

# The Legal Protection of Children Under Child's Right Act 2003 and Human Rights in Nigeria

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**Abstract:** *The Child Rights Act (CRA) was in 2003 adopted and domesticated in Nigeria. This piece of legislation ushered in a new legal framework, which stated that every child has the right to life, survival, education and social development. Hence, the importance of children's education in any given society is very essential to the social and economic development of that society particularly for its future attainment, advancement and development. To deny the child rights to education is to deny the nation its critical development economically, socially, politically and otherwise. The needs of a child ranging from health care, feeding, clothing, accommodation rest on the shoulders of adults, parents, guardians and the government, because children are vulnerable and cannot cater for themselves, hence, they must be provided guidance, training and care for meaningful contribution in the society. This responsibility of educating the child for critical thinking and development lies on the society. It is in recognition of this, that the right to education has been entrenched in several international, regional and domestic legal instruments. Nonetheless, there is the problem of implementation and enforcement of these extant laws as there are still so many uneducated, unfed, and tattered children in the street engaged in hawking and child labours. Economic landscape of the future generation in Nigeria cannot be guaranteed. The aim of this study is to examine the legal protection of children under the Nigeria Child Right Act 2003. The study adopted the doctrinal research method to achieve the objective. The study observed that the various constitutive legal instruments though adequate however, lack proper mechanism or institutional framework for implementation and enforcement. The researcher recommends constitutional amendment to include child's right to education as a fundamental right.*

**Keywords:** Child Rights Act (CRA), child rights, right to education, child protection, child labour, implementation and enforcement, fundamental rights, Nigeria.

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## INTRODUCTION

Children are widely recognized as vulnerable individuals who depend heavily on adults for their basic needs and overall survival, especially in early life<sup>1</sup>. Because of this dependency, international human rights law regards children as a protected group requiring special legal safeguards. However, the idea

of formal children's rights is relatively modern, as earlier societies often assumed parents naturally acted in the best interests of their children, without the need for specific legal protections.

The development of children's rights is linked to the broader evolution of human rights, including women's rights, where both groups were historically treated as subordinate or even as property in earlier centuries. Over time, global awareness led to stronger recognition of children's rights as independent and enforceable.

Organizations such as UNICEF play a major role in promoting and protecting children's welfare worldwide. Established after the Second World War, UNICEF has expanded its mission to include global advocacy against violence, discrimination, and neglect of children, working in over 150 countries<sup>2</sup>.

Key international instruments like the Universal Declaration of Human Rights affirm the right to education and other fundamental rights for all individuals, including children. Nigeria domesticated these principles through the Child Rights Act, which guarantees children's rights to life, survival, education, and social development.

## **THEORETICAL FRAMEWORK**

The childhood years have been described as the most vulnerable years of a person's life, as the child, to a very large extent depends on its parents or guardians for survival.<sup>3</sup> Any omission or commission on the part of the parents or guardian can make or mar the child for life. Under International law, the child is recognized as among the vulnerable persons whose rights must be protected and one of such rights that must be safeguarded and protected is the right to education.<sup>4</sup>

The point has been abundantly made that education and enlightenment are two nuclei to a proper understanding of what human rights are and the modus operandi in their enjoyment. Thus, for a person to understand and appreciate the entirety of his rights as a human being, he/she must be educated first. To deny a person education especially in his/her early years is akin to denial of life.<sup>5</sup> It has also been said that education is the greatest force or asset that can be utilized to bring about change and also the greatest investment that a country can make for the quick development of its economic, political, cultural and sociological and human resources.<sup>6</sup> A nation whose citizenry are majorly uneducated is sure to be underdeveloped and stagnated. Illiteracy has been identified as the major root cause of poverty and education is described as the surest route or pathway out of poverty especially for most children in the developing countries, such as ours (Nigeria).

International law recognizes children's right to education as a fundamental human right which guarantees the full enjoyment of all other rights as contained in both domestic and international legal instruments.<sup>7</sup> In fact, under International law every individual, irrespective of race, gender, nationality, ethnic or social origin or background, religious or political preference, age or disability is entitled to a free elementary education<sup>8</sup>. This right was explicitly enunciated in the Universal Declaration of Human

Rights (UDHR) 1948 which stipulated thus: “Everyone has the right to education. Education shall be free at least in the elementary and fundamental stages, elementary education shall be compulsory.”<sup>9</sup>

This instrument recognized the critical importance of education especially at the rudimentary and foundational stages of human life. It is believed that the UDHR actually sets the pace for the development and the recognition of the right to education under International law. Also the landmark Convention on the Rights of the Child among other things enjoins state parties or contracting states to recognize the right of the Child to Education with a view to achieving the Right progressively and on the basis of equal opportunity by making primary education compulsory, available and free for all.<sup>10</sup>

The various Legal Instruments that contain this right have gained universal acceptance at both regional and domestic levels and it is expected that Countries which have ratified and domesticated these Conventions, Treaties, and Covenants etc., should incorporate them into their local or domestic Laws and ensure adequate implementation. However, in reality these Laws have become mere paper tigers with little or no practical relevance. For instance, Nigeria as a Nation has at both the Federal and State levels domesticated, incorporated and enacted into laws the Convention on the Right of the Child which embodies the child’s right to education. There is the Child’s Right’s Act of 2003 and the various State Laws on the Child’s Right.

