

THE EXTENT OF THE LEGAL PROTECTION OF THE NIGERIAN CHILD

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ABSTRACT

Legal protection of children is as old as antiquity itself. They are eternal laws that cannot and should not be taken from children by their existence. When states fail to protect children, they do not just contravene international law but eternal law. This paper introduced the concept of legal protection, it stipulated the statement of the problem, the methodology used and the theories of the legal protection of a child. It accessed the extent of the legal protection of children by accessing the provisions of the Child's Rights Act, the Violence against Persons Prohibition Act and the African Charter on the Rights and Welfare of the Child. Also, it recommended that the provisions of the African Charter on the Rights and Welfare of the Child that leaves room for alternatives and conflict be amended to ensure compliance by states. It further recommended that the Child's Rights Act be adopted by states especially states in the northeast and northwest to ensure adequate protection of children in those states. This paper concluded that when legislation intended to protect children is left with several alternatives for states to choose from, these laws will become incapable of actual enforcement and in the long run become redundant leaving no actual protection, subjecting them to abuse, torture and arbitrariness from the very people who ought to protect them.

Keywords: Africa, Child, Rights, Legal, and Protection.

INTRODUCTION

The concept of the legal protection of children has been extensively documented by several scholars and academics with different concepts and theories of legal protection being posited.ⁱ In recent years, children's rights have been violated and the question as to what protection is accorded to children and the level of enforcement of these rights where these violations occur has been consistently left unanswered. The African Charter on the Rights and Welfare of Children (ACRWC) provided a road map for African nations to protect the rights of children in Africa, this charter permits Nations to circumvent its provisions where its legislation is more advantageous to the realization of the rights and welfare of a child.ⁱⁱ The Child's Right Act (CRA) was enacted in Nigeria to protect children's rights in Nigeria and ensure that the best interest of the child is of principal consideration in every circumstance.ⁱⁱⁱ Meanwhile, the 1999 Constitution of the Federal Republic of Nigeria which is the grundnorm stipulates the rights that are non-justiciable in courts.^{iv} These nonjusticiable rights include the right to free education, unrestricted healthcare, good shelter and welfare for all including children. The question is how can the best interest of a child be of paramount consideration when they do not have the right to free education, shelter or even healthcare? This paper shall review the legal protection of the Nigerian child and assess the contribution of the ACRWC (2007) and the CRA 2003.

DEFINITION OF TERMS

The United Nations Convention on the Rights of a Child defines a child as anyone under the age of 18years.^v The ACRWC defines a child as a person below the age of 18years.^{vi} In Nigeria, there are different definitions as provided in legislation as to who a child is, the authorized capacity of a child and the penal responsibility of a child. The Childs Right Act^{vii} defines a child as anyone under 18 years.

The Children and Young Persons Act^{viii} defined a child as anyone below the age of fourteen years and defined a young person as anyone who is age 14 and below 17 years. The Immigration Act^{ix} defines a child as anyone who is under 16years while the Matrimonial Causes Act^x stipulates that a person attains adulthood at 21.

The Penal Code^{xi} which is applicable in the Northern State places the age of penal responsibility of a child at age 12. Specifically, it stipulates that:

“No act is an offence which is done by a child under seven years of age; or by a child above seven years of age but under twelve years of age who has not attained sufficient maturity of understanding to judge the nature and consequence of such act”.

Non-justiciability denotes that the courts cannot interpret any of the provisions of chapter II of the 1999 Constitution of the Federal Republic of Nigeria.^{xii}

STATEMENT OF RESEARCH PROBLEM

In recent years, legislation has been enacted to protect children’s rights not just in Africa but globally. The ACRWC was enacted to serve as a road map for all African Nations on the protection of the rights of children. However, several of the provisions in this Charter are contradictory, a violation of International law and unenforceable. In Nigeria, the CRA was enacted in 2003 to protect the rights of children, these rights are not just inadequate but they do not apply to all 36 states, particularly states in the northeast and northwest where 48% of the girls were wedded at age 15 and 78 per cent were wedded at age 18.^{xiii} This in addition to the recruitment of child soldiers by the Boko-Haram armed group, torture experienced by children in Nigeria particularly female genital mutilation and child imprisonment by the Nigerian military. The question is whether the ACRWC and the Child’s Rights Act are sufficient to protect the rights of children in Nigeria.

