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Contents

1. Essential Services and the Deficit of Domestic Labour Regulations in Nigeria – <i>Ogbole Ogancha O.</i>	1
2. Space Debris and Environmental Protection Issues in Outer Space – <i>Yewande F. Oluwajobi</i>	32
3. Appraising Community Service as a Form of Non-Custodial Sentencing in Nigeria: Lessons from Kenya – <i>Omodanisi Kemi Beatrice</i>	59
4. Presumption of Innocence and Its Application in Bail after Conviction Proceedings in Nigeria – <i>Peter Ademu Anyebe</i>	88
5. Examining The Legal Framework for The Protection of Children Against Violence in Nigeria – <i>Jade Mohammed, Barakaat Raji and Adedoyin Akinsulore</i>	111
6. An Appraisal of Legal and Institutional Frameworks Governing Housing Financing in Nigeria – <i>Jubril Akinkunmi Farinde</i>	134
7. Legitimation and the Inheritance Rights of a Child Born Outside Wedlock in Nigeria – <i>Foluke Dorcas Moronkeji</i>	151

8. The Adequacy of Data Privacy and Data Protection Laws in Nigeria vis-à-vis European Union GDPR <i>– Oladimeji Ifedayo Idowu</i>	168
9. Fuel Subsidy Regime Vis-a-Vis the Nigerian Petroleum Industry Law: Breaking the Jinx – <i>Beida Julius Onivehu, Beida Omenesa Victor, and King James Nkum</i>	187
10. The War Against Terrorism and the Environment: Implications for the Right to a Satisfactory Environment in Nigeria – <i>Ebunoluwa Odunayo Popoola and Emelda Undiandeye Ejeh</i>	213
11. The Nigerian Patent Law: A Statute Begging for Amendment – <i>Chukwunye Augusta Ojeih and Mary Arthur-Jolasinmi</i>	239
12. The Right to Strike as an Instrument for Enforcing Collective Agreements: ASUU v. Federal Government of Nigeria – <i>Foluke Dorcas Moronkeji</i>	265
13. Punishment of Rape under the amended Kaduna State Law: A Critical Reflection – <i>Professor Abdulwasiiu Ojo Akorede Yusuff (PhD)</i>	290

Examining the Legal Framework for the Protection of Children Against Violence in Nigeria

Jade Mohammed, Barakaat Raji & Adedoyin Akinsulore

Abstract

The United Nations Convention on the Rights of the Child was adopted over three decades ago. Nigeria ratified the Convention in 1991 and passed the Child Rights Act in 2003 in line with the Convention. Provisions for the protection of the child are also contained in others. Yet, violence against children increased by 5% between 2016 and 2021, while many children aged between 1 and 14 suffered violence from their caregivers. This paper engages the pervasive issue of violence against children and the law in Nigeria. It identifies the common forms of violence against children and the effectiveness or otherwise of relevant extant national legislation and the international legal regime. The paper reviews the existing legislation and the challenges of enforcing the law in Nigeria. It concludes that while there are myriads of laws targeted at curbing violence against children at the municipal level, a blend with International legal jurisprudence of the right of the child will strengthen the protection of children against violence in Nigeria.

Keywords: Children, Violence, Protection, Municipal Law, International Law.

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1.0. Introduction

Children, by their nature, are unarguably the most vulnerable members of society.¹ They are most susceptible to violence and violation of their rights worldwide.² In Nigeria, children make up about 43% of the population. UNICEF estimates that as high as sixty (60) percent of these children have experienced some form of violence.³

There is no consensus on who a child is, as this varies from society to society. Under the common law, an infant is someone below the age of twenty-one, while a child is a person under the age of 14 years.⁴ However, commencing from January 1, 1970, the age of majority in England has been pegged at eighteen years.⁵

In Nigeria, customarily, the term child is used more disparately. Any person under the age of 20 years or still under parental care or influence, no matter the age, is regarded as a child.⁶ In contrast, under the Child's Right Act (CRA), a "child" is defined as "a person under the age of eighteen years".⁷ The position of the CRA is not to be confused with that of the Children and Young Person's Act (CYPA), which designates a child to be a person less than fourteen (14) years old and a "young person" to be anyone who has attained the age of fourteen (14) years but is not up to eighteen (18) years.⁸ The general application is that the rights and protection of a child apply to all persons yet to attain eighteen years. For this paper, a "child" is considered to be a person under the age of 18 years.

¹ UN Global Impact, 'Children's Rights'(2023) <<https://unglobalcompact.org/what-is-gc/our-work/social/childrens-rights>>accessed 13 June 2023.

² World Health Organisation, 'Violence against children (2022)' <<https://www.who.int/news-room/fact-sheets/detail/violence-against-children>>accessed 13 June 2023.

³ UNICEF-Nigeria, 'Child Protection'(2023) <<https://www.unicef.org/nigeria/child-protection>>accessed March 17,2023

⁴ Section 1(1) England's Family Law Reform Act 1969.

⁵ Section 107 England's Children and Young Persons Act 1933.

⁶ See K.O. Fayokun, 'Legality of Child Marriage in Nigeria and Inhibitions against Realisation of Education Rights'(2015) 12 *US-China L. Rev* 812.

⁷ Section 277 Child's Rights Act, 2003.

⁸ Section 2, Children and Young Persons Act, Cap 32 and Laws of the Federation of Nigeria and Lagos, 1958; similar provision is contained in all the states' Laws in Nigeria.

On the other hand, violence means any form of harmful behaviour to a person's physical, moral, or mental well-being.⁹ Violence against children thus means any act or omission which results in the physical abuse, sexual abuse and neglect of a child.¹⁰ According to the World Health Organisation (WHO), violence against children refers to

*All forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child's health, survival, development or dignity.*¹¹

Violence against children may also take the form of violent discipline acceptable in some communities. Violence against children often happens in secret places, with perpetrators concealing their acts. Children victims are also left unprotected and with no remedies.