However, there are no visible effects of implementation in the society. In fact, there are no clear cut legal mechanisms set up to ensure implementation of these laws nor is there any such provision in the Constitution of the Federal Republic of Nigeria. It is worthy of mention that the Constitution of every country is the fundamental law of the country, reflecting the underlying and unifying values of the society, laying out the basic rights of each person; it also serves as a frame work for all other laws and policies in any given State.<sup>11</sup> In order words the Constitution of any country places the limit to which values and rights can be respected, promoted and safeguarded in any given society thus where a lacuna is created by the Constitution itself no other law can effectively fill that gap.<sup>12</sup>

The State on the other hand is the central actor to any claim that borders on the rights of its citizens; it is the prime duty-bearer and the prime or chief implementer of the Constitution. It is the guarantor of the rights provided in the Constitution and it is the State’s signature vis-à-vis the international norms and standards which binds it to respect, protect and fulfill these rights, particularly the right to education.<sup>13</sup> So where the State lacks the political will to implement and enforce its own laws, the society is helpless and will descend into anomie.

The drafters of the 1999 Constitution of the Federal Republic of Nigeria in order not to over burden the Government, cleverly exonerated the State from enforcing certain rights which are recognized in International Law (right to education inclusive) by including it in Chapter II on Fundamental Objectives and Directive Principles of State Policy which are essentially not justiciable.<sup>14</sup>

Paradoxically, Section 6 (6) (c) of the same Constitution ousted the powers of the Court to question Government on any act or omissions relating to Chapter 11. Consequently, Chapter 11 is clearly non-

justiciable and thus the practicality of the provision that ‘Government shall strive to eradicate illiteracy ‘as provided in section 18 has been termed as mere political rhetoric with no legal relevance.<sup>15</sup>

Herein lays the bone of contention which this research is set to find a solution to. Indeed there are plethora of international documents guaranteeing and protecting children and their rights especially to education which the Nigeria Government is a signatory to that are just dormant and inoperative in the face of glaring abuses.<sup>16</sup> Governments have come and gone yet none has mustered enough political will to implement and enforce these laws, therefore, it is the objective of this research to unravel these seeming challenges and proffer possible solutions as the way forward.

### ***The problem of the study and its importance***

Overall, children’s rights are essential for national development, and Nigeria continues to collaborate with UNICEF and other stakeholders to ensure the protection, survival, and development of children in line with global standards.

This study focuses on the poor implementation and enforcement of laws and international instruments protecting children’s rights in Nigeria, despite the existence of adequate legal frameworks. The situation is worsened by weak political will, religious misconceptions that discourage children’s education, inadequate public sensitization on child rights, and deep-rooted socio-cultural practices such as patriarchy, which often favour the boy-child over the girl-child in access to education.

The importance of this study lies in exposing the gap between child rights laws and their practical enforcement in Nigeria. It highlights the need for stronger implementation mechanisms, improved public awareness, and policy reforms to address harmful cultural and religious misconceptions. The study also provides useful insights for policymakers, legal practitioners, and child welfare stakeholders in promoting equal educational opportunities and strengthening child protection systems for sustainable national development.

### **RESEARCH METHODOLOGY**

The study uses the doctrinal approach, also known as library-based qualitative method using in-depth analysis of primary and secondary sources. The doctrinal research method otherwise known as the library based research sees law as a normative science and humanities requiring the analysis of cases and statutory provision by the use of the power of reasons.<sup>17</sup> Primary Sources include, the constitution, statutes enacted by federal, state or local authorities (including subsidiary legislation such as regulations, orders, rules and practice directions), case law, treaties/international agreements; etc. The secondary data or source materials include journals, case reviews, books, treatises, restatements, dictionaries, encyclopedias, monographs, lecture notes, projects/thesis/dissertations, conference papers, inaugural and distinguished lectures, dailies, periodicals, commentaries and e-materials etc.<sup>18</sup>

## CONCEPTUAL CLARIFICATION OF TERMS

### *The Legal Meaning and Nature of the Word ‘Right’*

The Black’s Law Dictionary ninth edition defines Right among others to mean:

- i. something that is due to a person by just claim, legal guarantee, and moral principles;
- ii. a power, privilege or immunity secured to a person by law;
- iii. a legally enforced claim that another will do or will not do a given act;
- iv. a recognized and protected interest that the violation of which is a wrong.

