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could better be understood in the contemporary period. It reaffirms the civilized nature of Islamic religion. However, no civilization or modernity to be adopted in Islam should violate the fundamental principles of the religion.[115] Most of the *muftis* do relied on the authority and make inference from the Qur'an to arrive at conclusion in their decisions. For instance, the legality of organ transplantation is based on the provision of the Qur'an that says "…and if anyone saved a life it would be as if he saved the life of the whole people…"[116] Similarly, the following reasons have also canvassed, namely: *Al- Darrar* (Harm) must be wiped away (*al-dararu yuzālu*). To this end, Allah says, "...Allah intends every facility for you and He does not want to put you to difficulties…" [117] Another reason is that hardship begets facility (*Al-Mashaqqātu Tajlib At-Taysīr*), thus, the Almighty Allah says, "...But if one is forced by necessity without willful disobedience, nor transgressing due limits, then is he guiltless. For Allah is Oft-Forgiving Most Merciful;"[118] and *Irtikab akhaffu darrayn* (choosing the lesser of two harms);[119]

Conclusion

From the foregoing discussion and Qur'anic authorities cited earlier, one may understand that the concept of fatwā is a known and an accepted phenomenon in Islamic law. It should not be considered as a medium for succumbing to the western ideologies or modernization so-called. However, it does not also imply that Islam is rigid or has been shunning it face from the advent of modern developments. In fact, Islam is a dynamic and civilized religion that provides an avenue for accommodating new issues and developments but according to its own way. It has been understood that the concept of fatwā plays a vital role in that regard. Fatwā in Islamic law has been identified as an instrument of social change and ideology in an Islamic perspective and in accordance with the objectives of Shari'ah. To this end, it is the submission of this paper that the concept of fatwā is not aimed at modernization so- called, rather, it is an instrument that confirms the dynamism of Islam and Islamic law. Hence, it is better and advisable to always look at it from the positive perspective rather than the negative perspective.

[115] Mufti Muhammad Taqi Usmani, "Islam and Modernism", available at www.practiceislam.org, accessed on 29/12/2013 P 13

[116] Qur'an 5:32

[117] Qur'an 2:185

[118] Qur'an 2:173

[119] Ministry of Health Malaysia & JAKIM, *Organ Transplantation from the Islamic Perspectives* (The Ministry of Health Malaysia, 2011), 16

A CRITIQUE OF THE LEGAL FRAME WORK FOR THE PROTECTION OF THE NIGERIAN CHILD: LAGOS STATE IN FOCUS.

By

Aondofa Aligba (Ph.D)[1]
Mahmud K Adebayo (Ph.D)[**]
Dr Saka Olookoba (Ph.D)[***]

Abstract

This article has provided an insight into how the different laws in Nigeria have tried to protect the Nigerian child who belongs to the vulnerable group in the country. In the paper, key concepts that constitute the topic are defined followed by a statement of the significance and relevance of children in the development process of every nation including Nigeria, and an examination of various laws enacted by the Federal and State Governments directed at the protection of children in Nigeria. The paper then identified the social-legal defects that have continued to militate against the effective protection of children in Nigeria and concludes with such suggestions that the writers think will help enhance the protection of children in Nigeria, as well as guarantee their happiness and well-being in Nigeria.

Introduction

This article essentially is undertaken to examine the position and vulnerability of the Nigerian child in the present day Nigerian society, and has also evaluated how different Laws enacted by the state have safeguard the interest and well-being of the Nigerian Child. In the course of the write-up, the essential terms that form the topic are defined followed by an examination of the relevance of the Nigerian Child in the development process of the country, then a detailed examination and analysis of the various Laws or provisions of Laws that are enacted to safeguard children's interest in Nigeria. The Laws that are essentially examined in this paper are: the Nigerian Child's Rights Act (cap50) Laws of the Federation of Nigeria 2004, the Criminal Code Act (cap c28) Laws of the Federation of Nigeria, 2004 the Evidence Act, 2011, the Adoption Law of Lagos State (cap a5), Trafficking in Persons (prohibition) Law Enforcement and Administration Act, 2003, Children and Young Persons Law (cap 10) Laws of Lagos State, 2004 and Infants Law of Benue State (cap 83), 2004. In the course of the examination of the Laws, the basic problems that have constituted obstacles to the effective protection of the Nigerian Child are pointed out.

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The article then concludes with those recommendations that are considered useful to help improve the social, economic and legal position of children in Nigeria.

Conceptual Clarifications

"An overview'' as used in this write-up means a critical assessment, examination or evaluation of something or person. While ''Legal'' is a term that connotes anything that belongs to or relates to Law. ''Law'' is defined as an obligatory rule of conduct. It is also defined as a rule of conduct imposed and enforced by the sovereign authority. It is further defined as a body of principles which are recognised and enforced by the State in the administration of justice.[2] To philosophers' like Maine, Law also includes the rules that are applied and enforced in primitive societies.[3] By the above definition, Maine distinguishes himself from other parochial minded European intellectuals who out of racism had chronicled that African indigenous society had no Laws, no history and could be equated to beetles that could be observed under microscopes.[4] By his definition therefore, the body of principles or rules that were issued by the native chiefs, elders, age grades or in-laws in the indigenous society, also qualified as Law. By his definition, the chiefs and elders became fitted in the concept of sovereign authorities that are recognised for the issuance of commands in the European continent. ''Framework'' means the body or structure of something. ''Legal Framework'' implies the structure of the various Laws that are provided by the state for the protection of the Nigerian Child. ''Protection'' as used in the write-up means to safeguard, to keep safe from harm, spoil, destruction, damage, or pollution.[5] Nigeria is a country located in the West African sub region of Africa. It is the most populous black nation on earth, with rich mineral resources to cater for the interest and well being of the various segments of the people of the country. ''A Child'' is defined under the Nigerian Child Right Act as a person under the age of 18 years.[6] Under the Adoption Law, juveniles are placed in the same bracket with children and are defined to be any person who is under the age of 17 years.[7] The Child's Rights Act has gone ahead to regard any person as a child of any family if he is a child of both parents who are legally married or one who is placed with any person as forster parents by a local authority, organisation, or who has been treated by both parties as a child of the family.[8] Since the Child's Rights Act has provided the definition of who is a Nigerian child, its definition is taken as most authoritative and conclusive meaning of the word "child".

[2] Bird R, *Osborn's Concise Law Dictionary* (7th ed) (London: Sweet and Maxwell, (1983) p197
[3] Bird, ibid, at 197
[4] Rodney W, *How Europe Underdeveloped Africa* (Enugu: Ikenga publishers, (1982) p9-20
[5] See Crowther J *Oxford Advanced Learner's Dictionary* (New York: Oxford University Press, 1998) p932
[6] Section 277 of the Child's Rights Act, 2004
[7] Section 24 of the Adoption Law (Cap a5) of Lagos State, 2004
[8] Section 277 of the Child's Rights Act, ibid

Legislative Efforts towards the Protection of the Nigerian Child

Under the customary setting, children and women were accorded very little legal recognition and protection under the native laws and customs. Because of failure of the customary law to accord recognition and protection to children, they are placed in very serious disadvantage and are vulnerable. For instance, children born as twins were offered as sacrifices to the gods or were simply buried alive in some societies, while women that persistently gave birth to twins were simply regarded as misfortunes and were ostracised and banished with such children in other communities. It is the generation of such lineages that gave rise to the caste system of Osu in many parts of Igbo community in the eastern part of Nigeria.