The United Nations Children's Fund (UNICEF) warned that the global meltdown might aggravate violence and sexual exploitation of children in Nigeria. According to UNICEF, violence and sexual exploitation, including rape, child prostitution, child trafficking, child pornography, genital cutting, child betrothal and early marriage, are some of the worst forms of violation of children's rights. This prompted Sakai's comment,

*Child victims of violence and sexual exploitation after traumatization grow up to be dysfunctional adults, an avoidable tragedy and a waste of the human potential that Nigeria needs to accomplish its Vision 2020.*¹²

⁹ Black's Law Dictionary 6th ed., 10.

¹⁰ UNICEF, 'Violence Against Children' (undated) <www.unicef.org/protection/violence-against-children/> accessed on 27 March 2023.

¹¹ WHO/Pan American Health Organisation, 'Regional Status Report 2020: Preventing and Responding to Violence against Children in the Americas' (2020) <<https://iris.paho.org/handle/10665.2/53038>> accessed 23 March 2023.

¹² This is the comment of Dr Suomi Sakai, UNICEF Representative in Nigeria, as the Organisation celebrated Children's Day on May 27, 2009. <https://www.unicef.org/nigeria/media_3304.html> Accessed 20 February 2023.

2.0. Theoretical Foundation

In America, organized campaigns to protect children from violence began in the 1870s and really took off in the 1960s and 1970s.¹³ Vecchio *et al*, identify numerous explanations for child aggression, such as behavioural, coercive, and social learning theories.¹⁴ All of the theories are connected. The development of aggressive behaviour places a strong emphasis on reinforcement, according to behavioural theory, which is frequently seen as the basis for other techniques. Positive reinforcement involves rewarding aggressive behaviour, and negative reinforcement involves eliminating the sanction or penalty. The outcome in both situations is that the aggression will probably continue to get worse in the future.¹⁵

According to coercion theory, when parents and children engage in ways that increase conflict, children learn poor adaptational behaviour, which perpetuates the cycle of child abuse across generations.¹⁶ Because aggressive behaviour is developed by watching bold action, people often have their kids go through the same experiences they had as kids.¹⁷ Stress and rage have also been linked to abuse.¹⁸ According to ecologists, child abuse/maltreatment is a result of societal, community, and family belief systems that reduce the quality of interactions between parents and children.¹⁹ All of these theories are visible in the Nigerian child abuse problem.

¹³ Edward Zigler, Nancy W. Hall, 'Physical Child Abuse in America: Past Present and Future' in Dante Cicchetti and Vicki Carlson (eds) *Child Maltreatment: Theory and Research on Causes and Consequences of Child Abuse and Neglect* (Cambridge University Press 1989) 38.

¹⁴ Vecchio D.T, Erlanger A.C.E., Slep, A.M.S., (2012) 'Theories of Child Abuse' in M.A Fine and F.D. Fincham (eds), *Handbook of Family Theories: A Content based Approach*, (NY, Taylor and Francis/Routledge).

¹⁵ *Ibid*

¹⁶ Patterson, G. R. (2002), 'The early development of coercive family process' In J. B. Reid, G. R. Patterson, & J. Snyder (Eds.), *Antisocial behaviour in children and adolescents: A developmental analysis and model for intervention* (American Psychological Association, 2002) 25–44

¹⁷ Albert Bandura, *Social Function of Thought and Action: A Socio-cognitive View*, (Englewood Cliffs, NJ, Prentice Hall, 1986); Heyman RE and Ezzell CE, 2005, Interpersonal Violence in AP Guardino and R Alexander(eds), *Child Maltreatment* (St Louis, GW Medical Publishing, 2005) pp 639-658.

¹⁸ Vecchio DT Theories of Child Abuse' (n 14).

¹⁹ *Ibid*.

Albert Bandura's Social Learning Theory proposes that humans learn behaviour, emotional responses, and attitudes in social groups by "observing, modelling, and imitating the actions of others in the social environment."²⁰ Learning new behaviours can be influenced by direct or indirect encounters. Bandura's (Bobo Doll experiment) experiment demonstrated that children become more violent when exposed to violent adults.²¹ It then becomes a process of learning violence vicariously through observation.²² As a result, a person can avoid actively engaging in a behaviour in order to study or model it.²³ One explanation provided by the Social Learning Theory is that current child abuse could be a result of adults modelling their behaviour when they were young.

The concept of the rule of law and human rights is also relevant in this discussion. In modern times, the rule of law involves the notion of legality, the requirement of a transparent, accountable, and democratic process for establishing laws, non-discrimination, and equality before the law. The rule of law also implies legal certainty, the prohibition of arbitrariness, and the preservation of fundamental rights.²⁴ Justice must be delivered in a timely manner by competent and independent community leaders while human rights are maintained.²⁵

Respect for the rule of law consequently necessitates adherence to specific international standards, particularly in the area of human rights. Thus, the rule of law, justice, and human rights are inseparable because of violations of the rule of law, violence continues to destroy children's rights.²⁶ These theories on the

²⁰ Baştan, A., and Dülek, A., 'Learned violence: Bandura's Social Learning Theory in Edward Bond's *The Children*' (2023) 13 (1) *Nevşehir Hacı Bektaş Veli Üniversitesi SBE Dergisi* 106-118; See generally, Albert Bandura, *Social Learning Theory* (1977, Prentice-Hall, Inc.)

²¹ Bandura, A., 'Social learning theory of aggression' (1978) 28(3) *Journal of Communication* 12, 19.

²² Amir Abbassi & S. Dean Aslinia, 'Family Violence, Trauma and Social Learning Theory' (2010) 38(1) *Journal of Professional Counseling: Practice, Theory & Research* 16-27.

²³ *Ibid*, 19.

²⁴ See Mark Agrast, Juan Botero, Joel Martinez, Alejandro Ponce and Chritine Part, "The World Justice/Rule of Law Index 2011-2013" <<https://worldjusticeproject.org/publication/rule-law-index-reports>> Accessed 26 February, 2023.

²⁵ *Ibid*

²⁶ Liora Lazarus, 'Doing Violence to the Rule of Law' (2018) *SSRN Electronic Journal*, <<http://dx.doi.org/10.2139/ssrn.3170649>> accessed 27 March 2023.

causes of violence against children, along with views on the rule of law and human rights, form the basis of this paper, with the understanding that child rights are human rights and that protecting the child from abuse equates to safeguarding the right to dignity and ensuring the child's equality before the law and access to justice.