The Black’s Law Dictionary further classified right, inter alia, in terms of perfect and imperfect rights, Legal right, positive and negative rights, natural right and absolute rights viz:<sup>19</sup>

- a) perfect right, meaning right that is recognized by the law and is fully enforceable while imperfect right is one though recognized by law but is not enforced.
- b) positive right, entitles a person to have another do some act for the benefit of the person entitled and
- c) negative right is one entitling a person to have another refrain from doing an act that might harm the person entitled.
- d) Legal right is that which is created or recognized by law.
- e) absolute right is a right that belongs to every human being such as the right to personal liberty etc.
- f) natural right is a right that is conceived as part of natural law and that is therefore thought to exist independent of right created by government or society such as the right to life, to liberty etc.<sup>20</sup>

In 1924, Norman Wilde in his book “The Meaning of Right” states that:

Any theory of the state must come to an understanding with itself on the subject of rights, whether in affirmative or denial, it must raise the question of their existence, define their nature and considers their supposed basis. For it is by relation to the idea of right that the state itself gets its definition and status.<sup>21</sup>

Norman Wilde, further states that it is essential to determine whether rights are created or conditioned by the state or whether they are inherent absolutely in humans. He held that if the first is correct then the state assumes the role of political providence in whose hands rest the fortunes and happiness of its individuals but if the latter is correct then the state is a secondary product with powers strictly limited by reference to the rights in which it has its basis. The above proposition is set to clarify the basis for the existence of right in any given society.<sup>22</sup>

### *Meaning and Nature of a ‘Child’*

The United Nations Convention on the Rights of the Child (UNCRC) defines a child as a human being below the age of 18 years unless under the law applicable to the child,<sup>23</sup> majority is attained earlier.

The United Nations Declaration on Human Rights 1948 recognizes the importance of children in some of its provisions such as, Article 1, which states that all human beings are born free and equal in dignity and right, and emphasizes that motherhood and childhood are entitled to special care and assistance.

Biologically, a child is anyone between birth and puberty or in the developmental stage of childhood, between infancy and adulthood. Children generally have fewer enforced rights than adults and are classed as unable to make serious decisions and legally must always be under the care of a responsible adult.

### ***Current Social Attitude towards Children***

The current social attitudes toward children differ around the world in various cultures. These attitudes have changed over time. A 1988 research on European attitudes toward the centrality of children found that Italy was more child-centric and the Netherlands less child-centric, with other countries, such as Austria, Great Britain, Ireland and West Germany falling in between. However, in most developing countries decades ago, (Africa) children are mostly treated as properties; the wealth of a man is measured in terms of the number of children he has sired. They are to be seen and not heard. They are regarded as weak, dependent and most times merely tolerated especially the girl-child, although this fact has declined rapidly with modern civilization and awareness.

In China, the one-child policy forces some couples to have not more than one child. The implementation of this policy has led to abortion and forced sterilization and where the child is allowed to live the parents must pay a large fine for every day the child lives. This also is not the present case in China today as most of these laws and policies have been reviewed and what is obtainable now is social welfare rather than any special child tax. The age at which children are considered responsible for their society-bound actions (marriage, voting, contract, etc.) has also changed overtime, and this is reflected in the way they are treated in courts of law. In Roman times, children were regarded as not culpable for crimes, a position later adopted by the Church. In the 19th century, children younger than seven years old were believed incapable of crime. Children from the age of seven forward were considered responsible for their actions. Therefore, they could face criminal charges, be sent to adult prison and be punished like adults by whipping, branding or hanging. Today, in many countries like Canada and the United States, children twelve and older are held responsible for their actions and may be sent to special correctional institutions, such as juvenile hall.

The Nigeria Criminal Code Act provides that a person under the age of seven years is not criminally responsible of any act or omission.

## **Meaning and Nature of Education**

Education as a genetic of civilization is any conversation of added educational value which nurtures human capacity to understand, identify problems, issues and solve them. The new Webster's Dictionary defines education to mean, "Instruction or training by which people (generally young) learn to develop and use their mental, moral and physical powers; and the art of giving such training."<sup>24</sup> It can also be defined as a process of receiving or gaining systematic instruction, especially at a school or university. Education narrowly refers to formal institutional instruction.