Under the Islamic aspect of customary law, the position of children especially female was made better in the area of inheritance of a father who died intestate leaving behind property to be inherited by female and male children. However, the failure of Islamic law to adequately take into account and protect children in the other aspects of life in Nigeria, is what has culminated into the present social problem of ''almajiris'' that is currently attracted the attention of many states in Northern Nigeria which are beginning to evolve policies towards its suppression. The failure of Islamic law to address properly the plight of children in Nigeria and accord them the desired protection has given rise to the problem of children adult marriages in many parts of Northern Nigeria, with its attendant consequences of rector fistula or vagina fistula which arise from the rapture of the hymen in the course of sexual intercourse or the damaging of the fallopian tube during child bearing, rendering the victim who is always a female to a condition of incontinence of urine and faeces, which further renders the woman as a social outcast, as her company is avoided or shunned by many women, and men avoid her sexually. It is also lack of sufficient protection of children in Islam that has given rise to the number of children that are seen roaming the streets of most town and cities of Northern Nigeria and other places in the country, soliciting for alms.

The advent of the British in the 1860's did not start by altering the position of children in the country, later the missionaries, through preaching were able to play a key role in the protection of children that were born as twins as such children were in most communities considered as a taboo. The British in taking control of the colony of Lagos introduced their common law on crime in 1863, which like customary law, showed little concern for the protection of children. Outside Lagos, the customary criminal law continued to apply until the introduction of the centralised system of administration in the country. The British apart from enacting laws regulating witchcraft, slave dealing, they also enacted laws forbidding the killing of twins, trial by ordeal and human sacrifices. The common law of crime introduced by the British in 1863 continue to apply until 1904 when Lord Lugaurd was appointed the Governor of the Northern Protectorate and in his proclamation, he introduced the Criminal Code whose target was to ''consolidate'' and amend the customary law system in Nigeria. This legislation was later extended to the whole

country in 1916 after the unification of the Northern and Southern Protectorate in 1914.[9] This code, which has remained unchanged in contents, spirit and letters contain minimal provisions that are directed at protecting children and juveniles in the country. Section 225 of the code provides that:

Any person who with the intent that an unmarried girl under the age of 18 years may be unlawfully carnally known by any man, whether a particular man or not, takes her or cause her to be taken out of custody or protection of her child or mother or other persons having the lawful care or charge of her, and against the will of such a father or mother or other persons is guilty of a misdemeanour and is liable to imprisonment to two years.

Unfortunately, the above provision in the Criminal Code did not have equivalence in the Penal Code law of Northern Nigeria of 1963 now adopted as the Substantial Code of many states in the Northern part of Nigeria including Benue State.[10] The absence of such a provision in the Penal Code law and the current Sharia Penal Code enacted in such states like Zamfara, Kastina, Kano, Yobe, and Borno State largely accounts why the Northern part of the country has continued to witness children neglect and abuses in many parts of Northern Nigeria. The worst of this incident occurred in Sokoto State in 1986 when Hauwa a female child of 9 years was compelled to marry a man old enough to be her grandfather. She was always running away from the man's house to her house. When the man could not stopped her from running, he cut off her two legs at once and Hauwa bled to death. The incidence caught the attention of the Federation of Women Lawyers who challenged the maltreatment melted to Hauwa but they were defeated on grounds of lack of Locus Standi.

Section 218 of the Criminal Code also prohibited, ''Any person who has unlawful carnal knowledge of a girl under the age of thirteen years is guilty of a felony, and is liable to imprisonment for life with or without caning''. The protection accorded to children in sections 223 and 218 of the Criminal Code is partial as it is directed towards the protection of female children in Nigeria against unlawful carnal knowledge by adults leaving out many other practices that affects both male and female children such as the circumcision of female children under the customary setting that has continued to produce dire consequences on the female children that are involved.

In the area of the offence of Assault, the Criminal Code Act has provided that, "any person who assaults another with the intent to have carnal knowledge of him or her

[9] Okonkow and Naish Criminal Law in Nigeria (London: Sweet and Maxwell, 1980) p4-5
[10] Note the Penal Code Law (cap 124) Laws of Benue State, 2004 and such similar Penal Codes in some States of Northern Nigeria

against the order of nature is guilty of felony and is liable to imprisonment to fourteen years''.[11] This provision is more balanced as it seeks to protect both male and female children against sexual abuse or harassment by adults who are parents, relations, friends or total strangers.

The Criminal Code has also recognised the defence of immaturity or infancy for children who have committed offences in Nigeria. By section 30 of the code, any person under the age of seven years is not criminally responsible for any act or omission. The Act has gone ahead to stipulate that, a person under the age of twelve years is not criminally responsible for an act unless it is proved that at the time of doing the act or making the omission he had the capacity to know that he ought not to do the act or make the omission.[12] By the above, children who are under the age of twelve years are not rendered criminally responsible under the code except if it is proved that they had the capacity to know that they were doing what was wrong or making an omission. This test is a subjective test which is difficult to be determined by the court or Judge sitting in the trial of the case involving the child. In such circumstance, the duty of the prosecution to be able to convince the court that the child had the capacity to know that he ought not to do the act or make the omission.

In 1916 the Criminal Code was extended for the whole country and its extension brought about conflict between its provisions and the system of Islamic law that was practiced in the area. By this conflict, certain acts or omissions that were not regarded as crimes under the Islamic customary law were considered as offences under the introduced Criminal Code. So also certain acts or omission that were regarded as crime in the Criminal Code were not considered as offences under the Islamic setting. It is the existence of conflict between the two systems that gave rise to the promulgation of the Penal Code Law by the Northern Regional Government in 1960.

The Penal Code Law that was eventually passed in 1960 did not contain many provisions for the protection of children in the Region. As earlier stated, the Code was enacted inline with the prevailing socio-cultural norms and practices that were prevalent in the Northern Region at that time. The only provision that stood out boldly for the protection of children or immature in the area was section 50 which states:

That no act is an offence which is done
(a) by a child under the seven years of age; or

[11] Section 253 of the Criminal Code Act, 2004
[12] Section 30 of the Criminal Code Act,, 2004

(b) 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 consequences of such act.

Apart from the above provision, section 238 of the code prohibits cruelty to children in Northern Nigeria. It provides that:

Who ever having the charge, care of a child under the age of fifteen years or being in a position of authority over him wilfully illtreats, or neglects him in such a way as to cause him unnecessary suffering shall be punished-

a. with imprisonment for a term which may extend to two years or for a fine or with both; and
b. illtreats or neglect results in serious injuries to the health of such a child, the offender shall be punished for a term which may extend to five years or with fine or with both.

Apart form the above, the Penal Code also renders punishable any act done with the intent to prevent any child from being born alive or cause it to die after birth.[13] It also frowns and renders any person liable that is found to have abandoned any child under the age of twelve years.[14]

The courts in England as far back as 1889 had acknowledged and accepted the defence of immaturity to avail to children or infants between the ages of 0-7 years as an absolute defence.[15] That position in Britain now is that the age for liability was raised to 8 years and finally to 10 years in 1963 by the Children and Young Persons Law of that country. The Nigerian position has however remained as it was imported into the country from the Common Law. And it is the thought of jurist like Aguda that the age limit for criminal liability should be raised to keep in line with the position in Britain. On this, the learned writer has been criticised on the ground that his postulation is hardly necessary, and to accept his view will be tantamount to acquiescing in the juvenile delinquency which has become a thorn in the flesh of the Nigerian society and a plague to Western civilization today. The courts in Nigeria are yet to decide on the recognition of the defence of immature for infants or children due to absence of any case that warrant such interpretation.

