

IMPEDIMENTS TO THE REALISATION OF THE CHILD'S RIGHTS ACT: THE CASE OF NIGERIA *

ABSTRACT

Enacting the Child's Rights Act in 2003 was a significant step towards realizing the child's universally recognized rights, such as the rights to survival, development, and protection. The provisions of the law have also been domesticated in some of the 36 states of the country. However, while recognizing the rights of the child is a commendable start, the provisions of the Act have been very difficult to actualize. After several years of enactment, the child is still far from fully enjoying the protection granted under the Act. This is due to several factors discussed in this article, which include law-related causes, access to and affordability of institutional safeguards, corruption, administrative, religious, economic, and socio-cultural issues. This article argues that a careful evaluation of these problems with a view to resolving them will assist in the actualization of the Child's Right Act.

Keywords: Child's Rights Act, implementation, Impediments, Barriers, awareness, corruption, access, socio-economic rights, health, education, child marriage.

Introduction

The idea of children's rights has prompted legislative, judicial, and legal responses on an international, regional, and local scale. While some believe that children, as young people, have the same rights as adults but are unable to exercise them; therefore, until the child is of age, an adult must serve as the trustee of those rights, others contend that children need additional protection beyond the rights they already have as people because of their inherent vulnerability to various sorts of abuse. In order to accomplish this, the child's family and the state must take up the responsibility of ensuring that the child receives the unique level of protection to which he is entitled.

The word 'right,' is derived from the Latin word, *rectus* which means correct or straight. The Black's Law Dictionary defines human rights as freedoms, immunities, and benefits that all human beings should be able to claim.¹ Human rights are those

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¹ BA Garner, *Black's Law Dictionary* (8th edn, West Publishing Co 2004).

basic claims and natural entitlements that are universally recognised as belonging to every human being equally.² They are inalienable, inseparable from his being, and must be enjoyed by all irrespective of race, social or ethnic background, gender, or status. They include the right to life, liberty, and security of human persons; freedom from discrimination, slavery, and cruel, inhuman, and degrading treatment; equality before the law; fair hearing; marriage by consent; ownership of property; free and compulsory education at the elementary level; and a standard of living adequate for the health and well-being of a person and his family, amongst others.³

A child, according to Black's Law Dictionary, is a person 'under the age of majority'.⁴ Under Article 1 of the United Nations Convention on the Rights of the Child, a child is 'every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier'. Nigeria is governed by both customary and statutory laws, as the Nigerian legal system is pluralistic in nature. Nigerian customary law stems from the native laws, customs, and practices of the people, which vary from one ethnic group to another, giving rise to an estimate of about 350 ethnic practices.

The definition of "child" varies and occasionally contradicts itself due to the structure of the Nigerian legal system. Under Nigerian customary law, the assessment of whether or not a person is a child is dependent on the customary law of the place where the matter arose.⁵ One of the grounds for determining childhood among numerous ethnic groups in Nigeria is the person's inability to care for himself and his family while also contributing financially to the community's growth.⁶ Among the Ibos in the eastern part of Nigeria, a person ceases to be a child upon joining an age group and undergoing initiation rites. Still among the Ibos, a first male child, for the purpose of inheritance, remains a child until the death of his father. Under Islamic law and practices, a child is defined based on his level of physical maturity.⁷

² U Armstrong, *Child Marriage in Nigeria: The Health Hazards and Socio-Legal Implications* (Lulu Press 2014); O Olusegun and O Ajigboye's, 'Realizing the Right to Development in Nigeria: An Examination of Legal Barriers and Challenges' (2015) 6(1) *Afe Babalola University: Journal of Sustainable Development, Law and Policy*; 145, 168; *Uzoukwu v. Uzoukwu* (1999) 6 NWLR pt. 200, 708 at 760 – 761

³ UDHR 1948 arts 3, 4, 5, 7, 10, 16, 17, 26 and 25.

⁴ Oxford Dictionary of English (Oxford University Press 2015).

⁵ MA Nwachuku, 'An Examination of Customary and Statutory Legal Meaning of a Child in Nigeria: A Stream of Two Waters that do not Meet' [2016] 52 *Journal of Law, Policy and Globalisation*; 167.

⁶ Nwachuku (n 5) 168.

⁷ EI Alemika and SK Kigbu, 'Translating the Legal Framework of the Rights of the Child (The Child's rights Act 2003) Into Effective Practice Through Human Rights Education in

Statutory laws, often known as 'received English laws', are codified and exist in various statutes. These laws, just like the customary laws, are also conflicting and are discussed in the later part of this paper.

Following the signing and ratification of the CRC by the Nigerian Government, it became obligatory to incorporate the provisions of the Convention into a national law. The Child's Right Act (CRA) is made up of 278 sections, eleven schedules and twenty four parts. In addition to the CRA, there are other domestic instruments on the protection of the rights of the child in Nigeria, some of which are: The Children and Young Persons Act which deals specifically on juvenile justice, Labour Act 1971, which protects children from exploitative and harmful labour; Births, Deaths, etc. (Compulsory Registration) Act, 1992, which provides for the compulsory registration of every child; the Matrimonial Causes Act 1970 and the Marriage Act 1914 which deal on the care and custody of children. Others are the Universal Basic Education Act, 2003 and Compulsory, Free Universal Basic Education Act which were enacted pursuant to the obligation of states parties under the CRC to foster education; the Nigerian Children's Trust Fund Act 1990 which establishes a trust fund for the provision of welfare packages, and social services for children; and the Discrimination against Persons with Disabilities (Prohibition) Act, 2018 which protects persons with physical, mental or sensory impairment which could interfere with the person's societal participation.

The National Human Rights Commission (Amendment) Act, 2010 establishes a body for the protection of the rights of every human person, and the Borstal Institutions and Remand Centres Act 1990 provides for the commission to and treatment of children in remand centres and Borstal institutions; and the Criminal Code Act 1990 make some provisions on the protection of children involved in criminal activities; and the Trafficking in Persons (Prohibition), Enforcement and Administration Act 2015 protects children from trafficking, injurious domestic work, sexual exploitation and harm caused by human trafficking.