3.0. Types of Violence Against Children

Violence towards children manifests itself in a variety of ways, ranging from the most subtle to the most blatant violent acts. Some of these activities, especially those applicable to parents and guardians exercising their duties, are highlighted here.²⁷

3.1. Child Neglect/Abandonment

Neglect/abandonment is one of the most common types of child maltreatment. These are kinds of essentially invisible violence with devastating and scary implications for the child's personality. Child neglect is defined as depriving a child of basic physical, emotional, educational, or social needs.²⁸ This involves inadequate guidance, clothing, housing, health care, and other necessities. Many parents and guardians are negligent toward their children in various ways.²⁹ In many cases, neglect develops because parents are frequently absent from the home for the most of the day in pursuit of daily bread, to the point where there is no meaningful interaction between them and their children. As a result, a group of children who are disruptive, rude, and lacking in culture corrupt their peers. Other forms of abuse typically stem from fundamental flaws in the family

²⁷ This is not to discountenance that there are sources of violence for children such as peers, teachers, siblings, community etc. See National Institute of Justice, 'Children Exposed to Violence' (2016) <<https://nij.ojp.gov/topics/articles/children-exposed-violence>> accessed 20 June 2023.

²⁸ Barnett, W.S. and Belfield C.R., 2006, 'Early Childhood Development and Social Mobility' (2006) 16 (2) *Future of Children, Princeton University* 73-98.

²⁹ Eunice Uzodike, 'Child Abuse and Neglect in Nigeria- Socio- legal Aspect' (1990) 4 (1) *International Journal of Law, Policy and Family* 83-96.

structure.³⁰ When parents renounce their interest in a kid in a 'illegal method,' this is considered child abandonment/sale. Unlike legally regulated adoption processes, 'abandonment' or 'sale' is the practice of 'dumping' a child, particularly a baby. Some of these new-borns are eventually brought in by "motherless babies' homes," which are ill-equipped to care for them.³¹ In developing countries, this menace results in street children being neglected to wander away from their families to become a nuisance on the streets.³²

3.2. Child Labour and Trafficking

Child labour affects at least one out of every ten children worldwide.³³ According to the International Labour Organization (ILO), about 15 million children are exploited for labour in Nigeria.³⁴ Child labour is the use of non-adults in work and dangerous workplaces.³⁵ Child labour is in high demand since it is inexpensive.³⁶

Children are more submissive and easily manipulated than adults by nature, and they are often too afraid to protest.³⁷ As a result, they are used as domestic servants (especially girls) and are poorly underpaid. They are prone to sexual and physical assault. Child labour in the current context does not refer to everyday household tasks performed by children at home. This is the typical household preparation for adulthood. In many African communities, every child wakes up

³⁰ *Ibid.*

³¹ U.U. Okonkwo and N.A. Obi-Ani, 'Women and the Upsurge of "Baby Factories" in Southeastern Nigeria: Erosion of Cultural Values or Capitalism?' (2020) 21(6) *Journal of International Women's Studies* 408.

³² This phenomenon is rampant in northern Nigeria, where pupils of mosque Quranic education are sent into the streets by mallams, who operate Arabic schools either in the mosque or in their homes, to solicit for alms as professional beggars.

³³ UNICEF, 'Child Labour' (2019) <<https://www.unicef.org/protection/child-labour>> accessed 24 March 2023.

³⁴ ILO, 'ILO Supports Nigeria's Response to Child Labour Emergency' (2021) <https://www.ilo.org/africa/about-us/offices/abuja/WCMS_803364/lang--en/index.htm> accessed 24 March 2023.

³⁵ Jens Chr. Andvig, Sudharshan Canagarajah and Anne Kielland, 'Issues in child labour in Africa', in *Africa Region Human Development Working Papers Series* (The World Bank, 2001) 3.

³⁶ Kaushik Basu, 'Child Labor: Causes, Consequences, and Cure, with Remarks on International labor Standards' (1990) 37 (3) *Journal of Economic Literature* 1083-1119.

³⁷ S.O. Akintola and O.A. Taiwo, *The Nigerian Women and Her Child: The Remaining Challenges* (Demyaxs Books, 2004) 22.

to conduct morning duties (sweeping, cooking, clearing the premises, etc.) after a morning prayer before going to school.³⁸

Child trafficking, while similar to child labour in form, is a highly structured syndicate in which children are kidnapped, held in remote areas, and prohibited from leaving.³⁹ For example, they are forced to labour on road construction and stone quarries.⁴⁰ According to the National Agency for the Prohibition of Trafficking in Persons (NAPTIP), children make up 28% of those trafficked. It further noted that the majority of recorded human trafficking instances involve women trafficked for prostitution in foreign countries and minors recruited for domestic employment.⁴¹

3.3. Child Prostitution

As more children fall victim to sex trafficking, child prostitution has become a plague on Nigeria's societal status.⁴² Human trafficking is a major conduit for child prostitution. Human trafficking entails "force, fraud, or coercion - legally sanitized terms that cover kidnapping, beating, rape, deception, abandonment, and murder."⁴³ Torture takes many forms, including psychological abuse and physical deprivation.⁴⁴

³⁸ BBC News Africa, 'African girls tell housekeeping tales' BBC News (7 October 2016) <<https://www.bbc.com/news/world-africa-37590404>>accessed 19 June 2023.

³⁹ Akintola and Taiwo, 'The Nigerian Women' (n 37).

⁴⁰ *Ibid*

⁴¹ Prohibition of Trafficking in Persons (NAPTIP), 'Human Trafficking in Nigeria', NAPTIP (2022) < on 20 February 2023.

⁴² Tobore Ovuorie, 'The ugly truth of Nigeria's child trafficking' *DW: Human Rights* (29 July 2022) <<https://www.dw.com/en/the-ugly-truth-about-nigerias-child-trafficking/a-62622680>>accessed 19 June 2023.

⁴³ John R. Miller, 'Slave Trade: Combating Human Trafficking' (2006) 27(4) *Harvard International Review* 70.