Under the Commonwealth legal system there are a number of cases in which the defence of immature has received judicial recognition. For instance, in Walters vs Lunt[16] there was a charge of receiving stolen property from an infant and it was held that since the child was incapable of committing the offence in respect of the

[13] Section 235 Penal Code Law (cap 89) Laws of Northern Nigeria, 1963
[14] Section 237 of the Penal Code Law
[15] R vs Tolson (1889) 23 KB P168
[16] (1951) 2 ALL E.R. P.645

property, the person receiving the property from the child could not be guilty of receiving stolen property. Also in R vs BABA SEIM[17] the charge was one of plying a bicycle for hire without road worthiness by an infant. It was held by the court that since the offender was a child of only 5 years of age, he was not criminally responsible for his conduct.

The provision of the Penal Code Law of Northern Nigeria recognising the defence of immature or infancy is today replicated in the Penal Code Law of various states in Northern Nigeria.[18] In 2000, many States in Northern Nigeria like Zamfara, Jigawa, Kano, Kastina, Sokoto, Yobe, and Borno States etc severed themselves from the Penal Code Law of Northern Nigeria, 1963 and enacted their Sharia Penal Codes which in the end is an incorporation or embodiment of many of the provisions of the Penal Code Law of 1963. In this Sharia Penal Code, little attempt is made to depart essentially from the position of the Penal Code Law by including substantial provisions for the protection of children in Northern Nigeria, as well as, addressed the socio-religious practices of almajeri and the begging for alms on the streets by children of the under privileged families which has continued to be a source of nuisance in those states and embarrassment to the public and the nation.

In 1945, the colonial regime introduced the Evidence Act in Nigeria as a piece of legislation to be relied upon by courts in giving and taking oral evidence before the court. The Act required that, in giving oral evidence in any proceedings before the court, an oath or affirmation must be administered as prescribed in the oaths Act or Law as the case may be.[19] By administration of Oath and Affirmation, a witness testifying before the court is placed in a precarious position and renders himself liable for the offence of perjury when it is found that he has told lies or misled the court. This has remained the position in the Evidence Act of 2011. To protect the Nigerian child whose mental faculty is undeveloped, the Act provides that:

In any proceedings in which a child who has not attained the age of fourteen years is tendered as a witness, such child shall be sworn and shall give evidence otherwise than on oath and affirmation, if in the opinion of the court, he is possessed of sufficient intelligence to justify the reception of his evidence and understands the duty of speaking the truth.[20]

The essence of this provision is to protect children from being bound by what the evidence they give in the court because they do not understand the implication of

[17] (1938) A.I.R, 400
[18] See for instance section 50 of the Penal Code Law (cap 124) Laws of Benue State, 2004
[19] See section 205 of the Evidence Act (HB.214) 2011
[20] See section 209 (2)(3)&(4)of the Evidence Act, 2011

speaking on Oath due to their undeveloped mental faculties.[21] In the continent of Europe, a notion has been developed that witnesses who are vulnerable such as children and victims of sexual harassment have some ''rights'' that must be protected appear to be gaining recognition on daily basis. To this end, the Council of Europe in 1997 issued Recommendation No. R(97) 13 on intimidation of witnesses and the Right of Defence, which requires that appropriate practical and legislative measures should be taken by countries in Europe to ensure that witnesses such as children and those that are victims of sexual harassment are allowed to testify freely and without intimidation when called upon as witnesses in any criminal proceedings.[22] The above requirement has received judicial approval before the European Human Rights Court, in the case of *Doorson vs The Netherlands*[23]. In this case, the Human Rights court took judicial recognition for the first time the rights of witnesses who are victims of crimes such as children need to be enhanced by contracting states and directed them to organise their criminal proceedings in such a manner that the interests of witnesses like children and those who are classified in the vulnerable group, are not unjustifiably imperilled.[24]

From independence in 1960, Nigeria has operated under different constitutions. In these grundnorm, there are also provisions for the protection of Nigerian child and young persons as well as the aged against any exploitation what so ever and moral and material neglect.[25] In addition to the above, the 1979 constitution has recognised the family as an important unit of socialization or up bringing of children and has urged the state to recognise and encourage its evolution and promotion in the process of the state formulating its policies.[26] Under the constitution also, issues affecting children as a subject matter are placed in the concurrent list of the constitution.[27] By this constitutional arrangement, both the National Assembly and the State Houses of Assembly are empowered and permitted to make Laws pertaining to the welfare, happiness and the protection of children in Nigeria. This explains why we have Laws for the protection of Children for the entire Federation of Nigeria such as the Child's Rights Act[28], Trafficking in Persons (Prohibition) Law Enforcement and Administration Act[29] and the provision of the Child's Rights

[21] See the case of R vs Tolson (1889) 23KB, 168 and sections 5 and 6 of the Oaths and Affirmations Law (cap116) Laws of Benue State, 2004
[22] See European journal of Social Sciences vol. 13, No.1 of 2012, p54
[23] (1996), 22EHCR, 330: Boegen vs The Netherlands (1995) ECHR, application 16696/90
[24] Ibid, at 54
[25] See sections 17(3)(f) of the Constitution of the Federal Republic of Nigeria, 1979 and 1999 Constitutions
[26] Section 17(3)(h) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)
[27] See second Schedule, part II of the constitution of the Federal Republic of Nigeria, 1999 (as amended)
[28] (cap c.50) Laws of the Federation of Nigeria, 2004
[29] Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003.

Laws, Children and Young Persons Law and Adoption Law in each of the 36 States of the Federation of Nigeria.

Since this article is concern with the examinations of the Laws in Nigeria, to ascertain how they have safeguarded an protected the interest of the Nigerian Child, the above mentioned Laws of the Federal and States are selected, reviewed and analysed in that regard.

Lagos has been chosen as a sample state that has Laws provided just like other states, in the Federation for the protection of the Nigerian Child. Since the provisions of the Laws of the other states on the various subject matters concerning the Nigerian Child are similar in content, spirit and letter, it will amount to a duplication to indulge into the review of each of the Laws of the other states that seek to protect the Nigerian Child.

Before we proceed to examine how the Laws in Nigeria have strived to protect the Nigerian Child, in the socio-cultural environment he has found himself, certain vital questions may be raised and addressed before embarking on the analysis of the legal framework for protecting the Nigerian Child. The first question is, why are children so important that they have caught the attention of the state and attracted the legislature or law makers when making laws.

Significance and Relevance of Children to Every Society

Children are very important segment of every society in this world. They constitute the nucleus or offspring for the perpetuation of humanity or man as human specie. They also constitute the medium in which the social, economic, political and cultural norms and values, knowledge or ideas are transmitted from one generation to another. Even though, with the knowledge of science and technology today, many ideas and knowledge may be preserved and transmitted through scientific devices, yet the machines will still be ineffective without the transmission of the ideas that are contained therein to the younger generation of man who are essentially, children. For this singular factor, the neglect of this segment or problems affecting this group of the society produce dire consequences on the society or nation eventually. No one realises the significance of children in the society more than the creator of heavens and the universe when he decreed that ''humanity should multiply and fill the earth''[30] indeed same God, incarnate, as Jesus Christ, used children as a yard stick for entry into heaven when he warned those aspiring to enter the kingdom of God to behave and humble themselves like the little children. The next fundamental question that follows is what are the problems facing the welfare, happiness and well being of children in the Nigerian society of 2013?