General international instruments use the term in this sense and the right to education, as protected by international human rights instruments, refers primarily to education in a narrow sense. The 1960 UNESCO Convention against Discrimination in Education defines education as: "all types and levels of education (including) access to education, the standard and quality of education and the conditions under which it is given".<sup>25</sup>

In the wider sense education is about building mental ability to reinvent one's self in the bid to make progress in a very challenging circumstance.<sup>26</sup> The wider meaning of education has been recognized in UNESCO's 1974 Recommendation concerning Education for International Understanding, Cooperation and Peace and Education relating to Human Rights and Fundamental Freedoms.<sup>27</sup> The article states that education implies "the entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, the national and international communities, the whole of their personal capabilities, attitudes, aptitudes and knowledge."<sup>28</sup>

The European Court of Human Right has defined education in a narrow sense as "teaching or instructions...in particular to the transmission of knowledge and to intellectual development" and in a wider sense as "the whole process whereby, in any society, adults endeavour to transmit their beliefs, culture and other values to the young".<sup>29</sup>

Education has been regarded in all societies and throughout human history both as an end in itself and as a means for the individual and society to grow and develop. It has been said that education and enlightenment are two central nuclei to a proper understanding of what human rights are and the modus operandi in their enjoyment. Its recognition as a human right is derived from the indispensability of education to the preservation and enhancement of the inherent dignity of human person. For this research, education is a critical essence for human survival and overall development. Hence a proper definition of education should comprise all form of training, development and learning whether formal or informal.

## **The Legal Basis of the Right to Education**

The Right to education is a universal entitlement to education, a right that is recognized as a fundamental human right by the United Nations. Several International, Regional and National legal

instruments recognized the right to education. The Universal Declaration of Human Right (UDHR) 1948 articulates that everyone has the right to education and that education shall be free, at least in the elementary and formative stages. It also provides that elementary education should be compulsory, technical and professional education should be made generally available and higher education shall be equally accessible to all on the basis of merit. It further enjoins States to ensure access to education as a precondition for full realization of the right to education because without access, it is not possible to guarantee the right to education. UDHR recognizes that the quality of education is the other side of the coin. Providing access to schools secures only one part of the right to education. Once in school, children can be subjected to indoctrination (e.g., in communist countries). Thus, UDHR further stipulates in the same article that Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among racial or religious groups.

### **Global Trend in Education**

Experts' records show that since the turn of the millennium global access to schooling has expanded substantially: an additional 20% of primary school-age children have enrolled in school in Africa and an extra 10% in South and West Asia. This is indeed a tremendous turnaround, with a six-fold greater expansion during this decade than happened in the 1990s.

Notwithstanding that progress, experts assert that much remains to be done in order to achieve the 2015 aspirations set by the Education for All (EFA) agendas and two Millennium development Goals (MDG) which focus on education viz: MDG 1, ensure that by 2015 children everywhere, boys and girls alike will be able to complete a full course of primary school. MDG 2, eliminate gender parity in primary and secondary school. 72 million children worldwide remain out of school; almost half are in Sub-Saharan Africa and a majority of the rest in South Asia. Around one-quarter and one-seventh, respectively, of all primary school-aged children are affected in these regions. It is usually the poorest countries which are the least able to scale up their school systems so that all can be enrolled. Girls make up for more than half of these numbers and with two-thirds of the world's 780 million illiterates being women, the need to meet the MDG 2 (universal primary education) and 3 (gender equality) is evident. In 2005 the world missed an initial target for MDG 3: gender parity (equal proportions of girls and boys) in primary and secondary schools was not achieved in 74 countries.

Indeed, achieving the international targets for education is a crucial part of delivering basic human rights to the world's population. It is clearly in the interests of both rich and poor nations to do so, underlining that promoting human rights especially the right to education and developing sound economic system support overall development in any given State. Strong research evidence shows the numerous economic and social benefits that flow from providing quality access to education. On average, a further year of education increases wage-earnings of individuals by about 10%, researcher's states and the quality of learning also brings economic payoffs. Thus, reducing educational inequality

helps to reduce economic inequality. Countries with more schooled populations enjoy higher rates of economic growth, higher international test scores are associated with faster rates of per capita income growth, and schooling improves people's productivity in rural self-employment.

More educated women are able to participate more fully politically, economically and socially. They often have fewer children, and enjoy better health from improved nutritional diets and earlier and more effective diagnosis of illness. These largely economic benefits accord well with the human rights case for education, and thus Governments can actually find help and inspiration from standards that have already been set by the international community. As the case is in many countries the right to education has been enshrined into laws and is expressed as part of immediate obligations that every member country in the world community should formally enforce and implement.

## **LEGAL AND INSTITUTIONAL FRAMEWORKS**

### ***Child's Rights Act, 2003***

The Child's Rights Act is a piece of legislation divided into 24 parts, comprising 278 Sections. The CRA seeks to protect the rights of the child in specific terms and defined a child to be a person under the age of eighteen years. The mandate of the Act is to the effect that "in every action concerning a child, whether under taken by an individual, public or private body, institutions or service, court or law or administrative or legislative authorities, the best interest of the child shall be the primary consideration. The CRA incorporate all the rights and responsibilities of the child and makes provision relating to all aspect of the rights of the child in a single legislation as well as specifying the duties and obligations of government parents, authorities, organizations and bodies. It is interesting to note that the CRA did not provide for specific rights peculiar to the only, but also incorporates the fundamental rights enshrined in the constitution for the General Citizens forming part of the CRA this deficit the courageous step by the Nigeria government towards protecting the rights of the child who was not entitled to specific rights.