RESEARCH METHODOLOGY

The doctrinal method of research was used in conducting this research. This entails a descriptive and detailed analysis of the legal rules found in the Child Rights Act and the ACRWC. It also entailed a short analysis of theories for the legal protection of a child, and a review of articles and online resources.

THEORIES FOR LEGAL PROTECTION OF A CHILD

Several theories posit the reasons for legal protection. This paper will focus on three of them and they are:

1. Natural Theory
2. Social Theory
3. Economic Theory

Natural Theory

The natural theory argues that certain rights are embedded in every human by their existence.^{xiv} This theory applies the same to children, regardless of their nationality, race or colour, who by being children have rights that cannot or should not be taken from them.^{xv} Examples include the right to dignity, family and recreation. As a result, states must enact legislation to protect these rights. Failure to which will be an offence to nature and a contravention of eternal laws. This was succinctly stated in the words of Cicero in his *De Legibus*^{xvi}:

There is indeed a law, right reason, which is by nature; existing in all, unchangeable, eternal. Commanding us to do what is right, forbidding us to do what is wrong. It has dominion over good men but possesses no influence over bad ones. No other law can be substituted for it, no part of it can be taken away, nor can it be abrogated altogether. Neither the people nor the senate can absolve it. It is not one thing at Rome, and another thing at Athens: something today, and another tomorrow; but it is everlasting and unchallengeable globally and for all periods.

Social Theory

This theory is rooted in the perception of communal advancement. It posits that children are the heritages of every community and the steadiness of the community is contingent on children.^{xvii} It essentially posits that without children no community can thrive or survive. In Nigeria, children are seen as very important in every family and the absence of none many times can lead to ostracization of a woman as it is believed that the protection of children amounts to "positive social benefits" in the long run. This was succinctly stated by Kaime^{xviii} who stated that "children are the trees that perpetuate the forest: without them, society will

die”. Kaime reiterating this stated that children are the future and society owes them a duty to take care of them, by doing so society will thrive.^{xix}

Economic Theory

This theory argues that it is important that children are protected as this will have a lasting effect on the financial development of the Nation. It posits that if for example a child is educated, this education will form long term financial competitiveness and increase the quality and efficiency of labour in a Nation.^{xx} Becker,^{xxi} in emphasising the importance of education stated that:

the rate of return on investment in early childhood development is higher than investment in “on the job training” during later stages of life. He further emphasized that early childhood development is the first step in the process of human capital development.

Another example is if every girl child is educated in Nigeria, this will significantly reduce the gender disparities in the society, increase the economy, eliminate female genital mutilation, and reduce the infant mortality rate and child marriages in Nigeria.^{xxii} Another example is the right to health, when children are denied the right to quality healthcare, the short-term impact will be that the society will lack individuals who are fit to run the economy due to irreversible and cognitive defects and the long-term impact is that the economy will crumble.^{xxiii} This shows that a state’s protection of children’s rights will significantly contribute to the peace, stability and growth of the society.

LEGAL PROTECTION FOR A CHILD IN NIGERIA

The Childs Right Act

The Children and Young Persons Act was the first and main law for the protection of children and young persons in Nigeria before the CRA.^{xxiv} Other statutes enacted for the protection of children and young persons are the Administration of Criminal Justice Act,^{xxv} the Criminal

Code,^{xxvi} Penal Code^{xxvii} and Islamic Law.^{xxviii} These laws were generally inadequate and insufficient for protecting children in Nigeria. Thus, the CRA was enacted making it the fundamental law that guarantees the right of every child in Nigeria. It provides succinctly that the best interest of every child in Nigeria shall be the principal consideration in any question of law or fact.^{xxix} However, this law does not apply to all states in Nigeria as only 26 states out of 36 states have adopted this law.^{xxx} This can be attributed to the legal plurality in Nigeria and the religious duplicity in Nigeria.