[30] See Genesis1:28

Problems Militating Against the Welfare of Children in Nigeria

The Nigeria Child is faced with many socio-legal problems attributed to his disability or vulnerability. In Nigeria, children are denied of so many privileges and benefits that adults are made to enjoy. In many societies in Nigeria, either the female children are denied education on the grounds of poverty, while informal education that develops a child into a full responsible adult may be lacking as a result of moral bankruptcy or degradation of the home a given child comes from. Health wise, many children are seen to be unable to attain the best state of the physical and mental growth arising from poor medical attention or care. This has also given rise to high infant and child mortality rate in the country. Poor feeding of children due to absence of adequate nutrition and safe drinking water has exposed the Nigerian Child to the problem of guinea worm infestation or the problem of kwashiorkor. In some homes in Nigeria, poverty has made some families turn their children into the medium of producing wealth for the family. This has given rise to the situation in Nigerian towns and cities where children are seen in the early hours of the day or very late in the night hawking with various items on their heads or begging for alms, they end up being sexually harassed in the process.

The prevalence of the bad socio-cultural practices in most parts of Nigeria has also continued to warrant adult childhood marriages in some communities in Nigeria. The situation is compounded with the customary Law position that permits adults to marry and have sexual intercourse with any girl established to have attained the ''age of puberty''.[31] By this ugly legal position, female children who are identified to have developed pubic features at the age of 12, 13,14,15 and 16 years, even though children, under the native law and custom are qualified to be married and have sex with any male adult. This unfortunate legal position of the customary law background is responsible for the unfortunate incidents of Vaginal or Rector Fistula which arise from the damaging of the woman's hymen in the course of sexual intercourse or tearing of the bladder in the process of child bearing. In some communities, well to do members have returned to the villages to take the children of their relations to towns and cities with the undertaking to bring them up, only to subject such children to dehumanizing and degrading treatments like exploitative labour, prostitution and pornographic performance.

The lust for money of certain persons have made some persons subject children into such inhuman treatment like the plunging of their hands in hot or boiled water, smearing of their bodies with hot irons for offending or annoying their guardian or master. In some situations, Nigerian children of female specie are sexually harassed in certain homes by parents, close relations and other adults. The most serious

[31] See for instance the Tiv, Birom, Biu, Nupe and Borgu Declarations of Customary Law marriages that have approved one of the requirements for contracting customary marriages to be when a girl is established to have attained the age of puberty

among these practices is the current situation of trafficking in children and javelins' who are induce to leave their parents and travel out of the country where they are promised greener pastures, but at the end, are reduced to positions not better than slaves and serfs. Criminals have also used children to archive their criminal targets by sending them on errands as spies and by putting them on surveillance for some other criminal purposes. In Nigeria under customary law marriages, children are regarded as the property of man and in divorce proceedings; their custody is granted to the husband even if he is a pauper, and cannot adequately take care of the children and their interest, physically and morally. Fortunately, the law has now intervened in this area by insisting that the interest of the Nigerian Child is paramount in divorce proceedings and must be given priority at the stage of separation of the husband and the wife.[32]

The above represent some of the problems that have continued to affect the welfare, happiness and well being of children in the Nigerian society. Having taken the above into account, this article shall proceed to examine the laws that are provided by the state to protect and safeguard the interest of the Nigerian Child.

A Review of the Nigerian Child's Rights Act Provisions as a Means of Protecting the Nigerian Child

Under the Nigerian Child's Rights Act, 2004, Nigerian children are provided with a plethora of rights that are guaranteed in Chapter Four of the 1999 Constitution and are intended to be enjoyed by every person in Nigeria.[33] Under the Child's Rights Act, the Nigerian Child in addition to the Fundamental Rights is specifically permitted to enjoy similar rights like the freedom of association and assembly[34] freedom of thought, conscience and religion,[35] the right to private and family life,[36] freedom of movement,[37] freedom from discrimination,[38] and the right to dignity of the child.[39]

These rights in addition those provided in the Constitution, have helped immeasurably to protect the Nigerian child from the harsh treatment, practices or neglect that he directed at his person in different places or environment he finds himself in Nigeria. The Act has also render enforceable such rights like freedom to compulsory and universal primary education which is rendered non-justiciable right

[32] Section 25 of Infants Law of Benue State (cap 83), 2004
[33] See Sections 33, 34, 38, 40, 41, & 42 etc of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)
[34] Section 6 of the Child's Rights Act, 2004
[35] Ibid, Section 7
[36] Ibid, Section 8
[37] Ibid, Section 9
[38] Ibid, Section 10
[39] Ibid, Section 11

under the constitution of the Federal Republic of Nigeria.[40] It has also made the duty of parents to take care and maintain their children as a legal right, which hitherto was not regulated by any statute.[41] The legislation has increased and emphasised the responsibility and duty of every government, parents, guardians, agencies or institutions established to cater for the interest of children to endeavour to provide the best for the Nigeria children, so as to enable them attained the best of their health, and to reduce the problem of infant and children mortality rate, by providing them with adequate nutrition and safe drinking water or exposing them to good hygiene and environmental conditions and to contribute in fighting disease with the help of strong primary health care, and ensure that the appropriate health care system is provided for expectant and nursing mothers.[42]

Discovering the danger or problem of children adult marriage in Nigeria, section 21 of the Act has prohibited such marriages and provided that no person shall contract any marriage with any lady who is below the age of 18 years. By this, the customary practice in some parts of Nigeria where parents allow their female children to be betrothed by adults at infant stage is prohibited.[43] Also having identified the problem of child's labour this legislation has prohibited employers of labour from engaging children into any force or exploitative labour. They are also forbidden from being employed to work in any industrial undertaking.[44] To arrest the problem of trafficking in children, section 30 of the Act has forbidden the selling, hiring or otherwise dealing with children for the purpose of buying, selling, hawking or begging for alms, guiding beggars, prostitution, domestic or sexual labour for any unlawful or immoral purposes.[45]

By way of emphasis, the Act has forbidden the treatment of children as slaves or prohibited such practices meted to children that are akin to slavery, servitude, force or compulsory labour, hawking of goods or services on streets, brothels or to procure or offer children for prostitution or the production of pornography or pornographic performance, or to procure or offer them for any activity involving the production or trafficking in illegal or illicit drugs.[46]

In Nigeria, female children are most vulnerable to sexual abuse through marriages contracted under customary laws of many communities. To check this practice, section 31 of the Act has specifically forbidden and rendered unlawful any sexual

[40] Section 18(3) and Section 6(6)(c) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)
[41] Op Cit, Section 14 of the Child's Rights Act,
[42] Ibid, Section 13(3)(a)-(g)
[43] Ibid, Section 22
[44] Ibid, Section 28(2)
[45] Ibid, Section 30(1)(2)
[46] Ibid, Section 30(2)(a)-(f)

intercourse with any child in Nigeria.[47] It has further rendered the offender liable even if he believes that the child is above 18 years or that the sexual intercourse is being done with the consent of such a child.[48] It also punishes any person who sexually abuse or exploits a child in any manner or circumstance.[49] This provision has protected particularly female children that are sexually abused or exploited on grounds of poverty, naivety or special relationship that they share with an adult which give rise to undue influence or duress in schools, trade centres or such similar places.