The rights of the child can be discussed under four categories such as the survival rights, development rights, participation rights and the rights to protection. The survival rights of the child encompasses the right to life, right to survival and development, right to health and healthcare services, right to dignity, right to freedom from discrimination, right to a name and birth registration.⁸ Under the second category of rights, the development rights, there is the right to free compulsory and universal primary education, the right to leisure, recreation and cultural activities,

Nigeria' <www.ihrec2015.org/sites/default/files/Panel%2010.%20Alemika%20-%20paper.pdf> accessed October 18 2017.

⁸ Child Right Act 2003 (CRA 2003), ss 4 and 12; Georgina M. Osaroei, 'Child Protection in Nigeria: An Overview of the Child's Rights Act' (2018) 7(3) *PHLJ* 379, 381.

freedom of thought, conscience and religion, and the right to parental care, protection and maintenance.⁹ There is also the participation rights under which the child's freedom of movement, expression, association and peaceful assembly, and the right to personal liberty are protected. Vulnerable children such as orphans, abandoned or neglected children and homeless children are equally protected under the CRA.¹⁰

The Nigerian child today suffers various forms of violation without redress. This is a serious challenge that can be attributed to several factors, such as religious beliefs, lack of sensitization, political factors, socio-cultural factors, lack of uniformity of laws, economic factors, and administrative factors, amongst others. There appears to be a wide gap between the rights as provided under international, regional, national, and local child rights laws and what is obtainable in practice.¹¹ These challenges are discussed in detail below:

1. Legal Barriers

a. Exclusive Legislative Powers of States Houses of Assembly

The State Houses of Assembly are vested with exclusive jurisdiction to legislate on all matters on the residual legislative list. Matters relating children's rights fall under the residual list over which state houses of assembly have exclusive legislative powers. Therefore, the CRA is not binding on any state unless and until adopted by that state. The CRA was enacted in 2003, but till date, only about 29 out of the 36 states in Nigeria have adopted it¹². The rights enshrined in the CRA cannot be enforced in any of the remaining states unless and until it is domesticated by them.

b. Economic and Social Rights are not justiciable under the 1999 Constitution

Under the 1999 Constitution¹³, economic and social rights such as the rights to security, free and compulsory education, food, shelter, health, safety, welfare, and freedom from exploitation and neglect, amongst others, recognised in Chapter 2 of the 1999 Constitution are unenforceable. By the provisions of Parts 14 and 19 of the CRA, day care centres, children's homes and other institutions are to be established and maintained for children. The government is also required to make provisions for

⁹ Georgina M Osaroei, (n 8), 382.

¹⁰ *ibid* 383.

¹¹ O S Akinwumi, 'Legal Impediments on the Practical Implementation of the Child's rights Act 2003' [2009] 37 (3) *International Journal of Legal Information*; 391.

¹² Bureau of International Labor Affairs, 'International Child Labor and Forced Labor Reports: Findings on the Worst Forms of Child Labor – Nigeria' <www.dol.gov/agencies/ilab/resources/reports/child-labor/nigeria> accessed 23 May 2023.

¹³ Constitution of the Federal Republic of Nigeria 1999 (1999 Constitution/CFRN 1999).

children in need. However, under the doctrine of supremacy and operation of Chapter 2 of the 1999 Constitution, these responsibilities of the government are discretionary.

c. Attitude of the Court Towards Enforcement of Directive Principles of State Policy

Social-economic rights are now being enforced by courts in countries like India, though under the Indian Constitution, the rights are recognised as directive principles of state policy¹⁴. In the Indian case of *Khet Mazdoor Samity & Ors. v State of West Bengal & Anor.*,¹⁵ the petitioner could not receive medical treatment from the six public hospitals he visited because they lacked the required medical facilities. The Court held that the right to life imposes on the state the duty to protect and preserve human life by providing emergency treatment in state hospitals. The state was ordered to pay damages for the loss incurred by the petitioner.

It is worthy of note that Chapter 2 of the 1999 Constitution was extracted from the Indian Constitution.¹⁶ Indian courts now enforce the sections of the Constitution declared non-justiciable but Nigerian courts are yet to do the same. In the case of *Falana v. A. G. Federation*,¹⁷ the applicant sought to enforce the right to health provided under the 1999 Constitution and the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act 2004.¹⁸ He argued that the treatment of public officers in foreign hospitals at public expense while public hospitals are not equipped is a violation of his right and urged the Federal High Court to compel the Federal Government to repair and equip public hospitals. The Court held that section 17 of the Constitution is not enforceable.

In the landmark case of *Socio-Economic Rights and Accountability Project (SERAP) v. the Federal Republic of Nigeria & Anor.*,¹⁹ SERAP sought to enforce the right to free, compulsory and universal education. The federal government challenged the jurisdiction of the ECOWAS Community Court of Justice on the ground that free education provided under chapter 2 of the 1999 Constitution is not justiciable, but the ECOWAS Court in Abuja, dismissed this argument, holding that ‘the contention of the government that the right to education is not justiciable as it falls within the directive principles of state policy cannot hold’.

¹⁴ *C.E.S.C Ltd. v Subhash Chandra Bose & Ors* 1992 AIR 573 Para 293 – 294.

¹⁵ (1996) AIR SC 2426.

¹⁶ Remigius N Nwabueze ‘The Legal Protection and Enforcement of Health Rights in Nigeria’ in Flood C M and Gross A (eds), *Right to Health at the Public/Private Divide: A Global Comparative Study* (Cambridge University Press 2014)387.

¹⁷ Suit No. FHC/IKJ/CS/M59/10.

¹⁸ CFRN s 17(3)(d); ACHPR 2004 art 16(2)(d).

¹⁹ No ECW/CCJ/APP/0808, 37 October, 2009.