Several examples show that the Childs Right Act is not or has not been sufficient in protecting the rights, especially the dignity of children in Nigeria as contained in Section 11 of the Child Rights Act. Three examples stand out and they are:

1. The Female Genital Mutilation (FGM) and
2. Child Marriage
3. Child Soldiers

The Female Genital Mutilation

The World Health Organization defines FGM as the partial or total removal of the exterior female genitalia or other injuries to the female genital organs for non-medical reasons.^{xxxi}

Section 11(a) and (b) of the Child Rights Act^{xxxii} stipulates that:

“Every child is entitled to respect for the dignity of his person, and accordingly, no child shall be:

(a) Subjected to physical, mental or emotional injury, abuse, neglect or maltreatment, including sexual abuse;

(b) Subjected to torture, inhuman or degrading treatment or punishment”.

Regardless of this provision Nigeria, has one of the highest statistics of FGM worldwide, accounting for approximately one-quarter of the projected 115–130 million circumcised women in the world with at least 77% of occurrence in the South-South, 68% occurrence in the south-east, 65% occurrence in the south-west (65%), and practised on a lesser scale in the north.^{xxxiii} Statistics show that between the years 2004 and 2015, 19.9 million Nigerian women

and girls have experienced Female Genital Mutilation making Nigeria the third largest Nation prevalent in FGM.^{xxxiv}

The FGM is a flagrant contravention of the human rights of girls and women which is deeply rooted in the discrimination against women and young girls in Nigeria.^{xxxv} It speaks to the unenforceability of Section 11 of the Child Rights Act as this practice is almost often carried on children specifically young girls.

Child Marriage

Although Section 21-23 of the CRA and Section 13 of the Violence against Persons Prohibition Act explicitly prohibit the betrothal or marriage of children who are below the age of 18. Many states in Nigeria observe the culture of marrying under-aged girls and since their unable to give or withhold consent to sex as per their age, their first sexual encounter is usually forced.^{xxxvi}

In Nigeria, the mean age of first marriage is placed at age 17. However, in Kebbi State, it was placed just a little over 11 years.^{xxxvii} In 2005 the National HIV/AIDS and Reproductive Health Survey emphasized that the number of married teenagers and young adults in the Northwest and Northeast consists of about 42% of the entire number of married people in Nigeria.^{xxxviii} This was re-emphasized in 2012 when the State of the Nigerian Girl Report^{xxxix} stated that 78% of the girls in Northern Nigeria are married off by the age of twelve (12).

In 2018, UNICEF estimated that 22 million women and young girls in Nigeria were married in their childhood.^{xl} This was emphasized by the British Council, which stated in its report that more than half of the women in Northern Nigeria are married off by the age of 16 and are likely to give birth to a child during the first year of marriage.^{xli} Further, the Nigeria Demographic and Health Survey in 2008 stated that the median age of marriage for fifteen (15) to nineteen (19) year olds in the Northeast was 15.9 and 15.7 in the Northwest.

Child Soldiers

Section 26 of the CRA^{xlii} prohibits the use of children in criminal activities. Specifically, it provides that:

(1) No person shall employ, use or involve a child in any activity involving or leading to the commission of

any other offence not already specified in this Part of the Act.

(2) A person who contravenes the provisions of subsection (1) of this section commits an offence and is liable on conviction to imprisonment for a term of fourteen years.

Regardless of this provision, members of the Boko-Haram have consistently used children as a weapon of warfare to aid their criminal activities. The Second Country Report of the Secretary-General on Children and Armed Conflict in Nigeria^{xliii} described at least 5,741 severe violations against children between January 2017 and December 2019 in Nigeria. It stated that the conscription and utilization of children accounted for the highest number of confirmed violations, with a total of 3,601 boys and girls affected and used as not just sex slaves but transporters of personnel-borne improvised explosive devices, also known as “human bombs”.^{xliv}

The lack of enforceability and regard for this provision, especially subsection (2) which stipulates the punishment of using children for criminal activities can be seen in the proposed plan of granting repentant members of the Boko-Haram group amnesty.^{xlv} This lack of enforceability is not just as regards Section 26(2) of the CRA but in other areas of the Act. Another example that points to this is the provision of Section 11 of the Child’s Right Act which^{xlvi} stipulates that:

Every child is entitled to respect for the dignity of his person, and accordingly, no child shall be:

- (a) subjected to physical, mental or emotional injury, abuse, neglect or maltreatment, including sexual abuse;*
- (b) subjected to torture, inhuman or degrading treatment or punishment;*
- (c) subjected to attacks upon his honour or reputation.*

Despite this provision, the Nigerian military has detained thousands of children on the suspicion that they are members of an armed Islamist group called “Jama’atu Ahlis Sunna

Lidda'awati wal-Jihad” which means people dedicated to the propagation of the teachings of the Prophet meanwhile in International law, the major distinction between a child soldier and other members of the group is that he is the victim and not the perpetrator.^{xlvii} In an interview with Human Rights Watch,^{xlviii} one boy stated that he was detained for more than two years because he purportedly sold yams to members of the Boko-Haram group. These children were subjected to torture, inhuman and degrading treatment. This was vividly described by the children who were detained at Giwa barracks by the Nigerian military. They stated that^{xlix}:

They were confined in an extremely overcrowded cell with at least 300 children who were forced to lay on their sides, packed tightly together in rows like razor blades in a pack. They suffered in extreme conditions like heat, hunger and an overwhelming stench from hundreds of detainees who had to share a single toilet.

They were subjected to mental injury as they had to watch soldiers take out the dead bodies of children who had died in the cell. Some of them were imprisoned for months, others were imprisoned for years without being charged for a single crime.¹ The United Nations reported that between the year January 2013 and March 2019, the Nigerian armed forces detained over 3,600 children including 1,617 girls on the suspicion that they were involved with non-state armed groups.^{li}

VIOLENCE AGAINST PERSONS PROHIBITION ACT

This Act prohibits all types of violence against all persons in Nigeria including children. It provides protection for persons, remedies for victims and punishment for perpetrators of all forms of violence in Nigeria. The legal responsibility of a child under the VAPP Act is placed at 14 years.^{lii}

Specifically, Section 2 (1) of the VAPP Act stipulates that a person is criminally responsible for the offence of rape except he is less than 14 years of age. It prohibits the circumcision of a woman or a girl child.^{liii} A person who abandons his children without a means of sustenance commits an offence and is liable on conviction to a term of imprisonment not exceeding 3 years or a fine not exceeding 500,000 or both.^{liiv} In reality, Nigeria has one of the highest victims of FGM with almost no prosecution and continuous rising cases of abandoned children.^{liv}

AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD

The ACRWC was enacted to provide a road map for states in Africa to protect the rights and welfare of every child in Africa.^{lvi} When a state prepares to design a Child's Rights Act, the ACRWC should be a reference guide to ensure that the physical, mental, emotional and overall wellbeing of the child is protected. Bearing in mind the peculiarity of the African states and their flagrant disregard for the rule of law. This charter is inadequate in providing a proper road map for African states in the following areas:

1. *Obligation of the State Parties*^{lvii}

Article 1 of the Charter stipulates that:

Member States of the Organization of African Unity Parties to the present Charter shall recognize the rights, freedoms and duties enshrined in this Charter and shall undertake the necessary steps, by their Constitutional processes and with the provisions of the present Charter, to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter.

This provision presupposes that it is compulsory that member states not only identify the rights, liberties and obligations enshrined in this Charter but take required steps to safeguard the provisions of this Charter are adopted and given effect by each member state. However, Article 1 (2)^{lviii} makes a contrary provision to this compulsory mandate by stating that:

Nothing in this Charter shall affect any provisions that are more conducive to the realization of the rights and welfare of the child contained in the law of a State Party or in any other international Convention or agreement in force in that State.

The question is what is the scale of measurement for these more conducive rights? Who provides this scale of measurement? Nigeria for example has a Child Rights Act but can we say that it is more conducive to the realization of the rights and welfare of the child contained in this Charter. The 1999 Constitution^{lix} divided the rights of every individual including children into two. One is the justiciable rights and the other is the non-justiciable rights. The

justiciable rights are referred to as the fundamental rights and fundamental objectives while the non-justiciable rights are referred to as the socio-economic and political objectives which cannot be contended in the courts of law. An example is Section 18 of the 1999 Constitution^{lx} which provides that:

- (1) Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels.*
- (2) Government shall promote science and technology.*
- (3) Government shall strive to eradicate illiteracy; and to this end Government shall as and when practicable provide:*
 - (a) Free, compulsory and universal primary education;*
 - (b) Free university education; and*
 - (c) Free adult literacy programme.*