Another interesting provision in the enactment is the prohibition of child's soldiering. On this, section 34 of the Act stipulates that: ''No child shall be recruited into any of the branches of the armed forces of the Federal Republic of Nigeria''. By this, the government or any relevant agency or body for the enforcement of the provision of this law are to ensure that children are not directly involved in any military operation or hostility.[50]

In the enforcement of the provision of the Child's Rights Act, the courts are empowered upon information brought before them that any of the provision of the Act that is violated is free to issue a warrant of arrest, summons or conduct searches concerning any violation.[51] At the conclusion of trial against those that have violated the Act, they are permitted to make such orders like the forfeiture order and assessment orders.[52] When a child assessment order is made, it is to specify the date on which the assessment is to beginning: and have effect for such a period not exceeding 9 days beginning with that date, as may be specified in the order.[53] When an assessment order is in force concerning any child, it shall be the duty of the person in possession of such a child to produce the child to such a person as may be stated in the order: and to comply with such direction relating to the assessment of the child as the court may think fit or has specified in the order.[54]

The courts are also allowed to make emergency protection orders where a state government or an appropriate authority has apply for such orders for the protection of any child and the court may make the order, if satisfied that they is a reasonable course to believe that the child is likely to suffer significant harm.[55] In the realm of this legislation, a higher duty of responsibility is placed on the state government to

[47] Ibid, Section 31(1)
[48] Ibid, Section 31(3)
[49] Ibid, Section 32
[50] Ibid, Section 34(2)
[51] Ibid, Sections 37(1) and section 39
[52] Ibid, Sections 38 and 42
[53] Ibid, Section 41(4)
[54] Ibid, Section 41(4)(5)
[55] Ibid, Section 42(1)(a)

protect children that are found in their domain. The state is required to investigate when they are informed that a child who lives, or is found, in the state, is a subject of an emergency protection order or is in police custody or where the state has reasonable course to believe that a child who lives, or is found in the state, is suffering, or is likely to suffer significant harm, the state shall make or caused to be made such enquires as it considers necessary, to enable it decide on what action is to be taken to safeguard or protect the welfare of such a child. This requirement useful as it is, is discovered to be inelegantly drafted and by its drafting nature is likely to create problem of interpretation before the court.

The Child's Rights Act as detailed as it's provision have appeared, is still lacking in the area of locus stand as it has not included non governmental organizations in the federation that have interest in the welfare of children in initiating actions involving the welfare and neglect of children in any part of the country. There is also no standard regulatory agency to monitor the welfare of children down to the grassroots where they live. Another problem is that issues affecting children particularly those that live in the remotest part of the country can only be attended to by the state where it has received information. However, ignorance of majority of the people has hampered the supply of such information to the appropriate authority, thereby, limiting the powers of such authorities in checking and enforcing the provisions of this law.

The Child's Rights Act discussed above is also enacted into Law by some states of the Federation. Their provisions are *intadem* with the Child's Rights Act of the Federation. On that premise, it will amount to a repetition in embarking on the review of similar provisions of the Child's Law of the various states of the Federation.

Other than the Child's Rights Act, 2004, another Federal legislation that has attractive provisions for the protection of the Nigerian child is the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, No.24 of 2003.

A Review of Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003

This Act was passed by the National Assembly on the 14th July, 2003 for the prohibition of traffic in persons and to establish an agency for the enforcement of the provision of the Act against traffic in persons and to investigate and prosecute persons suspected to be involved in traffic in persons and to take charge and coordinate the rehabilitation and counselling of trafficked persons and to deal with such related matters.[56] The Act contains relevant provisions that can be relied upon

[56] Note the preamble to the Traffic in Persons (Prohibition) Laws Enforcement and Administration Act, 2003

in protecting Nigerian children and some young persons that are trafficked. It beginnings by prohibiting the exportation and importation of any person out of, and into Nigeria, below the age of 18 years, with intent that such a person, or knowing it that such a person is likely to be forced or seduced into prostitution in that place or anywhere in Nigeria.[57]

Equally, the enactment has forbidden any person from using deception, coercion, debt bondage or any means to induce any person under the age of 18 years to go from one place to another to do any act, with intent that such a person be forced to or seduced into illicit intercourse with another person, so as to gratify the passions of the other, procures, entices, or lead away, even with such persons consent, and if such person is under the age of 18 years, the persons that has induced him is to be considered to have committed an offence and upon conviction is to be sentenced to 10 years imprisonment without an option of fine.[58] Persons who are in custody, charged or care of any person under the age of 18 years who causes or encourage such a person to engage in seduction, unlawful carnal knowledge, prostitution, or the commission of indecent assault, is rendered punishable and upon conviction is subject to 10 years imprisonment.[59]

Further the Act has checked the prevalent practice in the country where persons under the age of 18 years are induced or procured by their peers, relations and some so called business tycoons who induce such children to desert the custody of their parents, guardians and to follow them to towns and cities where they are compelled to involve in the life of prostitution and gratify certain persons in unnatural lust. Such persons are rendered punishable upon conviction and sentenced to 10 years imprisonment.[60] The enactment further prohibits persons from procuring, using or making offers to any person below the age of 18 years, for prostitution or production of pornography or for pornographic performance or procure and use such a person for the production or traffic in drugs.[61] To regulate the practice of persons who have made it their business in Nigeria, to organise and promote foreign travels which are intended to promote prostitution or encourage similar activities is rendered punishable under the law, and upon conviction,are to be imprisoned for 10 years.[62]

Conspiracy with persons below the age of 18 years with the intent to induce them by force pretence or other fraudulent means, permit any person to have unlawful carnal knowledge of such persons is also rendered punishable under the Act. It equally applies to those children who are detained and are below the age of 18 years and are

[57] Ibid, Section 11
[58] Ibid, Section 12
[59] Ibid, Section 14
[60] Ibid, Section 14(1) & (2)
[61] Ibid, Section 15 (a) & (b)
[62] Ibid, Section 16

compelled against their will or on any premises to have carnal knowledge with any man.[63] Also forbidden is the procuring for defilement of any persons below the age of 18 years to have carnal knowledge with a man or an animal, either in Nigeria or outside Nigeria. This provision gives support to the provision on bestiality provided in the Penal Code Law.[64] The practice of hoodwinking female children under the age of 18 years by stupefying or over powering such children in other to enable any man to have carnal knowledge with them is also rendered an offence and upon trial and conviction, the accused is to be punished with 10 years imprisonment and a fine of ₦200,000.[65]

Persons who kidnaps or takes custody by force compels, or by any deceitful means induces, confines or detains another person under the age of 18 years against his will, or unlawfully defiles another person of his personal liberty or unlawfully takes an unmarried person under the age of 18 years out of the custody of such persons father, mother, or any other person having lawful care or charge of such person against their will is said to have committed an offence under the Act, and upon conviction, is to be sentenced to 14 years imprisonment without option of fine. To check the practice of kidnapping children or using children for ritual purposes, the law is against the kidnapping, adoption or deceitful luring of any person in order that he may be killed for any purpose. The penalty in respect of this offence is imprisonment for life.[66] The Law has further forbidden the permission of any person in or outside Nigeria, to be used for any force labour.[67]

While the Act has rendered punishable persons who are resident in Nigeria, who by calculation or omission have caused or induced the seduction or prostitution of any person under the age of 18 years or has kept a brothel where he permits the defilement of persons under the age of 18 years in his premises or allow them to be in the brothel or trade in as prostitutes or procures, uses or offer such a person for the production of pornography or for pornographic performance. Where an offence under this Act is committed by a body corporate or institution and it is attributed to the neglect, connivance of it's Directors, Managers or Secretaries who had purportedly acted in that capacity is liable. Where a body corporate is convicted of an offence under this Act, it shall be liable to N2m and the court may make an appropriate order for winding up and when that is done, the assets and properties of the company shall be forfeited to the victims Trafficking Trust Fund.[68]