⁴⁴ *Ibid*.

3.4. Child Soldiers

In 2016, Boko Haram insurgents forcibly recruited almost 1000 children in the fight in North-east Nigeria, while the Joint Task Force in Maiduguri released 833 children.⁴⁵ In the aftermath of the insurgency that has ravaged Bauchi, Yobe, Borno, and other states in Nigeria's North-East, the situation for children has deteriorated.⁴⁶ They have been displaced, are malnourished, and are unable to attend school.⁴⁷ Child soldiers face terrible circumstances both during war and during peacetime. During wartime, girls are sexually molested, which increases the likelihood of HIV/AIDS spreading. After the war, the majority of families do not want to have anything to do with the former soldier and their horrific past.⁴⁸ They are barred from engaging in free interaction. Another example is the aftermath of the Ife/Modakeke confrontation, which is still quite visible in the community.⁴⁹ The majority of juvenile soldiers are violent commercial motorcycle riders at best. Children in the aftermath of war feel betrayed twice. They were forced into maturity owing to war conditions, and when peace was restored, they were denied integration into the community.⁵⁰

3.5. Child Rape

Rape is considered to have occurred when a person obtains unlawful carnal knowledge of a woman or girl without her consent or with her approval if

⁴⁵ UNICEF, 'Children on the move, children left behind Uprooted or trapped by Boko Haram' (2016) <https://www.unicef.org/nigeria/media/1351/file/Children-on-the-move-and-left-behind-Boko-Haram_0.pdf.pdf> Accessed on 25 February 2023.

⁴⁶ UNICEF, '400,000 children in north-east Nigeria at risk of severe acute malnutrition' (2016) <<https://www.unicef.org/stories/400000-children-north-east-nigeria-risk-severe-acute-malnutrition>> accessed on 25 February 2023.

⁴⁷ *Ibid.*

⁴⁸ UNICEF, 'Children recruited by armed forces or armed groups' UNICEF (2021) <<https://www.unicef.org/protection/children-recruited-by-armed-forces>>AC

⁴⁹ J.O. Toriola, The Ife/Modakeke Crisis: An Insider View (2001) 9(3) *Ife Psychologia* 21; Raimi Abidemi Asiyabola, 'Identity issues in urban ethno-communal conflict in Africa: an empirical study of Ife-Modakeke crisis in Nigeria'(2009) 13 (2) *African Sociological Review* 81,91; Shina Olayiwola and Ndukaku Okorie, 'Integrated Education: An Instrument for Resolving Ife-Modakeke Conflict in Osun State, Nigeria' (2010) 2(2) *Journal of Alternative Perspectives in the Social Sciences* 953,960.

⁵⁰ M. Mazower, 'Children and the Aftermath of War' *History Today* (1996) <<https://www.historytoday.com/archive/children-and-aftermath-war>>accessed> 22 June 2023

obtained through force, threats or intimidation, or fear of harm. It may also involve making false and fraudulent representations about the nature of the conduct, or impersonating her husband in the event of a married woman.⁵¹

The Violence Against Persons Prohibition Act 2015 expanded Nigeria's definition of rape beyond vaginal penetration to include anus, mouth, and substance usage.⁵² Sexual intercourse between an adult and a child was likewise prohibited by the Act.⁵³ In Nigeria since the age of consent under the Child's Rights Act is 18 years old⁵⁴, a child cannot give sexual permission.⁵⁵ As a result, child rape is a statutory offence.

Victims of child rape are predisposed to psychological issues, particularly inappropriate sexual impulses.⁵⁶ Child rape occurs in child labour, conflict, schools, and households. The majority of child rape crimes are committed by the child's acquaintances, such as brothers, uncles, domestic employees, teachers, malims, and neighbours.⁵⁷

Rape was prevalent in Nigeria during the Covid-19 shutdown. Child rape incidents of youngsters being gang-raped increased dramatically.⁵⁸ Despite the fact that very few rape cases are reported to the police, it is sad that many of them

⁵¹ See Section 357, Criminal Code Act Cap 77, LFN, 2004.

⁵² Section 1 Violence Against Persons Prohibition Act, 2015.

⁵³ Section 31 (1-3) Violence Against Persons Prohibition Act, 2015.

⁵⁴ See section 31 (3)(a) of the Nigerian Child's Rights Act 2003.

⁵⁵ See Age of Consent in Nigeria, 'What is the Nigeria Age of Consent?' (2023) <www.ageofconsent.net/world/nigeria> accessed 27 October 2023. See also Motolani Alake, 'What Exactly is the Age of Consent in Nigeria?' *Pulse Nigeria News* 6 April 2020 <www.pulse.ng/news/local/the-nigerian-age-of-consent-is-18-not-11/0zs6h4h> Accessed 29 January 2023.

⁵⁶ Angel Castro, Javier Ibane and Juan Ramon Barrada, 'Childhood Sexual Abuse, Sexual Behaviour, and Revictimization in Adolescence and Youth: A Mini Review' (2019) 10 *Frontier in Psychology* 1.

⁵⁷ See the UNICEF Country Study, 'All Children in School by 2015: Global Initiative on Out-of-School Children' (2012) <<http://www.uis.unesco.org/Library/Documents/out-of-school-children-nigeria-country-study-2012-en.pdf>> Accessed 21 January 2023.