By this decision, the Nigerian child's right to education is paramount to any objective of state policy, but unfortunately, the ECOWAS Court lacks the mechanism to implement its decision, and as a result, the federal government has refused to obey the Court's decision in this case.²⁰

In comparison to other things, it is thought that the government's refusal or failure to implement economic, social and cultural rights such as the right to free and compulsory education at all levels, as well as the right to free and quality healthcare and shelter, is due to the high cost of implementation.²¹ It has also been argued that economic, social and cultural rights should be gradually realised.²² It is undisputable that the cost of providing free and quality education, healthcare, and shelter is high, but this should not be considered an excuse, especially when it has been established that available funds are mismanaged and misappropriated, and considering the fact that it has been over twenty-two years since the passage of the 1999 Constitution.²³

d. Domestication of International Laws

The provision of the 1999 Constitution that no law shall be enforceable unless enacted by the National Assembly,²⁴ renders the direct invocation of international laws and treaties on children's rights by a domestic court impossible. But where an international treaty is directly incorporated into an Act of the National Assembly and there is a conflict between the treaty and any municipal law, the provisions of the treaty prevail. In the case of *Abacha v Fawehinmi*,²⁵ the Supreme Court held that the African Charter was incorporated into domestic laws by the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act cap 10 LFN 1990

²⁰ Adetokunbo Mumuni. 'Litigating Corruption in International Human Rights Tribunals: SERAP Before the ECOWAS Court' (Open Society Foundations New York, 2016) <<https://www.opensocietyfoundations.org/sites/default/files/legal-remedies-8-mumuni-20161014.pdf>> accessed 22 December 2017.

²¹ Frederick A. Obi, 'Enforcement of Economic, Social and Cultural Rights in Nigeria' (2022) 5(1) *African Journal of Social Issues* <<https://www.ajol.info/index.php/ajosi/article/view/244748>> Accessed 10 May 2023.

²² Frederick A. Obi (n 21)

²³ U. Emelonye, 'Implementation of International Human Rights Obligations in Nigeria: Civil Society Perspective' (2021) 8(6) *Advances in Social Sciences Research Journal*; 330 <<https://doi.org/10.14738/assrj.86.10383>> accessed May 23 2023; Nwachukwu Prince Ololube, 'Education Fund Misappropriation and Mismanagement and the Provision of Quality Higher Education in Nigeria' (2016) 9(4) *International Journal of Scientific Research in Education*; 333; Chris Albin-Lackey and Human Rights Watch, 'Chop Fine: The Human Rights Impact of Local Government Corruption and Mismanagement in Rivers State Nigeria' (2009) 19(2) *Human Rights Watch*; 42.

²⁴ CFRN 1999 s 12(2).

²⁵ (2001) AHRLR 172.

(now cap A9, LFN 2004). Therefore, where there is conflict between any municipal law and the African Charter, the Charter, which has already been domesticated, shall prevail, as it is not intended that international obligations should be breached.²⁶ However, this position does not give international law superiority over the Constitution.²⁷ So where such a treaty conflicts with the constitution and the case is before a Nigerian court, the constitution will prevail.

e. Lack of Uniformity

Lack of uniformity in statutory provisions on the rights of the child is yet another factor militating against the realisation of the rights of the Nigerian child. Under Islamic law and practice, a child is defined based on the level of his physical maturity²⁸. Under the Children and Young Person Act 1958, a child is a person under fourteen years²⁹; the Labour Act 1971 defines a child as a young person below the age of 12³⁰; the CRA sets the age below 18 years³¹; Penal Code, 14 years³²; the Immigration Act 1963, below 16 years; and the Matrimonial Causes Act 1970 sets maturity at 21 years of age. Even among the states domesticating the CRA, the definition of the child varies: Akwa Ibom State sets the age of maturity at 16 years, while Jigawa defines a child by the attainment of puberty.³³ With these conflicting statutory provisions relating to the issue of child rights protection, it is uncertain whether the rights of the Nigerian child can be fully actualised.³⁴

²⁶ *Abacha v Fawehinmi* (2001) AHRLR 172.

²⁷ *Abacha* (n 26); O. Ogunde, 'Democracy and Child's rights Protection: The Problem of the Nigerian Constitution' in C. Akrivopoulou (ed) *Defending Human Rights and Democracy in the Era of Globalization* (IGI Global, 2017) 130.

²⁸ E. I. Alemika and S. K. Kigbu, 'Translating the Legal Framework of the Rights of the Child (The Child Rights Act 2003) Into Effective Practice Through Human Rights Education in Nigeria' <www.ihrec2015.org/sites/default/files/Panel%2010.%20Alemika%20-%20paper.pdf> accessed October 18 2017.

²⁹ CYPA 1958 s 2.

³⁰ LA 1971 s 91(1).

³¹ CRA s 277.

³² PC s 282(1)(e).

³³ Committee on the Rights of the Child, 'Consideration of Reports Submitted By States Parties Under Article 44 of The Convention' (Committee on the Rights of the Child, 54th Session, 11 June 2010) <<http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.NGA.CO.3-4.doc>> accessed 16 November 2016.

³⁴ E. I. Alemika and S. K. Kigbu, (n 26).

f. Supremacy of the 1999 Constitution

The supremacy of the 1999 Constitution is another barrier to the implementation of child's rights laws.³⁵ The validity of laws enacted by the National and State Houses of Assembly as well as international treaties is dependent on their consistency with the provisions of the constitution.³⁶ This has been a major barrier to the nullification of child marriage in Nigeria. The CRA prohibits child marriage, sets the minimum age for marriage at 18, and makes child marriage and betrothal a punishable offence.³⁷ However, by the interpretation of Part 1, item 61 of the Second Schedule to the 1999 Constitution, the federal government lacks the exclusive legislative power to enact laws on the formation, annulment, and dissolution of customary and Islamic marriages. Thus, perpetrators of child marriage in Nigeria have always been armed with the 'Islamic law marriage' shield.

