour. Labour that is of the essence for the development and training of the child is not considered forced labour. Every citizen including children is entitled to personal liberty. However, this right could be derogated in the execution of court orders or sentence for failure to comply with court orders or bringing a person before the court. Issues involving children should be addressed speedily via the family court, and children in conflict with law have a constitutional right to fair hearing and such matters must be held in private, preferably a family court as provided by the Child Rights Act.⁶²

⁵⁴(fn53).

⁵⁵ The Charter was ratified by Nigeria on 23 July 2001.

⁵⁶ U E Ofodile 'The Universal Declaration of Human Rights and the African Child Today: Progress or Problems?' [2009] (25) (37) *American University International Law Review* 53-60.

⁵⁷(fn56).

⁵⁸ Constitution of the Federal Republic of Nigeria (1999 as amended), section 1(1).

⁵⁹(fn58).

⁶⁰(fn57).

⁶¹P I Gbobo P I and O W Igwe, 'Child Rights Law and Practice in Nigeria: A Lesson from South Africa' [2021] 17 (1) *UNIZIK Law Journal* 97-113.

⁶² (fn61).

1.5.2. The Criminal Code Act 2004

The Criminal Code Act applies only to the southern part of Nigeria and it has protective provisions for children. The age of criminal liability as stated in the Criminal Code is that a child below 7 years cannot commit an offence⁶³ while a child above 7 years but below 12 years may be criminally liable for an offence if it can be proved that he/she understands the nature and consequences of the act.⁶⁴ Also, children above 12 years and below 18 years are liable for their criminal act or omission and will not be prosecuted under the conventional justice system but under the Children and Young Persons Law (CYPL).⁶⁵ The CYPL sees a child as a person below 14 years and a young person above 14 years and below 17 years.⁶⁶

1.5.3. The Penal Code Act 1960

The Penal Code Act applies to all the States in the Northern part of Nigeria. The Penal Code Act⁶⁷ has special provisions for the protection of children as offenders or victims, similar to the Criminal Code Act.⁶⁸ The PCA has protective measures for children starting from the point of conception because it is a criminal offence to procure an abortion to take the life of an unborn child⁶⁹ The Act recognizes the rights of an unborn child. Parents, guardians, or persons in loco parentis to the child ought to provide necessities for the basic survival, growth, and nourishment of children under 14 years of age.⁷⁰ However, the PCA has no provision penalizing the Amangiri's system where children roam the street as beggars for daily sustenance and nobody can be held responsible for the lack of provision of basic survival needs for children in the northern part of Nigeria.⁷¹ Islamic teachings encourage the Amangiri's system which is viewed as child labour and it violates the provisions of the CRA and the Constitution which guarantee the right to life and dignity of human persons.⁷² The PCA also permits the chastisement of children below 18 years but without grievous bodily harm, a provision which conflicts with the provision of the CRA 2003 against corporal punishment.⁷³

1.5.4. Children and Young Persons Act 1958

Children and Young Persons Act (CYPA) defines a child as a person below the age of 14 years while a young person is one above 14 years but below 17 years.⁷⁴ The difference in distinguishing who a child is or should be exposes children to more punitive measures, especially in states in Nigeria which are yet to adopt the CRA as a State law.⁷⁵ The CYPA does not place much importance on the principle of the best interest of the child, rather, its emphasis is on the punitive measure as against the welfare of the child. For example, section 27 of the CYPA directs the court to order a child to be kept with a Probation Officer, this contradicts the provision of the CRA which

⁶³Cap C 38 Laws of the Federation of Nigeria, 2004 section 18.

⁶⁴(fn63), section 30.

⁶⁵(fn62).

⁶⁶Children and Young People Act, section 2.

⁶⁷Penal Code Act (hereinafter referred to as PCA).

⁶⁸(fn67).

⁶⁹(fn68), section 232.

⁷⁰(fn69).

⁷¹B Owasanoye and A Adekunle, '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.

⁷²(fn71).

⁷³(fn72).

⁷⁴Children and Young Persons Act, section 2.

⁷⁵(fn72).



lays great premium on the care, protection, and development of the child in the child justice administration.