⁵⁸ UNICEF, 'COVID-19: Children suffer violence during Lagos lockdown' (2020) <<https://www.unicef.org/nigeria/stories/covid-19-children-suffer-violence-during-lagos-lockdown>> accessed 25 March 2023.

are seldom pursued to a successful end for a variety of reasons.⁵⁹ More so, the affected youngsters frequently consent to a settlement outside of court, owing to fear of stigmatization as a result of the case's public exposure or harassment by the perpetrators or rape apologists.⁶⁰ When a conviction is obtained, the sentence is frequently insufficient to act as a deterrent or to function as a punitive measure. For example, indecent assault on a girl under the age of 13 is a criminal punishable by two years in jail.⁶¹ Defilement of females under the age of eleven is punishable by life imprisonment.⁶²

3.6. Corporal punishment

In Nigeria, whipping children is a typical form of punishment for a variety of misbehaviours.⁶³ However, children's discipline, sanction, or punishment should be used sparingly. It is vital to emphasize that the Nigerian Constitution guarantees the dignity of all human beings, including children.⁶⁴ This is further reinforced by the new Child Rights Act of 2003.⁶⁵ It states that every child is entitled to be treated with dignity and, as a result,

*No Child shall be subjected to physical, mental, or emotional injury, abuse, neglect, or maltreatment, including sexual abuse, or torture, inhuman or degrading treatment or punishment, or assaults on his honour or reputation, or held in slavery or servitude.*⁶⁶

⁵⁹ See the UNICEF Country Study, 'All Children in School by 2015: Global Initiative on Out-of-School Children' (2012), <<http://www.uis.unesco.org/Library/Documents/out-of-school-children-nigeria-country-study-2012-en.pdf>> Accessed 21 March, 2023; See also S. O. Onwe, 'Championing the Campaign against Child Abuse in Nigeria: A Call to Save the Needy' (2014) 4 (10) *International Journal of Humanities and Social Science* 279,283.

⁶⁰ Theresa U. Akpoghome, 'Analysis of the Domestic Legal Framework on Sexual Violence in Nigeria' (2016) 4(2) *Journal of Law and Criminal Justice* 17.

⁶¹ See Section 222, Criminal Code Act, Cap 77, Laws of the Federation of Nigeria, 2004

⁶² See Section 218, Criminal Code Act, Cap 77, Laws of the Federation of Nigeria, 2004

⁶³ Sec 55 (1) 6 of the Nigerian Penal Code, Cap 89 Laws of Northern Nigeria 1963, allows whipping.

⁶⁴ Section 34, The Nigerian Constitution 1999.

⁶⁵ Section 11, Child's Right Act 2003.

⁶⁶ *Ibid.*

3.7. Child Marriage

Historically, the achievement of puberty has been the age qualification for marriage all around the world.⁶⁷ However, this practice has long been condemned over the world. However, child marriage is still prevalent in developing nations such as Nigeria. Despite substantial progress, Nigeria continues to have the highest number of child brides in West and Central Africa.⁶⁸ These marriages are frequently between a girl child and an adult male. Child marriage is a flagrant breach of children's rights to parental care,⁶⁹ privacy, appropriate housing, education, and proper health management, among other things. Not only does it harm the development of the female child, it also exposes these children to health risks such as Vascular Vaginal Fistula (V.V.F), a danger associated with early pregnancy.

Other dangerous behaviours that include violence towards children exist. Female genital mutilation (F.G.M.) and Facial Tribal Marks (FTM) on children are examples. Apart from causing physical agony to the child without its consent, it can also pose a serious health risk, particularly HIV/AIDS, which is spread through blood. This is a violation of the constitution.⁷⁰

4.0. Legal Framework for the Protection of Children against Violence in Nigeria.

There are numerous international and local legislation that aim to limit, prevent, or end violence against children in Nigeria. Some of these legislations were

⁶⁷ Nonyelum A Ujam, 'Child Marriage in Nigeria: Wedded to Poverty' *YaleGlobal Online* (26 December 2021) <<https://www.yaleglobal.yale.edu/content/child-marriage-nigeria-wedded-poverty>> Accessed 26 March 2023.

⁶⁸ UNICEF, 'Child Marriage in West and Central Africa at a Glance' (2018) <<https://www.unicef.org/chad/media/246/file/Child-Marriage-in-WCA-At-a-Glance.pdf>> accessed 26 March 2023.

⁶⁹ Section 21, Child Rights Act 2003.

⁷⁰ As contained in Section 34 of the 1999 Constitution of Nigeria provides for the protection of the dignity of a human person.

mentioned previously in the discussion. However, a review of the different legislation is attempted here.

4.1. The Nigerian Constitution

The Nigerian Constitution guarantees the fundamental rights of all people, including children.⁷¹ These include the freedom to move, the freedom of opinion, conscience, and religion, as well as the freedom from discrimination. These rights are inseparable, as a violation of one diminishes the dignity of the human person.

Some directive principles of the state under the 1999 Nigerian Constitution, focus on developing and protecting children in Nigeria. For example, Section 13 of the Constitution requires all branches and levels of government to adhere to the essential goals of socio-political, economic, educational, and cultural development. Section 14 states that the state shall control the economy in order to ensure the maximum welfare, freedom, and happiness of all citizens on an equal basis, and distribute material resources of the community in order to observe the common good, including the provision of suitable and adequate shelter and proper food for all Nigerians. Section 17(3) of the 1999 constitution states that the state is responsible for protecting children, young people, and the elderly from exploitation and moral and material neglect.

While the provisions of Chapter II of the 1999 Constitution are not justiciable, the rights or aspirations guaranteed by them are safeguarded by particular legislation that make them enforceable. The National Health Insurance Scheme (NHIS) Act and the Primary Health Care (PHC) Act are two examples. Furthermore, a broad interpretation of fundamental human rights laws will include elements from Chapter II of the Constitution, such as the right to dignity under Section 34.

⁷¹ See Sections 34, 35, 38, 40, 41, and 42 of the 1999 Constitution of Nigeria.

Some argue that making some socioeconomic rights unjustifiable under Chapter II of the Nigerian Constitution is regressive. In Ghana, for example, a progressive constitutional interpretation has permitted courts to recognize and give credibility to rights that are not guaranteed in the Constitution or have not yet been domesticated by law. Section 33 (5) of the Ghanaian Constitution states that the mere mention of a right shall not be used to exclude those rights that are "considered to be inherent in a democracy and intended to secure the freedom and dignity of man."⁷²

According to Quashigah, Section 33 (5) of the Ghanaian Constitution is linked to the ever-expanding international rights.⁷³ Furthermore, Ghanaian courts are advised to develop interpretative approaches that will bring rights guaranteed in line with the international community's perception of those rights.⁷⁴ The Nigerian Constitution should be changed to include such a progressive provision that will undoubtedly propel human rights protection forward.