[63] Ibid, Section 17
[64] Sections 200, 284 and 285 of the Penal Code Law of Northern Nigeria, (cap89) 1963
[65] Op Cit, Section 18 of the Traffic in Persons Act, 2003
[66] Ibid, Section 20
[67] Ibid, Section 22
[68] Ibid, Section 28(1) & (2)

This legislation has established an agency known as the National Agency for the Prohibition of Traffic in Person. Whose duty is to sue and be sued in its corporate name or on issues or matters arising from the provision of the Act.[69] This agency is the only body so far, that is recognised by law for the enforcement and due administration of any matter arising or is connected with the due administration of the Act and the coordination and enforcement of its provision for the safeguard of children and young persons who are subjected to several vices. The problem with this agency is that, it has it's offices presently restricted at the Federal Capital Territory, Abuja, as if the problem of children and trafficking in the country is confined to the Federal Capital Territory, alone. Since Nigerian children are found every where in the country, with so many vices directed at them in the remotest parts of the nation, the failure to extend the branches or offices of this agency down to the grassroots has denied it of the opportunity of receiving information affecting the welfare of children that are found far away from the Federal Capital Territory of the country.

The last of the problem of this agency discerned from the legal framework is that, in carrying out its mandate, it is required to rely on such funds that are paid and accredited to its accounts in each fiscal year and approved for it by the National Assembly.[70] The mode of funding of this agency affects its performance as it has to rely only on the funds approved in its budgetary allocation and once it has exhausted its overhead in the fiscal year, it has to rely on further peanuts that are approved for it by the executive. This has affected this agency in effectively championing the campaign for the protection of children ofNigeria that are being trafficked to other parts of the world.

It has already been pointed out else where in this article that one of the problems affecting the welfare of the Nigeria Child is the practice of adoption of children by other persons. In order to safeguard the interest and well being of the Nigerian Child, various states in the Federation have provided Laws regulating this practice, in order to ensure that children that are adopted are protected and made to live a happy life as if they were under the care of their biological or natural parents. Since Nigeria is a Federation with 36 states, it will be impossible to examine the Law on adoption in each sate of the Federation as that will render this article bogus. For that reason, only the adoption Law of Lagos State shall be reviewed in the article as its provisions are similar with the adoption laws of the other states. There is no Federal enactment on adoption because issues pertaining to children are considered under the direct domain of the states, since the National Assembly has abdicated the duty of making law in this area to the States House of Assembly.

[69] Ibid, See section 1(1) & (2)
[70] Ibid, Section 40 (1) & (2)

A Review of Adoption Law (Cap. A5) Laws of Lagos State, 2004

In Lagos State, there is a Law provided for the adoption of children in that state which is a reincarnation or the adoption law of Lagos state No.8 of 1990. This law has provided for the adoption of certain juveniles and seeks to regulate other practices connected with such adoptions.[71] The law state clearly that it's provision apply only to the adoption of any person who is under the age of 17 years and has being abandoned or such parents and relatives are unknown or cannot be traced after a due enquiry certified by a juvenile court.[72] By the above, the Lagos State adoption law like other adoption laws in the Federation is out to protect children that are born and abandoned on the streets, school premises, bridges and in the bush by their parents who cannot be identified. The law permits an adoption of any child or juvenile to be made where there is an application of two spouses authorising them to jointly adopt a juvenile and it forbids the making of an adoption order permitting more than one person to adopt a child or juvenile.[73]

The sad thing about this legislation is that section 2(3) of the law has permitted biological parents of any child to give out their children for adoption purposes once the child is established to be above one year. The question that comes to mind here is, does this provision not create room for slavery or servitude of children which the provisions of the Child's Rights Act have forbidden? To the mind of this writer, it does. Adoption orders are restricted in respect of any applicant who seeks for an adoption if it is shown that the applicant or applicants, one of them is not less than 25 years and is at least 21 years old than the juvenile.[74] For an order of adoption to made in favour of the applicant, both the applicant and the child concern must be resident in Lagos state and must be in trust or custody of the applicant for a period of at least 3 consecutive months, preceding the date of which the order is made: and the applicant must have at least 3 months before the making of the order informed the probation officer of his intention to adopt the juvenile or child.[75]

The legislation has prohibited the making of an adoption order by any juvenile court concerning any female juvenile or child, where the applicant is a male, except an unusual circumstance exists justifying the making of such an order.[76] The essence of this provision is to prevent female children from being harassed sexually while in custody of a parent or the adopted parent taking advantage of proximity and opportunity to turn such a female child into a sex partner. Further, members of the public are forbidden from taking custody of abandoned children except reference is made to the police and the Social Development Department charged with the duty of

[71] See the preamble of the Lagos State Adoption Law (cap A5) Laws of Lagos State, 2004
[72] Ibid, Section 1
[73] Ibid, Section 2(2)
[74] Ibid, Section 3
[75] Ibid, Section 3(a)-(d)
[76] Ibid, Section 3(3)

the treatment of such children.[77] By this, the law requires the adoption of children to be done formally and the Social Development department under the law is empowered to arrange for the formal adoption or placement of any abandoned child in the state in custody of any person.[78]

Any person that violate the provision of this enactment is to be fined N1000 if he is an individual and N5000 if it is an organization or six months imprisonment or both. Taking into account the increase cases of kidnapping, abduction and theft of children in Nigerian towns and cities today, this punishment is criticised in this paper, as too small, to serve as deterrent to individuals and corporate entities that are determine to involve in this crime. The courts are put in the central position as the regulatory body in adoption matters. On this, section 5(1) requires the court to make an adoption law of Lagos state requires of the court to make an adoption order if it is satisfied that:

a. Every consent required by section 4 of this law which has not been dispensed with has been obtained, and that every person who has given his consent understands the nature and effect of the adoption order for which the application is made:
b. The order, if made will, will be for the welfare of the juvenile, due consideration for this purpose being given to the wishes of the juvenile having regard to his age and understanding and the applicant has not received or agreed to receive, and no person has made or agree to make or give to the applicant any payment or reward in consideration of the adoption other than what the court may approve.[79]

There is a problem here as the court can only make its orders based on information that are placed before it. Where there is conspiracy between the biological parents and the applicant adopter, the court in that circumstance may be deceived in making orders which are founded on defective facts for the purpose of adoption of a particular child.