### ***Children and Young Persons Laws***

Children and Young Persons Law was initially enacted as an ordinance for Nigeria by the British Colonial Government, it was introduced as Children's and Young Persons Ordinance in 1943. The Ordinance was subsequently amended through several legislations and later re-enacted as the Children and Young Persons Act. The CYPA made provision dealing with the protection of the rights of the Child with respect to administration of criminal justice, without providing for the rights of the child with respect to the civil rights, obligation and protection. The CYPL defines a child as a person under the age of 14 years. While a young person is defines as a person whom has attained the age of 14 years but less than 18 years. The attempt of making distinction between a child and a young persons according to the CYPL does not make any different as to who is a child. It suffers that, as long a person is less than 18 years, he or she is a child. The CYPL seeks to protect the rights of the child in the event

that the Child Contravene Criminal Law by instigating the stringent procedure and treatment required of the general criminal justice system to suit the special nature of child offender. The relaxed procedure with respect to a persons who are less than 17 years of age equally extends to situations where they are found guilty by the court in some instance. It provides that:

1. No child shall be ordered to be imprisoned
2. No young person shall be ordered to be imprisoned if he can be suitably dealt with in any other way whether by probation, fine, corporal punishment, committal to a place of detention or an approved institution or otherwise.
3. A young person ordered to be imprisoned shall not be allowed to associated with adult prisoners

The intention of this law seems very good but its practicability is still far from being achieved, putting into consideration the grass inadequate bostal institutions in Nigeria with the attendant congestion and its effect on the health and development of the inates. Also, the CYPL protects the sanctity of life of the child even when he is found culpable of capital offences requiring death sentences. A sentence of death shall not be pronounced or recorded against any offender who has not attained seventeen years at the time the offence was committed, but in the place of a sentence of death, the court shall ordered the offender to be detained at the pleasure of the Governor. The general purpose and intent of the CYPL is to provide a separate Criminal Justice Procedure for children and to separate the child from the general administration of Criminal Justice System. This objective is recognized and protected by the CRA when it provides that: where a child offender is brought before court, the court shall ensure that the reaction taken is proportional not only to the circumstance and the gravity of the offence, but also to the circumstance and needs of the child and the society.

### ***Labour Act***

The Labour Act defines a child as a young person under the age of twelve, while a young person means a person under the age of eighteen years. For the purpose of the contract of apprenticeship, no person under the age of 16 years shall be capable of entering into a contract of employment in Nigeria. A contract of employment means any agreement whether oral or written, express or implied whereby one person agrees to employ another as a worker and that other person agrees to serve the employer as a worker. Furthermore, the Labour Act, has special provision under which a young person may be employed to work in some cases without regard to age.

However, the Act protects and inputs into consideration the health, physical growth and the moral well-being of the child in such circumstance. It states as follows:

“No young person shall be employed in any employment which is injurious to his health, dangerous or immoral and where an employer is notified in writing by the minister that the kind of work upon which a young person is employed is injurious to the young person’s health,

dangerous immoral or otherwise unsuitable, the employer shall discontinue the employment without prejudice to the right of the young person to be paid such ways as he may have earned up to the date of discontinuance”

The labour Act, does not define what amount to employment that is injurious or immoral to the health and wellbeing of young persons. It is therefore been suggested that the act be amended to define or lay down guidelines to determine employments that are injurious, dangerous and immoral to the well-being of the child

### ***Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2015***

The objective of Trafficking Act is to provide general for Laws and to establish mechanisms for the investigation, prevention, protection, prosecution, punishment of offenders and compensation of victims. The Trafficking Act defines human trafficking as:

The recruitment, transportation, transfer, harbouring or receipt of persons by means of threat or use of force or other forms of coercion, abduction, fraud, deception, the abuse of power of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person or debt bondage for the purpose of placing or holding the person whether for or not in involuntary servitude (domestic, sexual or reproductive) in forced or bonded labour, or in slavery like conditions, the removal of organs or generally for exploitative purposes<sup>30</sup>

The Trafficking Act defines a child to mean a person under the age of 18 years. In protecting the child against trafficking, the Trafficking Act prohibit the procurement of persons less than 18 years for illicit inter course, prostitution or other forms of sexual exploitation and prescribes a minimum penalty of seven years imprisonment and a minimum fine of ₦100,000.<sup>31</sup> The Trafficking Act prohibits the procurement or recruitment of a person for the purpose of organ harvest specifically with respect to the child provides:

Accommodated or takes in another person under the age of 18 years for the purpose of removing the person’s organs commits an offence and is liable on conviction to imprisonment for a term not less than 7 years and a fine of not less than ₦5,000,000.00.<sup>32</sup>

Some of the cases of trafficking in persons in Nigeria are for the purpose of rituals, whereby human organs are harvested from the bodies of victims of human trafficking while the mutilated bodies are dumped in the bush or rivers.<sup>33</sup>

The Trafficking in Persons Act established a body known as the National Agency for prohibition of Trafficking in Person (NAPTIP). Which is saddled with the responsibility of executing the mandate

and objectives of the Trafficking in person Act. In Nigeria, NAPTIP has been in the frontline in fighting human trafficking including children and the evolving phenomenon of baby factories in Nigeria. Note, it is immaterial that a child consented to being trafficked or participated without any form of deceit, coercion, fraud or promise of favour. It is not a defence that, the minor consented this is because a minor does not possess the requisite capacity to give consent. The Trafficking Act is silent on the prohibition of child marriage/betrothal the failure to prohibit child marriage/betrothal may encourage trafficking of children under the guise of marriage.