Section 18 (3) provides that Government shall only provide unrestricted compulsory and universal education when it can. Meanwhile, Article 11 (1) of the ACRWC^{lxi} provides that every child shall have a right to education. This means that regardless of whether it is practicable or not, every child must have an education. Research shows that one out of every five of the world's out-of-school children is in Nigeria and approximately 10.5 million of the country's children aged 5-14 years are not in school.^{lxii} In northern Nigeria, this figure is even lower, as only 47.7 and 47.3 per cent of female children are in school, this means that more than half of the girl children in Northern Nigeria have no formal education.^{lxiii} In the north-eastern Nigeria which is torn by the Boko-Haram armed conflict, at least 802 schools have been closed, 497 classrooms destroyed and 1,392 damaged but repairable leaving at least 2.8 million children out of school.^{lxiv}

Also, Article 4 of the ACRWC provides for the best interest of a child. Specifically, it stated that, "In all actions concerning the child undertaken by any person or authority, the best interests of the child shall be the primary consideration".

This was repeated in Section 1 of the CRA. However, the question is what is the best interest of a child? Who determines what the best interest of a child is? Do children in Nigeria have a say as to what their best interest is? In Nigeria where child marriage is prevalent, harmful practices and FGM is one of the highest in the world with parents believing that it's in the best

interest of a child to imbibe these practices, will it not be best that the best interest of a child is explicitly spelt out.

In 2021, the Human Rights Watch^{lxv} interviewed a few girls who were victims of child marriage, Hafsa N. from Kano state, one of the victims who was married at 14 to a 30-year-old man from a neighbouring village, said:

When her mother's co-wife sat her down to explain that she would soon become someone's wife she wasn't happy. "But my [stepmother] said that even if it's my dead body, they're going to take it to the husband, they don't give a damn about it. They don't care. So, I don't have any option. I spent days crying, but nobody listened, and nobody cared, because there was no one to stand up for me." Now 17, she has had two children, but one died because of untreated measles.

Another community leader stated that^{lxvi}:

The main reason why parents allow their daughters to marry very early is to avoid shame; they try to avoid promiscuity which may lead to unwanted pregnancy. They prefer early marriage to our young girls becoming prostitutes. Our culture does not permit misbehaviour by girls, even boys must marry early to be responsible. A girl's father must marry her off appropriately.

However, Article 4 (1)^{lxvii} further provided that:

In all judicial or administrative proceedings affecting a child who is capable of communicating his/her views, an opportunity shall be provided for the views of the child to be heard either directly or through an impartial representative as a party to the proceedings, and those views shall be taken into consideration by the relevant authority per the provisions of appropriate law.

This was somewhat reiterated in Article 7 of the ACRWC of the Child^{lxviii} which stated that, "Every child who is capable of communicating his or her views shall be assured the right to express his opinions freely in all matters and to disseminate his opinions subject to such restrictions as are prescribed by-laws".

In Nigeria, hearing disorder was documented in 65.2% children, speech disorders in 30.4% of children, rhinolalia in 2.2% of children and stuttering in 2.2% of children. 70% of children who had a hearing disorder, had delayed speech while 78.6 % of the children with speech disorders had specific language impairment (SLI).^{lxix} This means that the rights of children with these disabilities were not taken into consideration as there will be no opportunity for their views or opinions to be expressed and heard or considered by the relevant authority.

Article 10^{lxx} which provides for the protection of privacy stipulates that:

“No child shall be subject to arbitrary or unlawful interference with his privacy, family home or correspondence, or to the attacks upon his honour or reputation, provided that parents or legal guardians shall have the right to exercise reasonable supervision over the conduct of their children. The child has the right to the protection of the law against such interference or attacks”.

This provision protects the privacy of children, on one hand, on the other hand, it provides that parents or legal guardians shall have the right to “exercise reasonable supervision”, the question is what is reasonable supervision? And who determines what reasonable supervision is? This provision is a convenient avenue for parents to disregard this provision and arbitrary interference with the privacy of children.

Article 11(2)^{lxxi} also provides that:

“The education provided to children shall be aimed at, upholding the preservation and strengthening of positive African morals, traditional values and cultures”.