2. Access to Institutions

Accessibility may be viewed from four perspectives: the ability of the child to gain entrance into any institution and receive services without restraint; affordability of resources; equal treatment; and access to information³⁸

- a. **Ability of the child to gain entrance into any institution and receive services without restraint:** this entails that schools, and health centres, or other institutions should be located at a place where the child can easily access them without any harm to his body; there should be good access roads and security; and institutions should not be far from communities.³⁹ Child care centres should be located in areas where the rights of the child are mostly threatened; the complaint procedure should be child-friendly and officers should be receptive. However, this is not the case in Nigeria, as some children risk their lives trying to assess educational

³⁵ CFRN 1999 s 1(1).

³⁶ CFRN 1999 s 1(3).

³⁷ CRA 2003 ss 21 & 23.

³⁸ International Council on Human Rights Policy, 'Corruption and Human Rights: Making the Connection' (2009) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1551222> accessed 23 May 2023; A. Abudoo, 'Adoption of Human Rights Approach' in A. C. Onuora – Oguno, W. O. Egbewole and T. E. Kleven (eds), *Education Law, Strategic Policy and Sustainable Development in Africa: Agenda 2063* (Springer International Publishing 2017) 34; B. J. Madrid and D. Traisci – Marandola, 'Child's Right to Health, Education, and Freedom from Hunger' in Sibnath Deb (ed), *Child Safety, Welfare and Well-being: Issues and Challenges* (Springer 2015) 119.

³⁹ A. Abudoo, 'Adoption of Human Rights Approach' in A. C. Onuora – Oguno, W. O. Egbewole and T. E. Kleven (eds), *Education Law, Strategic Policy and Sustainable Development in Africa: Agenda 2063* (Springer International Publishing 2017) 34.

institutions.⁴⁰ Some Nigerian schools are in shambles with dilapidated buildings, falling and leaking roofs, insufficient chairs and tables, and insufficient learning materials.⁴¹

Lack of access to justice is yet another factor affecting the effective implementation of child rights. Family courts are yet to be established across the 36 states of the federation, and juvenile cases are heard in regular courts,⁴² which are neither structurally child-friendly nor presided over by specially trained judicial officers.⁴³ Contrary to the provisions of the CRA⁴⁴ corporal punishment and death penalty are still pronounced on juvenile offenders.⁴⁵

- b. **Goods and services needed by the child should be affordable:** Education should be free at the elementary level, and public healthcare services should be within the financial reach of the child or his guardians. The efforts of the federal and state governments in the provision of free medical services, subsidized drugs, and increased health care centres are commendable. However, statistics show that only about 30% of health care services are provided by the government; the private sector provides about 70%.⁴⁶ Thus, the cost-reduction scheme of the government is rendered ineffective as the percentage of health services dispensed by the public health sector is very low compared to that of the private health sector.

The National Health Act (2014), which makes health care services in public hospitals free to pregnant women and disabled children, is not fully implemented,⁴⁷ and primary education in some public schools in Nigeria is not

⁴⁰ Ameh Comrade Godwin, 'Eight Pupils, Pregnant Woman Drown in a Mysterious River in Akwa Ibom State' <<http://dailypost.ng/2015/07/27/eight-pupils-pregnant-woman-drown-in-mysterious-river-in-akwa-ibom/>> accessed 10 December, 2017.

⁴¹ Olaitan Olusegun and Oyeniyi Ajiboye, 'Realizing the Right to Development in Nigeria: An Examination of Legal Barriers and Challenges' (2015) 6(1) *Afe Babalola University: Journal of Sustainable Development Law & Policy*; 145, 163.

⁴² Niyi, '14-Year-Old Girl Faces Murder Trial Over Forced Marriage' *Information Nigeria* (2014) < <https://www.informationng.com/2014/08/14-year-old-girl-faces-murder-trial-over-forced-marriage.html> > accessed 18 December 2017.

⁴³ Menizibeya Osain Welcome, 'The Nigerian Health Care System: Need for Integrating Adequate Medical Intelligence and Surveillance Systems' (2011) 3(4) *Journal of Pharmacy BioAllied Sciences*; 470.

⁴⁴ CRA s 221.

⁴⁵ Niyi (n 42); Rap Nigeria, 'Child Marriage is Total Violation of Human Rights and Child Rights Act 2003' < www.rapnigeria.org/index.cfm/page/691 > accessed 13 May 2023..

⁴⁶ Remiguis N. Nwanbueze 'The Legal Protection and Enforcement of Health Rights in Nigeria' in Collen M. Flood and Aeyal Gross (eds), *Right to Health at the Public/Private Divide: A Global Comparative Study* (Cambridge University Press 2014) 374; Menizibeya Osain Welcome, (n 43).

⁴⁷ International Council on Human Rights Policy (n 38).

totally free; parents still pay tuition fees and purchase other school materials for their children.⁴⁸

According to the analysis of the Ministry of Budget and National Planning, which was done in conjunction with UNICEF in 2022, 54% of children in Nigeria are too poor to afford the required nutrition, healthcare, education, water, sanitation, adequate housing, and information.⁴⁹ While 65.7% of these children reside in rural areas, the remaining 28.4% reside in urban areas.⁵⁰ Another report reveals that children were more vulnerable to child labour, sexual exploitation, child trafficking, and child marriage because of Nigeria's 2023 cashless policy and withdrawal of old currency notes.⁵¹ These reports provide a clear roadmap for the Nigerian government to follow when planning the national or state budget, and in formulating fiscal policies.

- c. **The child should be given the same equal and adequate treatment as others without discrimination:** In the provision of health care services, marginalised groups or those in rural areas should not be given the same equal opportunity and treatment as others. However, in Nigeria, this is not the case. For instance, the National Health Insurance Scheme (NHIS), which was established with the aim of providing standard or high quality healthcare services to the public at an affordable rate⁵² is not enjoyed by all.⁵³ About 52 - 60% of the entire population does not benefit from the scheme because they work in the informal sector.⁵⁴ Muslim girls do not enjoy the same equal protection as other girls, as perpetrators of child marriage hide under the cover of Islamic law.⁵⁵ Notwithstanding the provisions of the Discrimination against Persons with Disabilities (Prohibition) Act, 2018, government agencies still fail to protect children and young people with disabilities from discrimination, exclusion, and harm, particularly in poverty-and conflict-affected areas.⁵⁶ Persons with disability

⁴⁸ Bureau of International Labor Affairs (n 12).