In making orders for adoption, the court is required to impose such terms and conditions it thinks fit, requiring the adopter by bond to make for the juvenile such provisions as in the opinion of the court, is just an expedience.[80] In making adoption orders, the law has restrained the courts from acting hastily. On this, the law demands that when ever an application for an adoption order is made, the court should postpone the determination of the application and to issue an interim order placing the child or juvenile in custody of the applicant for a period not exceeding 2 years, by way of probation period upon such terms regarding the provision for

[77] Ibid, Section 3(3)
[78] Ibid, Section 3(3)(a)&(b)
[79] Ibid, Section 5(a) - (c)
[80] Ibid, Section 5(2)

maintenance, education and supervision of the welfare of the juvenile and otherwise.[81] After the probation period, if the court is satisfied that the child is well maintained and educationally carted for, it may then make a final order of adoption in favour of the applicant. A fundamental problem identified with this legislation is the absence of an effective regulatory body or agency to monitor and supervise the welfare of children in the country as they are scattered with many of them living the remote parts of the country. So far, section 6(2) of the enactment provides that ''the juvenile shall be under the supervision of such welfare officer as the commissioner may appoint.''[82]

The law also further stipulates that a juvenile or child adopted in Lagos State shall not be taken out of the state without the consent of the state government.[83] The provision above has help the state to keep surveillance over adopted children or juvenile to ensure that where ever they are taken finally, they are not treated like slaves, prostitutes, or abused. Where an application is made for adoption of a child in Lagos and one of the applicant is not a citizen of Nigeria, the courts are in exercising their powers, postpone the determination for adoption for a period of six months before it can make an interim order concerning such adoption. The law has prohibited an adopter or any person from receiving any payment or reward in consideration of any adoption except with the sanction of the court or the facilitation of any arrangement of the adoption.[84] It punishes any person who violates this provision, upon conviction to be fined N200 or imprisonment not exceeding 6 month or both. Since the above provision is intended to check and prevent the harsh treatment of children and juveniles, one would have expected the legislators to have contrived a more stem penalty against the offenders than the N200 it has stipulated in section 17(2) of the enactment.

The law also frowns seriously at the situation where an adopter adopts a child, and subsequently contracts a marriage with such a child or juvenile.[85] This means that adopted children are under the legislation, to be protected and are to be regarded as part of the families in which they are adopted. They are there fore, not to be sexually harassed but protected and not abused in the families in which they are adopted. By this, the law has placed them in the same degree of consanguinity and affinity like the natural children of the families in which they are adopted.

This legislation like others, have placed the supervisory powers to check the welfare of adopted children in the Director of Youth and Social Welfare Services of Lagos

[81] Ibid, Section 6(1)
[82] Ibid, Section 6(2)(a)
[83] Ibid, Section 6(2)(b)
[84] Ibid, Section 17(1)
[85] Section 22 of the Adoption Law of Lagos State, 2004; Young Persons Law (cap 29) Laws of Benue State, 2004

State who is required to keep himself informed from time to time of the condition and welfare of each adopted child in the state. And for that purpose, the director is required to arrange for such probation officers in his ministry to do the following on his behave

a. Pay periodical visit at reasonable time to each person adopted under the law, until such a person attains the age of 18 years
b. To enter any premises for the purpose of ascertaining whether there is any contravention by any person of any condition or of any provision of the law.[86]

During any visits the officer conducting the visit may demand for the production of the adopted juvenile or person, or that information be given or supplied about his condition or welfare.[87] This law to a large extent, has done well to safeguard the welfare and interest of the Nigerian adopted child and to protect him against the numerous abuses that may have been directed at his person with impunity and without checks on the parts of the state.

A Review of Children and Young Persons Law (Cap 10) Laws of Lagos State, 2004

The state has shown interest in how children and young persons that are involved in criminal activities are treated from the time of arrest, trial and at the stage of conviction and sentencing. To this, various state in Nigeria have enacted laws covering how children and young offenders are to be treated in criminal proceedings before the courts. On this, a special court known as juvenile court is established in each state of the Federation to conduct criminal proceedings involving children and young persons.[88] Under the juvenile law of the state, which is similar with the juvenile laws of other states in the Federation, ''a child is defined as a person under the age of 14 years: while young person is defined as a person who has attained the age of 14 years but is under the age of 18 years. A juvenile court is defined as a court constituted under the Children and Young Persons Laws for hearing and determination of cases relating to children and young persons.[89] This law began with the protection of children and young persons in the area of bail, where it provides that, when a person apparently under the age of 17 years is apprehended, with or with out warrant, and cannot be brought fought with before the court of summary jurisdiction, the police officer in charge of the police station to which such a person is brought shall release such a person on the recognizance being shown by him, his parents or guardian with or with out sorties.[90] The law has permitted the denial of bail to children and young persons only in the following circumstances:

[86] Ibid, Section 23
[87] Ibid
[88] See the preamble of Children and Young Persons Law of Lagos State, 2004
[89] Note the commencement part of the Children and Young Persons Law of Lagos State, 2004
[90] Op Cit, Section 3 of Children and Young Persons Law of Lagos State, 2004

a. Where the charge is one of homicide or other grave crime;
b. On less it is necessary in the interest of such person to remove him from associating with any reputed criminal or prostitute.
c. Unless the officer has reason to believe that the release of such person would defeat the ends of justice.[91]

To check the tendency of children and young persons developing into harden criminals, this law has forbidden the detention of children and young persons in the same place or allowing them to associate with adult charged with the same or other crimes.[92] In handling criminal cases involving children and young persons, this law has authorised the state to setup a juvenile court comprising of a magistrate who sits with such persons as the chief Judge may appoint.[93] The court when hearing cases involving children and young persons, if they are charged jointly with adults, the juvenile court shall sit in a different building or room, and not in the usual sitting room of the court in which regular proceedings are conducted.[94] This stipulation is one of the permitted exceptions to the constitutional law principle that all criminal proceeding should be heard in public.[95] And the constitutional position has received judicial approval in a number of cases in Nigeria.[96] To further exclude juvenile proceedings from the public, no person except members and officers of the court, the parties to the case their solicitors and other persons directly concern in the case shall be allowed to attend the court during its sittings. Further bonafide representatives of a newspaper or news agency are not to be excluded, except by a special order of the court.[97] It also frowns at undue publicity given to the name, address, school and photograph of the child or the doing of anything that is likely to lead to the identification of the child involved in a crime.[98]

The law gives the court the power to grant bail to any child that is not remanded but where he is not released on bail but committed to prison, the court shall direct the appropriate place in which he is to be detained or remanded until his case is delivered in due course. Where the child is of an unruly or depraved character, that is, is a person that is not fit to be detained, the court may make such an appropriate order concerning the child.[99] Concerning the procedure that is to be followed by a juvenile court, the law provides that any child or young person brought before the court, it shall be the duty of the Judge or court to explain to the child in a simple

[91] Ibid, Section 3(a)-(c)
[92] Ibid, Section 5
[93] Ibid, Section 6
[94] Ibid, Section 6(2)
[95] See section 36(3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)
[96] See Nigeria Arab Bank Limited vs Barvi Engineering (Nigeria) limited (1995) 8NWLR (pt 413) p257 & 271; Muhammed vs Nwobodo (2000) (pt 15) FWLR, p2547
[97] Op Cit, Section 6(5) of the Children and Young Persons Law of Lagos State, 2004
[98] Ibid, Section 6(6)
[99] Ibid, Section 7(1)(2)

language the substance of the allege offence against him.[100] In carrying out the explanation, the Judge is to avoid the use of harsh legal terms like ''charge'', ''condemn'' ''convicted'' etc. This provision is intadem with the principle of fair hearing entrenched in the constitution which provides that who ever is charged with a criminal offence, shall be entitled to be informed promptly in the language that he understands and in detail of the nature of the offence.[101] Where a child is charged with culpable homicide, then the court shall enquire from the parents of the child as to whether the child should be tried before a juvenile court and after explaining the substance of the offence, the court shall ask the child or young person whether he admits the offence.[102] This is to keep in line with the practice of plea-taking which is generally accepted in all criminal trials.[103]

Because children are dependents of parents the law has made it obligatory the payment of their fine and damages awarded by the court by parents of the child, except where the parent cannot be found or that he has not conduced to the commission of the offence by neglect or exercise due care of the child or young person.[104] The law also provides softer ways of punishing children other than imprisonment, when it provides that, no child or young person is to be ordered to be imprisoned if he can be dealt with in any other way such as probation, fine, corporal punishment, committal to a place of detention or to an approved institution or otherwise.[105] The Act further directs that where it becomes compulsory to order a child or juvenile to be imprisoned, they shall not be allowed to associate with adult prisoners or offenders.[106]