In the CYPA, issues relating to children in conflict with the law can be addressed in any court and the law provides for approved schools for children in conflict with the law as against the CRA which establishes Children's Residential Centres /Child Correctional homes, an environment more appropriate for the rehabilitation of the child in addition, the CYPA ensures speedy dispensation of justice and grant of bail except in cases of homicide or grievous crimes. The CYPA provides for punishment or imprisonment for young persons above 14 years and 17 years in remand homes or borstal institutions as against the CRA which advocates for non-custodial measures in line with the Tokyo Rules.⁷⁶

1.5.5. Labour Act 2004

The Nigeria Labour Act⁷⁷ 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 job that is unsafe for his/her health or immoral in nature⁷⁸ or a job where he will be unable to return home to his parents/guardian on a daily basis.⁷⁹ The exception to this provision is an approval from an authorized labour officer or as regards the contract of employment.⁸⁰ 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.⁸¹ 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.⁸² 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.⁸³

1.5.6. The Child Rights Act 2003

The Child Rights Act (CRA) 2003 is the primary and comprehensive legislation on issues affecting children in Nigeria and is a derivative of the United Nations Convention on the Rights of Children of 1989 and the African Charter on the Rights and Welfare of the Child 1990.⁸⁴ The CRA recognises that all the rights accruable to children are fundamental and should be protected and promoted. The Act reiterates that in all issues affecting children, the best interest of the child must be of paramount consideration.⁸⁵ The enactment of the CRA into a State law is solely the responsibility of respective states in Nigeria because issues concerning children are in the Residual list which only the state has the authority to legislate on. Some States have adopted the CRA as a

⁷⁶United Nations Standard Minimum Rules for Non-Custodial Measures, 1990 rule 1.5.

⁷⁷Cap L1, Laws of the Federation 2004.

⁷⁸(fn77), section 59 (6).

⁷⁹(fn78), section 59 (3).

⁸⁰(fn79), section 59 (4).

⁸¹(fn80), section 59 (8).

⁸²(fn81), section 59 (2).

⁸³(fn82), section 59 (1) (a).

⁸⁴Ladan 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).

⁸⁵ Child rights Act 2003, sections 1 and 2.

State law while other states yet to domesticate the CRA are mainly northern states where about 11 States are yet to domesticate the CRA.⁸⁶

Umar argues that the reason for not adopting the Act as a State law is that the provision of the CRA conflicts with Islamic law, especially concerning child marriages, and therefore, it is against the spirit and practice of Islamic Law. He therefore states that to make the rights of children realizable in the north, there must be a compatibility between the CRA and Islamic law.⁸⁷ CRA provides children with survival rights, protection rights, developmental rights, and participatory rights. The survival rights of the child include the right to life⁸⁸ which is the most fundamental of all rights and it is a prerequisite to the actualization of other rights.⁸⁹ This includes a life free from hunger, poverty, disease, and illiteracy amongst other needs. The right of survival is closely linked to identification and recognition, the right to a name at birth, and the mode of identification and registration of birth under the provision of the law.⁹⁰ The health and welfare of the child also promote the survival rights of children.⁹¹ These can be achieved through the eradication of childhood diseases and the provision of standardised care for children to reduce morbidity and mortality rates. The Act imposes duties on the government, parents, and institutions to protect and care for children and conform to the approved standard to enhance the dignity of every child.⁹² Also, the Act provides for the adoption of children and states the procedures and inbuilt mechanisms to monitor such children.⁹³ The Protective rights of children include protecting all children from all forms of corporal punishment and harmful cultural practices such as female genital mutilation, child marriages, child abuse, tattoos, and skin marks.⁹⁴

In cognizance of the Principles of Beijing Rules, the CRA also prohibits the imprisonment of children below 18 years, corporal punishment, and the death penalty. The Act also abolishes the age of criminal responsibilities and adopted above age eighteen as the age at which a child can be subjected to adult criminal process.⁹⁵ With regards to the development rights of the child, the CRA guarantees various rights relating to the developmental rights of children as they grow from childhood to adulthood. These rights include freedom of thought, conscience, and religion, right to rest and leisure, free and compulsory basic education and places a responsibility on the government and parents to ensure that children are educated.⁹⁶ The Act provides the right of children to participate in decisions that affect their lives either directly or indirectly, this provision is affirmed by both the Constitution⁹⁷ and the CRA.⁹⁸ The CRA also imposes duties and obligations on children to work towards the progress of their families and communities.⁹⁹

⁸⁶(fn84).

⁸⁷A Umar, '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.

⁸⁸(fn85), section 4.

⁸⁹(fn88), section 33.

⁹⁰(fn89), section 5 (1).

⁹¹(fn90), section 13.

⁹²(fn91), section 30.

⁹³(fn92), sections 125-148.

⁹⁴Umar (fn87).

⁹⁵(fn94).

⁹⁶(fn93), section 15.

⁹⁷(fn96), section 39.