⁴⁹ UNICEF Nigeria, 'New Evidence on the Situation of Child Deprivation in Nigeria' (27 May 2022) <www.unicef.org/nigeria/press-releases/new-evidence-situation-child-deprivation-nigeria> accessed 13 May 2023

⁵⁰ *ibid.*

⁵¹ United Nations Office for the Coordination of Humanitarian Affairs, 'Child Protection Area of Responsibility, North-east Nigeria - First Quarter Brief 2023' (*Reliefweb*, 4 May 2023) <https://response.reliefweb.int/nigeria/child-protection> accessed 13 May 2023.

⁵² National Health Insurance Scheme Act 2004 s18 (1).

⁵³ Remiguis N. Nwanbueze (n 46) 379.

⁵⁴ Menizibeya Osain Welcome, (n 43).

⁵⁵ T.S. Braimah, 'Child Marriage in Northern Nigeria: Section 61 of Part 1 of the 1999 Constitution and the protection of Children against Child Marriage' (2014) 14 *AHRLJ*; 474, 486.

⁵⁶ Asylos and Asylum Research Centre (ARC) Foundation, 'Nigeria: Children and Young People with Disabilities' < www.asylos.eu/nigeria-report> accessed 13 May 2023.

are made to rely on informal institutions due to stigma, discrimination and inadequate funds.⁵⁷ Children and young persons with disabilities returned to Nigeria face social and economic difficulties, with no systematic procedures in place to protect and rehabilitate them.⁵⁸ This makes them vulnerable to social vices and creates hurdles on their path to accessing quality healthcare, education and social services.

There is a significant gap in public schools' curriculum. The curriculum is still based on the Universal Basic Education (UBE) adopted several years ago. While children in private schools are taught digital skills and coding, their counterparts in public school are not.⁵⁹

d. The child should not be denied any information necessary to enhance his physical, moral, emotional, cultural, religious, social and economic wellbeing:

Information on sexual and reproductive health should be available and accessible.⁶⁰ Access to such information forms part of the survival rights of the child.⁶¹ The Committee on Economic, Social, and Cultural Rights (CESCR) places the duty of realizing the right to access information on reproductive health on the shoulders of the government.⁶² However, in Nigeria, due to the high level of social and economic diversity, most Nigerian women, especially those in rural areas, are deprived of their enjoyment of this right. Most people, including children, are not enlightened on the benefits of education, the consequences of child labour on the mental, physical, moral, educational, and social development of the child; and the negative effects of child marriage on the child's health and future. Hence, the child is continually engaged in these harmful practices.

⁵⁷ *ibid.*

⁵⁸ *ibid.*

⁵⁹ Akindare Okunola, '5 Issues Nigeria Must Address to Ensure Every Child Can Access a Quality Education' (*Global Citizen*, 11 September 2020) < <https://www.globalcitizen.org/en/content/issues-nigeria-must-address-quality-education/> > accessed 13 May 2023.

⁶⁰ CRC art 24; SS Hom, C Peter and ST Russel 'The Right to be who you Are' in M Peterson – Badali and M Freeman (eds), *Handbook of Children's Rights: Global and Multidisciplinary Perspective* (Routledge 2017) 230; Committee on Economic, Social and Cultural Rights, General Comment No 14, Para 14; International Covenant on Economic, Social and Cultural Rights, art 12(2)(a).

⁶¹ G Mirugi-Mukundi, 'A Human Rights-based Approach to Realizing Access to Sexual and Reproductive Health Rights in Sub-Saharan Africa' in E Durojaye (ed), *Litigating the Right to Health in Africa: Challenges and Prospect* (Routledge 2016) 45.

⁶² CESCR, General Comment No 14; Gladys Mirugi-Mukundi (n 61) 49.

3. Institutional and Administrative Factors

As earlier discussed, there are several institutions charged with the duties of promoting and safeguarding children's right. Efficient discharge of these duties is dependent on the availability of material resources and qualified officials. In Nigeria, appointment into these institutions is primarily based on political reasons rather than possession of the requisite qualifications or training.⁶³ Without qualified officers, child protection agencies are unable to function efficiently. The Nigerian Police, for instance, lacks the financial resources and knowledge necessary to interact with victims of child violence or abuse.⁶⁴ The Nigerian standard of policing is one man to 14,000 people as against the UN standard of one policeman to 400 people.⁶⁵ Even the health system is poorly funded⁶⁶ and health providers lack the requisite training.⁶⁷ The Nigerian Legal Aid Council, established to provide legal services to indigent Nigerians, is poorly funded; hence, children from poor homes are deprived of their rights to free legal services.⁶⁸ Regulating domestic labour has not been easy because the Nigerian social welfare system is weak.⁶⁹ For instance, children taken off the streets always return to the streets, as no alternative measures is provided⁷⁰.

Some institutions are below international standards due to insufficient government funding.⁷¹ During the African Summit on HIV/AIDS, TB, and Other Related Infectious Diseases held in 2001, 15% of the country's annual budget was recommended for the provision of health care services.⁷² However, Nigeria has not

⁶³ Olaitan Olusegun and Oyeniyi Ajiboye, 'Realizing the Right to Development in Nigeria: An Examination of Legal Barriers and Challenges' (2015) 6(1) *Afe Babalola University: Journal of Sustainable Development Law & Policy*; 145.

⁶⁴ Emilie Seeker, 'Barriers to the Effective Implementation of the U N Convention on the Rights of the Child in the Niger Delta of Nigeria, in Afua Twum-Danso Imoh and Nicolas Ansell (eds), *Children's Lives in an Era of Children's Rights: The Progress of the Convention on the Rights of the Child in Africa* (Routledge 2014).