United Nation Convention on the Rights of the Child:

This convention on the rights of the child is the first globally binding and enforceable treaty for the protection of the rights of the child, though there have been several efforts of protecting the rights of the child of the global level before its adoption. It was after the resolution and adoption of the CRC that the child became an active subject of rights. This convention is based on the best interest of the child, non-discrimination, participation, implementation of the child's Right, which include (economic, social and cultural rights) to the maximum extent of available resources, the rights to life, survival and development. It protected the vulnerable position of the child and encourages the state to observe their legal status and fundamental rights which is very paramount to their self-development and actualization of their potentials. Furthermore, the Child Right Convention categorized, the right of the child into the provisional, protection and participatory rights. A provisional right is the right to get one's basic needs fulfilled. This right includes civil and political rights such as the right to life. The right of the child to the enjoyment of the highest attainable standard of Health, the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development and the right of the child to education. Moreover, protective right is the right to be shielded from harmful acts or practices. It includes that state parties shall take measures to combat the illicit transfer and non-return of children abroad. And that state parties shall protect the child from all forms of physical or mental violence, injury or abuse. Furthermore, participatory rights is the right to be heard on decision affecting one's life. It includes the rights to freedom of expression, freedom of thought, conscience and religion and freedom of Association. The convention means duty on states that they must recognize the interest right to life of every child and ensure the survival and development of the child, implement the rights of a child to a name and nationality from birth and combat the illicit transfer and non-return of children from abroad. State is to put mechanism in place to guarantee respect for the right of the child to freedom of thought conscience and religion, ensure the access of children to information, protect the child against all forms of physical violence, injury, abuse, neglect or from economic exploitation and from all forms sexual abuse.

***Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts 2000***

The Optional Protocol on the Involvement of Children in Armed Conflict was adopted to protect children from the devastating effects of war and armed conflicts. It recognizes that children are among the most vulnerable victims of conflict, suffering physical, psychological, and social harm, while also being denied access to education, healthcare, family life, and proper development. The protocol

prohibits compulsory recruitment of persons under 18 years into armed forces and requires safeguards for voluntary recruitment. It also forbids armed groups from recruiting or using children in hostilities. Despite these provisions, insurgent and terrorist groups such as Boko Haram continue to recruit and exploit children in armed conflicts, particularly in Nigeria.

### ***Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000***

This protocol was adopted to address violations of children's rights through child trafficking, prostitution, and pornography. It defines the sale of children, child prostitution, and child pornography, while also providing standards for prevention, prosecution, victim protection, and international cooperation. In line with the protocol, Nigeria enacted the Trafficking in Persons (Prohibition) Enforcement and Administration Act to combat trafficking and protect children from exploitation. However, challenges such as "baby factories" and the commercialization of newborns persist, highlighting the need for stronger implementation and enforcement measures in Nigeria.

### ***Worst Forms of Child Labour Convention 1999***

The Worst Forms of Child Labour Convention was established to prohibit and eliminate exploitative and harmful child labour practices, including slavery, trafficking, forced labour, prostitution, pornography, and the use of children in criminal activities or hazardous work. The convention defines a child as any person below 18 years and calls for immediate action to protect children from exploitation. Child labour remains a major challenge globally and in Nigeria, where millions of children are engaged in dangerous and exploitative work that threatens their physical, mental, and moral well-being. The convention therefore emphasizes the urgent need for effective measures to eradicate child labour and safeguard children's rights and development.

### ***The Impact of International Organization***

The International Legal and Regional Instruments on the enforcement of the rights of the child are as not part of the municipal laws of Nigeria however are signed and adopted by Nigeria being a member of the regional and international community. Most of the instruments are not directly applicable or enforceable in Nigeria unless domesticated by the National Assembly. The Constitution of the Federal Republic of Nigeria provides that:

No treaty between the federal and other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.