⁹⁸(fn97), section 3.

⁹⁹(fn94).



The CRA establishes a child justice system to address issues relating to children who contravene the law against the adult criminal justice system. To ensure the effectiveness of the justice system, a special Children's Police Unit is established to handle child offenders, and such cases are heard in a family court.

1.5.7. Violence Against Persons (Prohibition) Act 2015

This Act was enacted to prevent violence against persons, especially women and children. The Act defines rape¹⁰⁰ and anyone convicted of rape against persons or children is liable to a sentence of a minimum of 12 years and a maximum of 20 years for the gang-rape¹⁰¹ and compensation to victims of rape issued by the court.¹⁰² A register of convicted sex offenders is kept and accessible to the public.¹⁰³ Infliction of physical injury on a child by weapon, substance, or object is an offence punishable on conviction of 5 years imprisonment or a fine of 100,000 Naira.¹⁰⁴ The Act prohibits female circumcision and genital mutilation with a penalty of less than 4 years and or a fine of 200,000 Naira.¹⁰⁵

1.5.8. Trafficking in Person (Prohibition) Law Enforcement and Administration Act

This Act was enacted in 2003 and empowers the National Agency for the Prohibition of Trafficking in Person and Other Related Matters (NAPTIP) to investigate and prosecute offenders of child trafficking in Nigeria. The agency is also involved in counseling and rehabilitation of victims. The Act prescribes penalties for any breach of its provisions. For instance, sections 30 and 31 of the Act state that persons aiding or abetting, facilitating, or promoting in any way the trafficking of any person (women or children) commit an offence and are liable on conviction to a fine of N200,000 and forfeiture of passport. Where a corporate body is convicted of an offence of trafficking or aiding in trafficking, shall be liable to a fine of 2,000,000 (Two million) naira only, forfeiture of assets, and closure of the body corporate.¹⁰⁶ Also, any commercial carrier who carries any person in violation of the Act commits an offence and is liable to 2 years imprisonment or a fine of Two million naira.¹⁰⁷ NAPTIP also monitors child trafficking units present in the Nigerian Police Force, Nigerian Immigration Services, and the Nigerian Customs Services. NAPTIP has been at the forefront of the fight against child trafficking in Nigeria, a lot of children have been rescued from their abductors and reunited with their families.¹⁰⁸

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.

¹⁰⁰Violence Against Persons Prohibition Act, 2015 section 1(1).

¹⁰¹(fn100), section 1 (2).

¹⁰²(fn101), section 1 (3).

¹⁰³(fn103), section 1 (4).

¹⁰⁴(fn104), section 2.

¹⁰⁵(fn105), section 6.

¹⁰⁶Trafficking in Person (Prohibition) Law Enforcement and Administration Act, 2003 section 28.

¹⁰⁷(fn106), section 29.

¹⁰⁸ (fn94).

1.6.1. Child Labour and Exploitation

Child labor and exploitation remain significant challenges confronting the protection of child rights in Nigeria. Despite national and international efforts to curb these practices, various factors contribute to the persistence of child labour, posing a serious threat to the well-being, education, and overall development of children in the country. Child labour is prevalent across multiple sectors, including agriculture, informal industries, and domestic work. Many children are engaged in hazardous forms of labor, exposing them to physical and mental health risks.

1.6.2. Cultural Practices and Beliefs

Cultural practices and beliefs play a significant role in shaping societal norms and behaviors in Nigeria. While many cultural traditions contribute positively to the rich tapestry of the nation, certain practices pose challenges to the protection of child rights. Understanding and addressing these cultural challenges is crucial for promoting a balance between cultural heritage and the rights and well-being of children. Some communities in Nigeria engage in harmful traditional rituals involving children, often with detrimental consequences for their physical and psychological well-being. These rituals may include female genital mutilation, early initiation ceremonies, or other practices that infringe upon the child's right to protection from harm. The practice of early marriage, driven by cultural norms, continues to affect young girls disproportionately.

Early marriages often result in the denial of education, exposure to health risks during childbirth, and perpetuation of cycles of poverty.

1.6.3. Poverty and Socioeconomic Inequality

Poverty and socioeconomic inequality constitute formidable challenges to the protection of child rights in Nigeria, permeating various aspects of children's lives and hindering their access to fundamental rights and opportunities. Understanding the intricate linkages between poverty, inequality, and child rights is crucial for developing effective strategies to address these pervasive challenges. Poverty often results in inadequate resources for families, limiting children's access to quality education. Children from impoverished backgrounds face challenges such as lack of school fees, uniforms, and essential learning materials. Families living in poverty may struggle to afford basic healthcare services for their children. Malnutrition, preventable diseases, and inadequate access to healthcare facilities contribute to high rates of child mortality.