⁶⁵ Gankam Tambo Ina *Child Domestic Work in Nigeria: Conditions of Socialisation and Measures of Intervention* (Waxmann Verlag 2014) 296.

⁶⁶ Remiguis N. Nwanbueze (n 46) 374.

⁶⁷ G. Mirugi-Mukundi (n 61) 61.

⁶⁸ CRA s 155; Emilie Seeker (n 64).

⁶⁹ Gankam Tambo Ina (n 65) 294.

⁷⁰ Asylus and Asylum Research Centre (ARC) Foundation (n 56)

⁷¹ Obiajulu Nnamuchi and Miriam Anozie and Festus Ukwueze, 'Maternal Health and Millennium Development Goal (MDG) 5 in Nigeria: Any Catalytic Role for Human Rights?' [2015] 34 *Medicine and Law*; 381, 410.

⁷² G. Mirugi-Mukundi (n 61) 58.

been able to meet the required standard; only 5.3% of GDP is allocated for health care delivery.⁷³

The reality of the Nigerian juvenile justice system is nothing compared to the alluring picture painted by the CRA. Juvenile offenders as young as 13 years of age, some of whom are awaiting trial and others convicted of minor offences like petty theft and street hawking, are reprimanded in the same prison as adults, where they are plagued with deteriorating health, hunger, violence, torment, neglect and eventually, death.⁷⁴ The remand home has lost its major objective, which according to the CRA is not punitive but to care for, correct, and educate child offenders to fit into and be productive in society.⁷⁵

4. Awareness

The value of information in national development cannot be overemphasised. A strong and continuous awareness campaign on the rights of the child can reform the minds of the public, thus persuading the government to form policies that would lead to the actualisation of the child's rights in Nigeria.⁷⁶ According to the Holy Bible, 'My people are destroyed for lack of knowledge'⁷⁷. This biblical provision represents the current position in Nigeria as the level of awareness of the rights of the Nigerian child is very low.⁷⁸ A national survey on Violence Against the Child carried out in 2014 revealed that only 18% of girls and 35% of boys knew where to get assistance against violence.⁷⁹ Among those who knew where to get assistance, only 5% of girls and 3% of boys actually sought assistance. Others could not seek assistance due to fear, financial constraint, and ignorance of the effects of violence.⁸⁰ If the child is not

⁷³ G. Mirugi-Mukundi (n 61) 58; Obiajulu Nnamuchi and Miriam Anozie and Festus Ukwueze, (n 71) 411.

⁷⁴ 'Get Minors Out of Prison' <www.change.org/p/the-federal-government-of-nigeria-get-minors-out-of-nigerian-prisons> accessed 14 September 2017

⁷⁵ CRA s236.

⁷⁶ Olusola Oyero, 'Information Sources and Awareness Level of Child Rights in Lagos State, Nigeria' (2011) 5(1) *Journal of the Department of Mass Communication*; 87, 98.

⁷⁷ Hosea 4:6, English Standard Version <<http://biblehub.com/esv/hosea/4.htm>> accessed 27 November 2017.

⁷⁸ U. O. Okoye, 'Knowledge and Awareness of the Child's Rights Act Among Residents of a University Town in Enugu State, Nigeria' (2011) 2(10) *Educational Research*; 1595, 1598; A. A. Akiri, 'Students' and Human Rights Awareness in Secondary Schools' Environment in Delta State' (2013) *Journal of Education Policy*; 5.

⁷⁹ UNICEF Nigeria, 'Violence Against Children in Nigeria: Findings from a National Survey 2014' (UNICEF Abuja, 2015) 18. <www.unicef.org/nigeria/SUMMARY_report_Nigeria_Violence_Against_Children_Survey.pdf> accessed 6 December 2017.

⁸⁰ UNICEF Nigeria, (n 79) 19.

aware of his rights, how will he know when it is violated and take necessary actions towards redressing the wrong?

One cannot overemphasize the importance of information in actualising the provisions of the child rights laws. A robust and continuous public education campaign on children's rights can change people's perspectives and persuade the government to create laws that would result in the actualization of children's rights in Nigeria.

There is a need for exhaustive and continuous training of all groups, persons, and officials involved in the child's rights protection process, like law enforcement officials, health and social workers, judiciary staff, officers with supervisory roles over children's homes and centres, traditional and religious leaders, primary and secondary school teachers, non-governmental agencies (NGOs) as well as all schoolchildren. The need for training is also a major factor militating against the promotion of children's rights in Nigeria. In urban areas, training sessions and seminars are held in this regard but this is not the case in rural areas.

5. Religious Factors

Some of the principles enshrined in the CRA and other child rights laws are inconsistent with Islamic religious beliefs.⁸¹ Some of these include the prohibition of child marriage,⁸² definition of the child, gender equality, western education,⁸³ non-discrimination based on the circumstances of one's birth, girl child education, adoption, the prohibition of female circumcision, and the supremacy of the family court over the sharia court on issues affecting the rights of the child. Some Islamic children are withdrawn from school for fear of being converted.⁸⁴ Some children are denied information on reproductive and sexual health on religious grounds.⁸⁵

⁸¹ F. D. Nzarga, Impediments to the Domestication of the Nigeria Child Rights Act by the States' (2016) 6(9) *Research on Humanities and Social Sciences*; 123, 128.

⁸² T. S. Braimah, 'Child Marriage in Northern Nigeria: Section 61 of Part 1 of the 1999 Constitution and the protection of Children against Child Marriage' (2014) 14 *AHRLJ*; 474

⁸³ Wale Odunsi, 'What Boko Haram told Schoolgirls after Dropping Them in Dapchi' *Daily Post* (21 March 2018) < <http://dailypost.ng/2018/03/21-boko-haram-told-schoolirls-dropping-dapchi/> accessed 30 April 2018.