In spite of the barriers against direct application of some of the regional and international instruments on the rights of the child in Nigeria, there is no doubt that, the regional and international legal instrument for enforcement of the Child's Right has impacted significantly on the Nigeria Child's Right enforcement procedure. The Africa Charter on Human and People's Right came into force in October 21st 1981. Nigeria has passed the charter into law and it is known as the African Charter on Human

and People Right (ratification and enforcement) Act 2004. As an International Law, it overrides municipal laws. Thus, anyone seeking to enforce fundamental rights many, in addition to relying on the fundamental rights provision of the Nigerian Constitution, also rely on the provisions of the Africa Charter on Human and Peoples Right. This position was upheld in the case of *Abacha v. Fawehimi* where the court held that, “The Africa Charter on Human Rights having been incorporated into the Nigeria organic law by legislation is enforceable in Nigeria”. This was also the position in *Director SS v. Agbakoba* . Furthermore, the Regional and International Legal Instrument on the rights of the Child on Nigeria, there is no doubt that, the CRC and its two optional protocols, ACHPR and ACRWC greatly influenced the enactment of the Child’s Right Act which is the extent law on the rights of the child in Nigeria today.

More also, the optional protocol of the convention on the Rights of the Child on the sale of children, child prostitution and Child pornography and the convention concerning the prohibition and immediate Action for the elimination of the worst forms of child Labour , triggered the enactment of anti-trafficking laws in Nigeria. Most importantly the ACHPR makes justiciable some socio-economic rights like the rights to health care services and right to education. Since the domestication of ACHPR in Nigeria its provisions are directly enforceable in Nigeria, that means that, the child can enforce the right to health care services and right to education under its provisions in Nigeria.

## **FACTORS MILITATING AGAINST THE PROTECTION AND PROMOTION OF THE CHILD RIGHTS ACT IN NIGERIA**

### **Lack of Implementation Mechanism for Most of the Laws on the Rights of the Child**

One of the major challenges affecting the protection of children’s rights in Nigeria is the weak implementation and enforcement of existing child rights laws. Although several laws exist to protect children, many lack effective enforcement mechanisms and specialized institutions to ensure compliance. Child justice institutions are poorly managed, leading to situations where children are tried in adult courts and detained alongside adults due to inadequate remand homes and correctional facilities. While the Child Rights Act provides for family courts, specialized police units, and correctional centres for children, many states have failed to establish these institutions. In addition, some people perceive the CRA as an imposition of foreign or western values, leading to resistance against its adoption and implementation in some states of Nigeria.

### **Non-Justiciability of Some Provisions of the Child’s Right Act**

Another major challenge is that some rights provided under the CRA, such as the rights to education, healthcare, survival, development, and parental care, are similar to the socio-economic rights contained in Chapter II of the Nigerian Constitution, which are generally regarded as non-justiciable. This means that such rights cannot easily be enforced in courts. As a result, many Nigerian children continue to suffer from poor healthcare, lack of access to quality education, and inadequate welfare despite the protections guaranteed under the CRA.

### **Religious Practice of Child Marriage and Betrothal in Nigeria**

Religious and cultural practices, particularly child marriage and betrothal, also hinder the effective enforcement of the CRA. In some parts of Northern Nigeria, child marriage is justified under certain interpretations of Islamic law and cultural traditions. Although the CRA prohibits marriage and betrothal of persons below 18 years and criminalizes offenders, child marriage remains common in many communities. This conflict between statutory law, religious beliefs, and cultural practices has contributed to the reluctance of some states to fully adopt and implement the CRA.

### **Socio-Economic Hardship and Poverty**

Poverty and economic hardship significantly affect the protection and enforcement of children's rights in Nigeria. Many families lack the financial resources to provide education, healthcare, and proper welfare for their children, leading to school dropout, child labour, street hawking, domestic servitude, prostitution, and trafficking. Economic challenges also make it difficult for parents and guardians to pursue legal action to enforce children's rights due to the high cost of litigation and limited access to justice.

### **CORRUPTION**

Corruption remains a major obstacle to the enforcement of children's rights in Nigeria. Many institutions and officials responsible for protecting children are weakened by corrupt practices, poor accountability, and mismanagement of resources. Government programmes aimed at improving child welfare, such as free education and healthcare, are often poorly implemented because of corruption. In some cases, traffickers and offenders escape punishment by bribing officials, thereby undermining efforts to protect children and enforce the provisions of the CRA.

### **CONCLUSION**

Efforts have been made to examine and protect the rights of children under the Child Rights Act. Children are recognized under international human rights law as vulnerable members of society who require special care, protection, and assistance from adults, especially during their early years. Over time, global awareness of children's rights has grown, leading to the establishment of organizations such as UNICEF, which advocates for the welfare and protection of children worldwide.

The Convention on the Rights of the Child emphasizes the right of every child to free and compulsory primary education on the basis of equal opportunity. Nigeria has adopted various laws and legal instruments to protect children's rights, including the Child Rights Act and state child protection laws. However, despite these legal frameworks, implementation and enforcement remain weak, making many of these protections ineffective in practice.