4.2. The Child Rights Act (CRA) 2003

The Child Rights Act is Nigeria's primary piece of legislation aimed at protecting children. The Act outlines the rights of children in greater details, in accordance with the Nigerian Constitution and international conventions. The CRA applies to the Federal Capital Territory as well as states that have domesticated it.⁷⁵ The law has been enacted in 34 states.⁷⁶ The Act safeguards the rights of Nigerian children. Aside from defining a child as anybody under the age of eighteen,⁷⁷ the Act guarantees the following rights:

⁷² See Section 33 (5) Ghana's Constitution of 1992 with Amendments through 1996.

⁷³ Kofi Quashigah, 'Trends in the Promotion and Protection of Human Rights under the 1992 Constitution', in Kwame Bofo-Arthur (ed), *Ghana: One Decade of Liberal State* (Zed Books, 2007) 25.

⁷⁴ *Ibid.*

⁷⁵ Only Kano and Zamfara states are yet to domesticate the CRA.

⁷⁶ FG: 34 States Have Domesticated the Child's Rights Act, Steve Aya. This Day Newspaper (29 November 2022), <www.thisdaylive.com/index.php/2022/11/29/fg-34-states-have-domesticated-childs-rights-act/> accessed 20 February 2023.

⁷⁷ Childs Rights Act, s 277.

- i. *The right to survival involves the right of the child to life, adequate health, balanced nutrition, and other associated issues.*⁷⁸
- ii. *The right to development includes the spiritual, emotional, and physical growth of the child.*⁷⁹
- iii. *Protection rights include protection of the child from child labour, child trafficking, ritual killing, sexual, physical and emotional abuse, and neglect.*⁸⁰
- iv. *The right to participate involves the child's right to be involved in things concerning them.*

The CRA states that having sexual relations with a child constitutes rape and that anyone found guilty of the crime will be imprisoned for life.⁸¹ Despite the fact that such a legislation is in place, it is alarming that child rape is still a routine crime that is frequently publicized in the news. Is it because the law is unenforceable, or because the authorities is unwilling to empower the agencies responsible with prosecuting offenders? It appears that the latter is the case.⁸²

The need to safeguard children as a vulnerable group informs the need to improve their rights protection. Constitutionalizing children's rights, as opposed to the basic provision of human rights in the Nigerian Constitution, elevates their standing to the highest point in the legal system.⁸³ It then makes it more difficult to violate or undermine children's rights, and "...allows for the enforcement of children's rights in the face of conflicting lower laws and policies."⁸⁴ It becomes a legal obligation for all levels of government in the country to preserve this constitutional right.

⁷⁸ *Ibid.*, Ss 12,13.

⁷⁹ *Ibid.*, Ss15,29.

⁸⁰ *Ibid.*, Ss 21-52.

⁸¹ Sc. 31(1), CRA, 2003.

⁸² There has been an increased rate of sexual violence against female minors in Nigeria, and the government appears helpless to curb it. See the insightful commentary of Joseph Jibueze, 'Rape' (*The Nation Newspapers*, 28 December 2013) <<http://thenationonline.ng.net/rape/>> Accessed 26 January 2023.

⁸³ Julia Sloth-Nielsen, 'Children's rights jurisprudence in South Africa — a 20year retrospective' (2019) 52 *De Jure* <<http://dx.doi.org/10.17159/2225-7160/2019/v52a29>> accessed 28 May 2023.

⁸⁴ *Ibid.*

The idea of enshrining children's rights in the constitution has been floated before in Africa. For example, the South African Constitution⁸⁵, includes a fair Bill of Rights that protects children.⁸⁶ It expressly defines a child as someone under the age of 18⁸⁷, and incorporates the notion of the child's best interests into the Constitution.⁸⁸ Sloth-Neilsen explains that “best interest” protects children's rights from arguments based only on legal technicalities that ignore their surroundings. South African courts, through persistent efforts of public interest litigation, have maintained and reaffirmed the constitutional provision's constitutionality.⁸⁹ The following is Justice Albie Sachs' dicta from a South African court's interpretation of this provision:

*Every child has dignity. If a child is to be constitutionally understood as an individual with a separate personality, rather than merely as a little adult waiting to achieve full growth, they cannot be treated as a mere extension of their parents, umbilically destined to drown or swim with them.*⁹⁰

The South African Constitution also protects children against maltreatment, neglect, and abuse.⁹¹ Children are also protected from exploitative labour practices.⁹²

The Nigerian Constitution makes no mention of this category of child rights. There is no "constitutional Child" to whom these unique protective rights are granted.⁹³ Constitutionalizing children's rights within Nigerian child rights

⁸⁵ Constitution Of the Republic of South Africa No. 108 Of 1996. (Hereafter referred to as the South African Constitution 1996)

⁸⁶ Section 28, South African Constitution 1996.

⁸⁷ Section 28 (3) South African Constitution 1996.

⁸⁸ Section 28 (2) South African Constitution 1996.

⁸⁹ *S v M* (Centre for Child Law as Amicus Curiae) 2008 (3) SA 232 (CC). See also Ann Skelton, 'Severing the Umbilical Cord: A Subtle Jurisprudential Shift Regarding Children and their Primary Caregivers' (2008) 1 Constitutional Court Review 351.

⁹⁰ *S v M* (supra) Para. 18.

⁹¹ Section 28 (1) (d) South African Constitution 1996.

⁹² Section 28 (1) (e) South African Constitution 1996.

⁹³ Julia Sloth-Nielsen and Helen Kruuse, 'A maturing manifesto: The constitutionalisation of children's rights in South African jurisprudence 2007-2012' (2013) 21 *International Journal of Children's Rights* 646-678.

governance will improve the prominence and profile of child rights concerns, as well as encourage public interest litigation on child protection issues.

4.3. Children and Young Persons Act ⁹⁴

The Children and Young Persons Act applies in Nigerian states where the Child Rights Act has not been passed. The provisions pertaining to young offenders are noteworthy. Even if a child commits a crime, this legislation protects him or her.⁹⁵ To protect their identities, they are not tried in public. They are not referred to as a defendant. If found guilty, the term liable is used instead of convicted. They are not imprisoned, but rather placed in a remand home under the supervision of state social welfare officers for greater reformation.⁹⁶ This is because the child is thought to have the potential for a positive development in the future and to prevent heart hardening within conventional correctional facilities offered by the government.