⁸⁴ Ngozi Chima – Umeh, 'Issues of Human Rights to Basic Education and Equality of Educational Opportunity in Africa: Nigeria as a Case Study' in A. C. Onuora – Oguno, W. O. Egbewole and T. E. Kleven (eds), *Education Law, Strategic Policy and Sustainable Development in Africa: Agenda 2063* (Springer International Publishing 2017) 16.

⁸⁵ S. S. Hom, C. Peter and S. T. Russel 'The Right to be who you Are' in M. Peterson – Badali and M. Freeman (eds), *Handbook of Children's Rights: Global and Multidisciplinary Perspective* (Routledge 2017) 231.

Shortly after the enactment of the CRA, the Supreme Council for Sharia in Nigeria (SCSN) objected to the domestication of the Act⁸⁶ and since then only a few northern states have domesticated the Act.⁸⁷

Religious factors also affect children's enrolment in schools in northern Nigeria. Some children are denied sex education on religious grounds based on the belief that sexual information exposes them to immoral activities. Some schools were burned down, and girls were abducted by the men of the Boko Haram sect on religious grounds. Abducted girls are returned and warned not to pursue western education because it is against Islamic law.

6. Economic Factors

Poverty impedes the realisation of the rights of the child in so many ways. It is one of the major causes of physical violence,⁸⁸ child marriage, child labour,⁸⁹ child trafficking and prostitution⁹⁰, illiteracy, street hawking, child crimes, infant and child mortality,⁹¹ and malnutrition. More than half of the Nigerian population lives on less than \$1 per day⁹² so some parents are forced to give out their children as domestic workers (house helps)⁹³ in exchange of financial and social benefits.⁹⁴ The prevalence of child marriage in poorer countries like Niger and regions like northern Nigeria can be linked to poverty.⁹⁵ The child bride is, sometimes, used as a bond for a grant or a means of discharging financial obligations.⁹⁶ In some areas where child marriage is

⁸⁶ F. D. Nzarga, (n 81).

⁸⁷ Ojoma Akor, 'Why Jigawa Deferred Child Rights Act' *Daily Trust* (28 December 2011) <<http://www.nigerianews24.com/articles/nigeria-why-jigawa-deferred-child-rights-act-allafricacom> > accessed 27 November 2017.

⁸⁸ Stephen N. Achilihu, *Do African Children Have Rights? A Comparative and Legal Analysis of the United Nations Convention on the Rights of the Child* (Universal Publishers 2010) 189.

⁸⁹ Gankam Tambo Ina (n 65) 294.

⁹⁰ Kathryn Cullen – Dupont, *Human Trafficking* (Infobase Publishing 2009) 12.

⁹¹ Kathryn Cullen – Dupont (n 90) 15; Pricillia Alderson, 'Health and Child Rights' in M Peterson – Badali and M Freeman (eds), *Handbook of Children's Rights: Global and Multidisciplinary Perspective* (Routledge 2017).

⁹² Menizibeya Osain Welcome, (n 43).

⁹³ NIO Ebbe, 'Control and Prevention of Trafficking of Women and Children' in NIO Ebbe and DK Das (eds), *Global Trafficking in Women and Children* (CRC Press 2008) 45.

⁹⁴ T. Alabi and M. Bahan and S.O. Alabi, 'The Girl-Child: A Sociological View on The Problems of Girl-Child Education in Nigeria' [2014] 10(2) *European Scientific Journal*; 393, 402.

⁹⁵ Obiajulu Nnamuchi and Miriam Anozie and Festus Ukwueze, 'Maternal Health and Millennium Development Goal (MDG) 5 in Nigeria: Any Catalytic Role for Human Rights?' [2015] 34 *Medicine and Law*; 381, 394.

⁹⁶ Kathryn Cullen – Dupont (n 90) 14.

practiced, the bride is always younger⁹⁷ and from a poorer background than the husband.⁹⁸

7. Corrupt Practices

The establishment, maintenance, and effective operation of child protection institutions, health centres, public schools, and social welfare centres require funding by the government. However, it has been reported that those in administrative positions embezzled funds allocated for these projects, leaving the institutions and centres in a non-functional and dilapidated state.⁹⁹ A survey carried out by Human Rights Watch (HRW) in 2006 revealed a high level of embezzlement and mismanagement of funds allocated for the maintenance of health centres,¹⁰⁰ schools¹⁰¹ and the provision of basic amenities like water, toilet facilities, electricity, and medicines.¹⁰² Funds meant for classroom renovation, construction of library, sports centres and health centres were expended on the purchasing of expensive vehicles for school officers.¹⁰³ The Khana Local Government allocated the hilarious sum of seven hundred and fifty thousand Naira (₦750,000) was allocated for the furnishing and renovation of 112 primary Schools within the local government area. As expected, no classroom was renovated.¹⁰⁴ According to available survey, despite receiving over US\$223 billion in oil revenues since the end of military rule in 1999, corruption has prevented millions of Nigerians from receiving even the most basic medical care and education.¹⁰⁵

Positive values when imparted to children through quality education will ensure a harmonious, peaceful, and productive future for Nigeria; therefore, the right to education of the required standard should not be gambled with.

⁹⁷ Kathryn Cullen – Dupont (n 90) 14.

⁹⁸ Obiajulu Nnamuchi and Miriam Anozie and Festus Ukwueze, (n 101).

⁹⁹ Nwachukwu Prince Ololube, 'Education Fund Misappropriation and Mismanagement and the Provision of Quality Higher Education in Nigeria' (2016) 9(4) *International Journal of Scientific Research in Education*; 333, 342; Chris Albin-Lackey and Human Rights Watch, 'Chop Fine: The Human Rights Impact of Local Government Corruption and Mismanagement in Rivers State Nigeria' (2009) 19(2) *Human Rights Watch*; 42.

¹⁰⁰ Chris Albin-Lackey (n 99) 48

¹⁰¹ Chris Albin-Lackey (n 99) 10. Nwachukwu Prince Ololube, (n) 42.