### **RECOMMENDATIONS**

The following are the recommendation of the study

1. It is recommended that mass enlightenment and grass root campaign of the child right to free education as provided under section 15 of the Child's Right Act should be carried out on regular bases.
2. That the right to education which is non-justiciable under the Constitution of the Federal Republic of Nigeria 1999 (as amended), be made enforceable right under chapter four of the Constitution of Federal Republic of Nigeria 1999 (as amended) for it to be binding on all citizens.
3. That education should be made compulsory and free for every Nigeria child to at least secondary school level.

## ENDNOTES

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<sup>1</sup> M T Ladan, Introduction to International Human Rights and Humanitarian Law (Ahmadu Bello University Press, Zaria, 1999). 123

<sup>2</sup> International Directory of Company Histories, (St. James Press, 2004) (58). 54

<sup>3</sup> Article 1 of the Convention on the Right of the Child 1989; Child's Right Act, 2003

<sup>4</sup>Article 1 of the World Declaration on the Right of the Child to Education 1990

<sup>5</sup> Carol Arinze-Umobi and Amaka Iguh, The Nigeria Girl - Child, Right to Education and the Nexus with National Development, 2011. <http://www.right-to-education.in Nigeria.co.org/html> (accessed 06 June 2024)

<sup>6</sup> International law and the Right to Education/Report to education [www.right-to-education.org/nude/234](http://www.right-to-education.org/nude/234) (accessed 10 June 2024)

<sup>7</sup> Universal Declaration on Human Right (UDHR) 1948; International Covenant on Economic, Social and Cultural Right (ICESCR) 1966; International Covenant on Cultural and political Right (ICCPR) 1966.

<sup>8</sup> Article 1 UDHR 1948

<sup>9</sup> Ibid

<sup>10</sup> Declaration on the Right of the Child 1924 and 1959; Article I of the Convention on the Right of the Child (CRC) 1989.

<sup>11</sup> United Nations on right to education. [www.unesco.org/new/en/education/themes/leading-the-intl](http://www.unesco.org/new/en/education/themes/leading-the-intl) (accessed 5 June 2024).

<sup>12</sup> Section 1 (1 & 3) of the 1999 Constitution of the Federal Republic of Nigeria, Cap C 23 Law of the Federation of Nigeria 2004.

<sup>13</sup> International law and the Right to Education/Right-to-education. Project [www.right-to-education.org](http://www.right-to-education.org) (accessed 6 June 2024).

<sup>14</sup> Section 18, Constitution of the Federation Republic of Nigeria (CFRN) 1999 (as amended).

<sup>15</sup> Section 18, Constitution of the Federation Republic of Nigeria (CFRN) 1999 (as amended).

<sup>16</sup> World Declaration on the Rights of Child to Education 1999; Universal Declaration on Human Right 1948; Convention on the Right of the Child 1989 Act.

<sup>17</sup>M U, Gasiokwu, Legal Research Methodology. The A - Z of Writing Thesis and Dissertation in a Nutshell (Fab Arich Nig. Ltd 1993). 13 - 16

<sup>18</sup>Ibid

<sup>19</sup> H C Black, Black's Law Dictionary, 9th Edition Thomson Reuters, Minnesota, U.S.A., (2009). 1267

<sup>20</sup> Ibid

<sup>21</sup> N. Wilde, The meaning of Right, International Journal of Ethics, 34 (3), (1924). 283-293.

<sup>22</sup> Ibid

<sup>23</sup> Section 1 of the Child's Right Act 2003, Universal Declaration on the Human Right 1948 and International Covenant on Economic, Social, and Cultural Right (ICESCR) also affirm this age.

<sup>24</sup> The New Webster Dictionary of the English Language, International Edition Lexicon International, Publishers quild group New York, NY.USA. (2004) 298.

<sup>25</sup>The UNESCO Convention against Discrimination in Education 1960.

<sup>26</sup> The New Webster's Dictionary of the English Language International Edition, Lexicon Int'l, Publishers Quild group, New York, U.S.A., ( 2004) 298.

<sup>27</sup> N Burnett, C Felsman, Post 2015 Education DG (2012). <http://www.edi.org.uk/site/edi.ukfiles/odi-assets/publications.opinion.files/7776.pdf> (accessed 20 June 2024)

<sup>28</sup> Article 1(a) of UNESCO's 1974 Recommendation concerning Education for International Understanding, Cooperation and Peace and Education relating to Human Rights and Fundamental Freedom.

<sup>29</sup> N Burnett, C Felsman, Post 2015 Education DG (2012). <http://www.edi.org.uk/site/edi.ukfiles/odi-assets/publications.opinion.files/7776.pdf> (accessed 20 June 2024).

<sup>30</sup> Section 22 (Trafficking Act)

<sup>31</sup> Ibid Section 16(1)

<sup>32</sup> Ibid Section 20(3)

<sup>33</sup> May Lewu, The Catholic Mission and Human Trafficking in Nigeria (2006) (1) (2) Illorin Journal of History 97