This provision does not explicitly provide what positive African morals, traditional values and culture are and is subject to interpretation and misinterpretation, especially in Nigeria where harmful practices are enforced by harmful gender norms, specifically patriarchal and misogynistic norms grounded on inequality between women and men, girls and boys, as well as preposterous chastity norms. Because these norms have been accepted by a significant

segment of society, they can be said to be positive African morals, traditional values and cultures by many.^{lxxii}

Article 13 provides generally for the rights of handicapped children in Africa. However, subsection (2) provides that:

“State Parties to the present Charter shall ensure, subject to available resources, to a disabled child and those responsible for his care, assistance for which application is made and which is appropriate to the child’s condition and in particular shall ensure that the disabled child has effective access to training, preparation for employment and recreation opportunities in a manner conducive to the child achieving the fullest possible social integration, individual development and his/her cultural and moral development”.

This means that if the state does not have available resources, disabled children will have no access to training, preparation for employment and recreation opportunities. The internationally recommended benchmark for national budgets on education is 15-20 per cent.^{lxxiii} Nigeria increased its allocation to 7.2 per cent from 5.7 per cent allocated in 2021. This is still way below the recommended budget for education considering that Nigeria has at least 10.5 million children out of school,^{lxxiv} which is one of the highest rates of out of school children globally.

Article 22^{lxxv} provides for the rules of armed conflicts. Specifically, it stipulates that:

“State Parties to this Charter shall undertake to respect and ensure respect for rules of international humanitarian law applicable in armed conflicts which affect the child”.

It also provides that:

“State Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in

hostilities and refrain in particular, from recruiting any child”.

It further provides in subsection (3) that:

“State Parties to the present Charter shall, per their obligations under international humanitarian law, protect the civilian population in armed conflicts and shall take all feasible measures to ensure the protection and care of children who are affected by armed conflicts. Such rules shall also apply to children in situations of internal armed conflicts, tension and strife”.

However, Article 31^{lxxvi} provides for the responsibility of a child, in providing for this responsibility, it provides that:

“Every child shall have responsibilities towards his family and society, the State and other legally recognized communities and the international community. The child, subject to his age and ability, and such limitations as may be contained in the present Charter, shall have the duty:

- (b) to serve his national community by placing his physical and intellectual abilities at its service;
- (c) to preserve and strengthen social and national solidarity;
- (e) to preserve and strengthen the independence and the integrity of his country”.

Article 31 is in direct contravention to Article 22. How can a child place his physical and intellectual abilities at the service of a Nation without taking direct part in hostilities and recruiting children as prohibited by Article 22? This shows that children are not protected from internal armed conflicts, tension and strife. This was seen in the reports by UNICEF,^{lxxvii} which stated that between 2013 and 2017, more than 3,500 children have been recruited and used by members of the Boko-Haram armed group in the ongoing armed conflict in northeast Nigeria.

RECOMMENDATION

This paper recommends that the provisions of the ACRWC that leave room for alternatives and confliction be amended to ensure compliance by states. This paper also recommends that the CRA be adopted by states especially states in the northeast and northwest to ensure adequate protection of children in those states. In addition, it recommends that the right to free education, free healthcare, good shelter and welfare be made justiciable in the 1999 Constitution of Nigeria. It further recommends that the provisions of International Humanitarian Law especially as regards the prohibition of the use of children in armed conflict is incorporated into the Child's Right Act. Finally, it recommends that a real enforcement mechanism be created to address the numerous violations of children in Nigeria.

CONCLUSION

The ACRWC and the CRA made interesting provisions for the protection of children in Nigeria. However, this legislation leaves room for conflict and redundancy in terms of interpretation and enforcement. This paper concludes that when legislation is left with several alternatives for states to choose from, these laws will become incapable of actual enforcement and in the long run, become redundant. More specifically, when legislation intended to protect the rights of children is redundant, children are left with no protection, leaving them vulnerable to abuse, torture and arbitrariness from the very people who ought to protect them.

ABBREVIATIONS

ACRWC- African Charter on the Rights and Welfare of the Child.

CRA- Child Rights Act.

FGM- Female Genital Mutilation.

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