¹⁰² Chris Albin-Lackey (n 99) 43.

¹⁰³ Nwachukwu Prince Ololube, 'Education Fund Misappropriation and Mismanagement and the Provision of Quality Higher Education in Nigeria' (2016) 9(4) *International Journal of Scientific Research in Education*; 333, 342.

¹⁰⁴ Chris Albin-Lackey (n 99) 60.

¹⁰⁵ U. Emolonye 'Implementation of International Human Rights Obligations in Nigeria: Civil Society Perspective' (2021) 8(6) *Advances in Social Sciences Research Journal*; 330 < <https://doi.org/10.14738/assrj.86.10383>> accessed 23 May 2023

The child's right to justice is hampered by corruption. In Nigeria, studies revealed that about ¼ of violation cases are not investigated and prosecuted; the police extort money from perpetrators and release them on bail.¹⁰⁶ The judiciary, said to be the last hope of the common man, is also corrupt,¹⁰⁷ especially when child's rights are violated by the highly placed in society.

Corruption also affects the quality of service and goods dispensed at institutions and centres where children's rights are administered. For instance, the quality of drugs distributed and healthcare facilities available at public health centres is substandard. During the 2017 Community Pharmacists Education Conference, the National Chairman of the Association of Community Pharmacists of Nigeria (APCN) attributed the non-actualisation of the fight against fake and substandard drugs to the corrupt practices of some staff of the National Agency for Food and Drug Administration and Control (NAFDAC).¹⁰⁸

8. Socio-Cultural Factors

Non realisation of the rights is also caused by strict adherence to customary beliefs and practices, which include the wrong belief that female genital cutting and child marriage preserve chastity; that a woman's main purpose is child raising and her place is in the Kitchen;¹⁰⁹ that some birth defects and unusual circumstances surrounding the birth of a child are indications that the child is a witch;¹¹⁰ that an adopted child should not enjoy the same rights as other members of society and that,¹¹¹ punishment, however harsh,¹¹² is necessary for the child's training. Given the

¹⁰⁶ Emilie Secker, 'Barriers to the Effective Implementation of the U N Convention on the Rights of the Child in the Niger Delta of Nigeria, in AT Imoh and Nicolas Ansell (eds), *Children's Lives in an Era of Children's Rights: The Progress of the Convention on the Rights of the Child in Africa* (Routledge 2014).

¹⁰⁷ Emilie Secker (n 106).

¹⁰⁸ The Lead, 'Group Blames Corrupt NAFDAC Officials for Substandard Drugs' *The Lead* (11 December 2017) <www.theleadng.com/group-blames-corrupt-nafdac-officials-for-substandard-drugs/> accessed 13 December 2017.

¹⁰⁹ SCA Ali-Akpajiak and Toni Pyky, *Measuring Poverty in Nigeria* (Oxfam GB 2003) 57; G Mirugi-Mukundi (n 61) 54; Elvis Mugisha, 'A woman's place is in the kitchen and raising children – and the man is always superior' (*Radio Ndarason Internationale*, 28 February 2022) <<https://ndarason.com/en/a-womans-place-is-in-the-kitchen-and-raising-children-and-the-man-is-always-superior/>> accessed 10 May 2023.

¹¹⁰ Mohammed Momoh, 'Nigeria: Street Children Branded Witches Face Rejection, Abuse' *The Nation* (27 October 2021) <<https://allafrica.com/stories/202110280026.html>> accessed 7 May 2023.

¹¹¹ O. A. Ojelabi and P. E. Osamor and B. E. Owumi, 'Policies and Practices of Child Adoption in Nigeria: A Review Paper' (2015) 6(1) *Mediterranean Journal of Social Sciences*; 75, 79; C. B. Eke and Others, 'Perception of Child Adoption Among Parents/Care-givers of

number of ethnic groups in Nigeria, some of which are marginalised, is a conflict of interests amongst the various groups. The most pronounced is the conflict caused by the Boko Haram sect (an Islamic Military Group), which has led to a countless number of deaths, rape, forced marriages, destruction of homes and schools, malnutrition, separation of children from their families, child suicide bombing, and child military recruitment, amongst others.¹¹³ According to the available report, since 1999, the issue of communal clashes, which have claimed the lives of over eleven thousand Nigerians, including children, their parents, or guardians, has remained unaddressed by the Nigerian government; of these numbers, Christians were the largest.¹¹⁴

CONCLUSION

The challenges discussed above are not insurmountable. The government has exerted commendable effort towards fulfilling its international obligation by enacting the Child's Rights Act. The provisions of the Act should not just be decorative or handled with levity. Considering the current economic and social status of Nigeria, there is a need for increased investment in the educational, health, and general wellbeing of every Nigerian child because the child represents the future. The government, institutions, individuals, and bodies should assume their responsibilities under the Act. Nigerian courts, just like courts of foreign jurisdiction, have a significant role in implementing the socio-economic rights of the child, and should stop hiding behind the veil of 'not-justiciability of directive principles'. Child rights awareness should be strategic and intensified, and information on safe pregnancy, family planning, and child trafficking should be passed on. Institutions like schools, health centres, remand homes and children homes should be adequately funded. There is a need for a standard monitoring system to prevent misappropriation of funds and other corrupt practices. The government should also liaise with religious and traditional rulers to end harmful practices.

Children Attending Pediatric Outpatients' Clinics in Enugu, South East, Nigeria' (2014) 17(2) *Nigerian Journal of Clinical Practice*;188

¹¹² Eric Ojo, 'A Multi-Disciplinary Analysis of the Protection of Children from Harmful Practices in Nigeria' (MPhil Dissertation, University of Pretoria 2014) 35.
<https://repository.up.ac.za/bitstream/handle/2263/46230/Ojo_Multi_2015.pdf;sequence=1>
accessed 18 October 2017.

¹¹³ Bureau of International Labor Affairs, (n 12).

¹¹⁴ U Emelonye, (n 23).