4.4. The Criminal Code

According to the Criminal Code, a seven-year-old child is assumed incapable of criminal culpability.⁹⁷ The legislation also protects children from criminal perpetrators by forbidding criminal activities against children and enforcing penalties. Child kidnapping,⁹⁸ abortion,⁹⁹ infanticide,¹⁰⁰ and indecent assault¹⁰¹ of a girl under the age of 13 years or 11, Child rape¹⁰² are all crimes against children that are recognized and punished by the law. In the event of child rape of a 13-year-old girl, however, the law states that the accused's belief that the girl was

⁹⁴ In states, they were domesticated as Children and Young Persons' Law (CYPL). An example is the Children and Young Persons Law of Oyo and Osun States.

⁹⁵ See Section 9 Children and Young Persons Act.

⁹⁶ Section 11(1) Children and Young Persons Act.

⁹⁷ This presumption is rebuttable at the age of 12. See Criminal Code of Oyo State, ss 225 & 362.

⁹⁸ Criminal Code of Oyo State, s 222.

⁹⁹ Criminal Code of Oyo State, s 328

¹⁰⁰ Criminal Code of Oyo State, s 30

¹⁰¹ Criminal Code of Oyo State, ss 222 & 221

¹⁰² Criminal Code of Oyo State, s 218

thirteen or older is a defense. This is cause for severe worry and should be reviewed.

4.5. Trafficking in Persons (Prohibition) Enforcement and Administration (TIPPEA) Act 2015

The National Agency for the Prohibition of Traffic in Persons (NAPTIP) is established by this law. NAPTIP is authorised to organize and enforce all laws pertaining to human trafficking and related offenses within and beyond Nigerian boundaries. This law, which includes a number of provisions for the protection of children from trafficking, kidnapping and prostitution, slavery, forced labour, and other forms of exploitation, was updated in 2015.¹⁰³ Throughout the provisions, the law prioritizes people under the age of eighteen. TIPPEA, in particular, imposes a variety of penalties for law violations.¹⁰⁴ This can vary from two years in prison to life in prison, as well as fines ranging from 100,000 naira to two million naira in a few cases when corporate organisations are implicated. It also establishes a Victim of Trafficking Trust Fund to assist impacted children in being rehabilitated and settled.

4.6. The Violence Against Persons (Prohibition) Act (VAPP Act) 2015

The goal of VAPP Act is to eradicate violence in both private and public areas. It outlaws all forms of violence, including physical, sexual, and emotional violence, as well as discrimination against individuals. The Act defines 26 offenses and imposes sanctions, including the creation of offender registers. The VAPP Act addresses sexual offenses in depth and broadens the definition of rape to protect both males and females as well as victims' identities. It also defines rape and makes life imprisonment a punishable offense.¹⁰⁵ The Act states that

¹⁰³ SS 11 - 27 thereof; now Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015.

¹⁰⁴ Sections 14-35 TPPEA Act, 2015.

¹⁰⁵ Sections 1&2, respectively.

sexual intercourse between an adult and a child is unlawful as is aggression against the child.¹⁰⁶ Child marriage or betrothal is an offense under the Act, punishable by five years in jail if convicted.¹⁰⁷ Only 19 states have domesticated the VAPP Act as of March 2022.¹⁰⁸ The Act, however, is applicable in the Federal Capital Territory of Abuja. To become a nationwide legislation, the VAPP Act must be passed in twenty-three states.

4.7. Applicable International Law

Nigeria is a member of international organizations governed by international treaties. The United Nations Organization (U.N.O.) is the most crucial of these bodies. There are others, such as the African Union (AU), the Economic Community of West African States (ECOWAS), and the International Labour Organization (ILO). Children's rights issues are at the forefront of internationally debate, and hence transcend national borders.

The United Nations Convention on the Rights of the Child is a major international instrument of the United Nations.¹⁰⁹ The agreement defines a child as any human being under the age of 18 years, unless the majority is acquired earlier under the law applicable to the child. It specifies the child's rights in considerable detail. The Convention was ratified by Nigeria in 1989 and domesticated in 2003 as the Child Rights Act and the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act.

The African Charter on the Rights and Welfare of the Child, adopted by African governments in 1990, is the most important regional instrument for child rights in Africa.¹¹⁰ Its preamble summarizes the challenges of African children in their

¹⁰⁶ Section 31(1-3).

¹⁰⁷ Section 21 thereof.

¹⁰⁸ Partner West Africa Nigeria, 'VAPP Tracker'(2023) <www.partnersnigeria.org/vapp-tracker/> accessed on 27 March 2023.

¹⁰⁹ United Nations Convention on the Rights of the Child (1989) Article 1; See also UNDOC A/44/736 (1989) already adopted in Nigeria.

¹¹⁰ Adopted by the then Organization of African Unity (now African Union), the treaty came into force in 1999.

community. The Child Rights Convention is heavily referenced in the African Child Rights Charter. The two instruments are completely compatible, emphasizing the four key principles of non-discrimination: the child's best interests, participation, and survival and development.¹¹¹ The two instruments should be utilized in together to promote and preserve the rights of children in Africa, particularly Nigeria.

Furthermore, Nigeria has accepted the United Nations Convention on the Rights of the Child (UNCRC) since 1991, as well as the African Charter on the Rights and Welfare of the Child in 2000.¹¹² Nigeria is obligated to adhere to the provisions as a result of this. For a variety of reasons, the government is also obligated to implement international law requirements concerning children.¹¹³ One of these reasons is to align the country's child protection system with the international Convention signed by state parties. The aim is also to bring the country's system of child justice administration and childcare and supervision in conformity with internationally accepted models. Children's rights are human rights. They are vulnerable and are among those suffering as a result of Nigeria's escalating poverty and governance crises. Every state government is accountable for children's well-being.