1.6.4. Education Barriers

Ensuring access to quality education is a fundamental aspect of protecting and promoting child rights. However, in Nigeria, numerous barriers impede children's ability to access and benefit from education, posing significant challenges to the realization of their rights. Limited access to quality education, particularly in rural areas, leads to low enrollment and high dropout rates. Gender disparities with girls facing additional challenges in accessing education.

1.6.5. Sexual, Physical and Emotional Violence

Sexual violence is defined as including all forms of sexual abuse and sexual exploitation of children comprising a range of acts such as unwanted sexual touching and physically forced sex.¹⁰⁹ Physical violence is defined as the intentional use of physical force with the potential to cause death, disability, injury, or harm.¹¹⁰ Emotional violence is defined as a pattern of verbal behaviour that is not developmentally appropriate and has a high probability of damaging a child's mental

¹⁰⁹National Population Commission of Nigeria (NPC), UNICEF Nigeria and U.S Center for Disease Control and Prevention, *Violence against Children in Nigeria: Findings from a National Survey 2014* (UNICEF, 2016). Xv.

¹¹⁰(fn109), 116.



health.¹¹¹ In the case *Edwin Ezigbo v The State*,¹¹² the 32-year-old appellant was alleged to have raped two underage girls. Muhammad JSC stated that: “such small girls and indeed all females of whatever age need to be protected against callous acts of criminally likeminded people of the appellant’s class. I wish the punishment was heavy to serve as a deterrent.”

Similarly, in *FRN v Chidi Nwosu*,¹¹³ the defendant was found guilty of raping a seven-year girl. Also, in *Commissioner of Police v. Apostle Basil Princewill*,¹¹⁴ the defendant was convicted for the rape of a 14-year-old girl. He impregnated her and gave her drugs to abort the pregnancy. When the drug caused bleeding, he took her to a clinic and falsely claimed to be her father to procure an abortion. The court held that it must “consider the interest of the society at large against the rising cases of rape.” These cases highlight the cases of violence against children that have become rampant and need to be curbed to protect the rights of children.

1.7. Conclusion and Recommendations

In conclusion, the legal protection of child rights in Nigeria is grounded in a combination of customary, statutory, and international legal frameworks. The meaning of a child in Nigeria varies between customary and statutory law, reflecting the diverse cultural contexts within the country. While customary law emphasizes traditional criteria, such as mental capacity and social responsibilities, statutory law aligns more closely with international standards, providing clearer definitions and protections for children. The history of child rights protection in Nigeria has seen significant progress, from the early stages of colonial influence to the more recent enactment of the Child Rights Act in 2003, which marked a milestone in aligning Nigerian law with global child rights standards.

International and regional instruments, including the Universal Declaration on Human Rights (UDHR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the United Nations Convention on the Rights of the Child (UNCRC), and the African Charter on the Rights and Welfare of the Child (ACRWC), provide a robust legal framework for protecting the rights of children in Nigeria. These instruments emphasize the fundamental rights of children, encompassing their right to survival, education, protection from exploitation, and participation in decision-making processes. Nationally, Nigeria has adopted various laws to protect children, including the 1999 Constitution, the Child Rights Act of 2003, the Children and Young Persons Act, the Criminal Code, and the Penal Code, among others. These statutes collectively ensure a broad range of protections for children, from safeguarding their health and education to preventing child labor, trafficking, and abuse.

However, despite the substantial legal frameworks in place, challenges remain in the effective implementation of child rights protections in Nigeria. Issues such as inadequate enforcement, cultural barriers, limited resources, and inconsistent judicial practices continue to undermine the full realization of children's rights. Addressing these challenges requires a concerted effort from all stakeholders, including government, civil society, and the private sector, to ensure that the legal

¹¹¹(fn110).

¹¹²(2012) 16 NWLR Pt 1326.

¹¹³(Unreported) 16 February 2016 Suit Number FCT/HC/CV/289/09.

¹¹⁴(unreported) 25 June 2019 Charge no: FCT/HC/CR/150.

protections available on paper are translated into real-world improvements for the well-being and development of children in Nigeria. Ultimately, while Nigeria has made significant strides in the legal protection of child rights, there is still much work to be done to overcome the existing challenges and ensure that all children in Nigeria can enjoy their full rights in a safe, nurturing, and supportive environment.