It is worth noting that the CRC has been domesticated by the CRA, 2003, hence enforcing the rules in most Nigerian states may no longer be a problem. All laws are enforceable in some manner in municipal courts and even on a global scale. Individuals, including children, can seek redress in court if any of their rights are violated. Child rights NGOs are also empowered to assist in such instances. In some jurisdictions, such as the United Kingdom, abused children report their

¹¹¹ Adu-Gyamfi Jones and Keating F., 'Convergence and Divergence between the UN Convention on the Rights of the Children and the African Charter on the Rights and Welfare of the Child', (2013) 3(1) *Sacha Journal of Human Rights* 47, 50.

¹¹² See Articles 4 and 1, respectively, regarding State parties' obligation.

¹¹³ M.T. Ladan, 'An Overview of the Child Rights Act, 2003', being a paper presented at the All Nigeria Judges' Conference of the Superior Courts in Abuja Nigeria, 15-19 November 2021 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4015384> Accessed 19 April 2023.

perpetrators to the police or other relevant agencies for action.¹¹⁴ This is an unusual occurrence in Nigeria.

5.0. Challenges to Implementation of the Laws for the Protection of Children against Violence in Nigeria

Over the years, several efforts have been made in Nigeria to safeguard children from violence. These include the passage of legislation and the establishment of child protection agencies. As such, Nigeria is a member of the African Network for the Prevention of Child Abuse and Neglect (ANPCAN) and the African Women Empowerment Group (AWEG), among others. There are other NGOs focusing on children's rights that fall under the control of the Child Rights Advocacy Group of Nigeria (CRAGON).

Despite the government's efforts, there are still significant challenges. Some of these include ineffective law and policy enforcement, poverty,¹¹⁵ Weak institutions, cultural beliefs, and non-domestication of key international regulations such as International Labour Organization Convention No. 138 of 1973 on Child Labour and International Labour Organization Convention No. 182 of 1999 on the Elimination of the Worst Form of Child Labour.¹¹⁶ Other challenges to the protection of children's rights in the country include inadequate reporting of instances, poor prosecution of reported cases, and the non-justiciability of Chapter II of the 1999 Nigerian Constitution.

¹¹⁴ For example, in the United Kingdom, physical assault in the form of corporal punishment is prohibited on the child in schools, alternative care settings such as foster care homes, daycare, and penal institutions, and a child has a right to report and get redress where such protections are breached. However, a limited amount of corporal punishment is lawful in the home by parents on their children as the government believes parents should be allowed to discipline children. See the report prepared by the Global Initiative to End All Corporal Punishment of Children, 'Corporal punishment of children in the United Kingdom' (2016) <<http://www.endcorporalpunishment.org/assets/pdfs/states-reports/UK.pdf>> Accessed 26 January 2023.

¹¹⁵ Lawal A and Adedipe A M, 'Poverty and Child Protection Policy in Nigeria' (2018) 1(1) *International Advanced Journal of Policy and Organisational Policy* 1.

¹¹⁶ ILO Convention No.138 on Minimum Age and Convention No. 182 on the Worst Forms of Child Labour <<https://www.ilo.org/ipecc/facts/ILOconventionsonchildlabour/lang--en/index.htm>> accessed 19 April 2023.

The failure of several Nigerian governments to embrace the CRA was a notable difficulty. Some elements of the Act were rejected by most states in Nigeria's North because they were incompatible with their religious and cultural values. The most offensive provisions are the prohibition on child marriage, the prohibition on marriage between members of adoptive families, and the definition of a child as someone under the age of 18.¹¹⁷ Even in jurisdictions that had enacted the Child Rights Act, acts of violence were still being committed with no record of prosecution.¹¹⁸ However, by November 2022, 34 states and the FCT had domesticated the CRA as a result of intensive awareness education by the Ministry of Women Affairs and Non-Governmental Organizations.¹¹⁹

6.0. Conclusion and Recommendations

Violence against children is perpetrated by different agents responsible for the child's socialisation. Parents, teachers, peer groups, communities, worship centres and the state, perhaps, due to its passivity, are the greatest perpetrator of violence against children. Every human endeavour and state policy must place human development at the centre, as the child is the nucleus of humanity. Every action or inaction of the state, therefore, affects the child. The child's right to education is not guaranteed when there is no available free education policy for children and youth. Children are bound to suffer neglect and inadequacy in a state where parents are not gainfully employed, and poverty abounds. The right to good health will be impaired when no free functional health service and parents cannot afford essential drugs. Children are the most vulnerable victims of all the vices. The rule of law is the only framework for achieving sustainable rights

¹¹⁷ Nigerian Tribune Editorial, 'Domesticating the Child Rights Act' Nigerian Tribune Newspapers (13 September 2021) <<https://tribuneonlineng.com/domesticating-the-child-rights-act/>> accessed on March 25, 2023.

¹¹⁸ Chinomso Momoh, 'Rights of Children Still Violated in Nigeria' Development Diaries (27th May 2023) <<https://www.developmentdiaries.com/2023/05/rights-of-children-still-violated-in-nigeria/>> accessed 19 June 2023.

¹¹⁹ Ifedayo Ogunyemi, 'UPDATE: Child Rights Act now domesticated in 34 states — Minister' Nigerian Tribune (24 November 2022) <<https://tribuneonlineng.com/update-child-rights-act-now-domesticated-in-34-states-%E2%80%95-minister/>> accessed 19 June 2023.

regarding security. Security is freedom from violence, and that is safety in every space. It is a condition to be fulfilled to attain the dignity of life. It is, therefore, imperative to break the cycle of violence against children, hence the following recommendations.

While implementation of the law on violence against children is fraught with administrative bottlenecks and other factors peculiar to Nigeria, the Child Rights Act and all other relevant legislations, such as VAPP Act, 2015, should be fully implemented by all legal institutions. These are mainly the Police, the Courts and Correctional Centres. Although the VAPP Act has primarily catered for the deficiencies in the Criminal Code, the weak provisions on child sexual offences should be reviewed at the earliest opportunity. The Police should diligently investigate and prosecute child sexual offences, rape, bullying, and cyberstalking, while the courts should timeously adjudicate and impose maximum punishment on perpetrators of violence against children. Children's Rights NGOs should intensify awareness campaigns on protecting children's rights, especially freedom from all forms of violence, including support and protection for children who are victims of violence.