On the mode of punishment, the Act has prohibited the pronouncement or recording of death sentence against any offender who has not attained the age of 17 years at the time the offence was committed, instead, the court shall order such an offender to be detained at the pleasure of the Governor. In the course of the trial of children and young person, the court is required to avoid the use of harsh terms and the Judges are expected to be soft and subtle in handling the child and try as much as possible to do away with the atmosphere that prevails in regular court trials. To archive the above, children any young persons charged with offences when the court is satisfied of their guilt, the court is directed by the law to make the following others

a. Dismiss the charge;
b. Discharge the offender upon his entering into a recognisance;

[100] Ibid, Section 8 (1)
[101] Section 36(6)(a) of the constitution of the Federal Republic of Nigeria, 1999 (as amended)
[102] Op Cit, Section 10
[103] Doherty O, *Criminal Procedure in Nigeria* (London: Black Stone Press Limited, 1990) p246
[104] Op Cit, Section 11
[105] Ibid, Section 12(1) & (2)
[106] Ibid, Section 12(3)

c. Or by discharging the offender and placing him under the supervision of a probation officer; or
d. By committing the offender by means of a corrective order to the care of a relative or other fit persons; or
e. By sending the offender by means of a corrective order to an approved institution;
f. By ordering the offender to be caned; or
g. By ordering the offender to pay a fine, damages or costs; or
h. By ordering the parent or guardian of the offender to pay a fine, damages or costs; or
i. By ordering the parent or guardian of the child to give security for his good behaviour;
j. By committing the offender to custody in a place of detention provided under this law;
k. Where the offender is a young person, by ordering him to be imprison;
l. Where the offender is a young person, by committing him to a borstal institution; or
m. By dealing with the case in any manner in which it may be legally suitable to deal with.[107]

To check or control truancy, vagrancy, alcoholism, drug addiction and other social vices associated with children and juveniles in Nigeria, section 28 of the Law permit the disciplining of the children or young persons by sending them to remand homes where they are in primary or secondary schools of the state and have failed to attend classes with out reasonable cause; or found loitering the street during school hours or in places of entertainments or any shop during school hours or any week day other than a day declared to be a public or school day shall be apprehended by the police or any other authorised person and be handed over to the Principal or Head teacher of his school for necessary disciplinary actions.[108] Finally, in dealing with cases involving children and young persons, the juvenile courts are directed to make orders like corrective orders as well as interim orders.[109]

It is discovered in this review exercise that the law makers have done much in the area of criminal proceedings involving children and young persons and have also tried to check the excesses concerning the Nigerian Child who is considered vulnerable in criminal trials and tried to regulate this vulnerability to a large extent, to ensure that children are not put in a disadvantageous position while undergoing criminal investigation and trial.As a result, practices like undue publicity of a child involved in criminal trials by the use of video cameras and their exposure through

[107] Section 15 of the Children and Young Persons Law of Lagos State, 2004
[108] Section 26(a)(b)(c) of Children and Young Persons Law of Lagos State, 2004
[109] Ibid, Sections 20 and 30 of Children and Young Persons Law of Lagos State, 2004

photographs displayed in newspapers, has not been adequately, checked and controlled in practice in Nigeria.

Observations on the Legal Framework for the Protection of the Nigerian Child

It is discovered in this article that except for human trafficking, the legislators are yet to come out with a standard regulatory agency that will properly check, supervise from time to time the abuses and neglect on the Nigerian Child. This is because Nigeria children are found scattered to the hinterland of the country where most of the abuses take place. Under the laws, the commissioner and the probation officers that are required to check and report on the welfare of the children in the country are resident in state headquarters and are resident far away from the rural areas or communities of the country where most of the abuses and neglect of children takes place. It is the absence of a standard and effective regulatory body in the country to monitor the welfare of children that has given rise to the continuousabuses such as hawking on the streets, leading of beggars on the high ways, the presence of children in brothels, the use of their cheap labour in restaurants, as well as, their engagement in pornographic performance and trafficking in drugs.

Other than individual problems arising from the laws discussed above, there are social cultural factors that have continued to frustrate the state in its attempt to safeguard and protect the Nigerian Child more effectively. For instance, while there are numerous provisions within the laws discussed in this paper attempting to regulate children and adult marriages and sexual intercourse, it is discovered that such marriages are still contracted by people who are ignorant of the position of law who still hold in high esteem such traditions and customs. The regard for such customs have allowed such practices to continue, while the Child's Rights Act has forbidden torture, and degrading treatment in section 11 of the Act, there are such cultural practices such as female circumcision, which permits the genital mutilation of female children at the childhood stage. The use of crude implements in carrying out the exercise has often resulted to torture arising from the rapture of the female Childs hymen and such other degrading treatment like vagina fistula arising from that conduct. In recent time, the exercise also accounts for the transmission of the deadly virus in the country as under traditional arrangement, a single instrument is reserve for series of female children that are brought for circumcision.

Further, while the laws have sought for the enhancement of the dignity of Nigerian children, there are also such customary practices that negate children and women access to certain delicacies such as eggs, gizzard and other essential parts of ameat in the name of taboo. Also while the laws appear to emphasise education of education of children by the state, and full care by parents and guardians, it is discovered that, religious and cultural practices in most parts of Nigeria have to continue to contribute to the neglect of children by parents and their denial of western education to such children in the name of boko haram. Therefore, the

prevalence of the practice of almajiris in many parts of Northern Nigeria which prevents many children from poor background from receiving western education and enjoying parental care, can hardly make the state realise its dream fully on education and the protection of the Nigeria Child. In practice, the absence of basic infrastructure in primary schools and secondary schools where children are made to sit on the floor or stand while receiving inculcation of knowledge can hardly be said to be in line with the policy of the law that requires of the state to do every thing possible for the promotion, enhancement of the education, welfare and happiness of children in the Nigerian society.

While section 14 of the Child's Rights Act have rendered parental care, protection and maintenance of children as a legal right for the purpose of every Childs welfare and education, it is unfortunate that to live up to this legal obligation parents or guardians must have the where withal. Unfortunately, the state has being unable to address one of the fundamental problem that have rendered many parents helpless in living up to their parental obligation to their children, whether in terms of education or welfare. This problem is the problem of poverty. The state at a point evolve a Poverty Alleviation Scheme in the country, which at the end of the day was abused and adulterated into a scheme for settling political supporters and placating political thugs that have played prominent role in assisting the wining political parties in each state during the general elections.

Solutions to Improve the Legal Framework for Protecting and Enhancing the Welfare of the Nigerian Child

From the above observation, the legal framework of the state for the protection of the Nigerian Child to be more effective than it is, the state must address its mind to the socio-legal problems affecting the laws for the protection of the Nigerian child. By this, the state should do the following:

I. Contrive or create such an agency whose presence is scattered across the Federation down to the grassroots to monitor happenings affecting the Nigerian Child and to strive to arrest such vices that are directed at his person.

II. The state should by way of orientation remove the ignorance that is predominant with Nigerian people concerning the rights of Nigerian children and should embark on thorough education of the people so as to eliminate some of the socio-cultural practices that are strongly embedded in the people's behaviour which cannot be destroyed or eliminated overnight.

III. Religious bodies must also rise up to contribute in this area in educating parents and their followers on the problems confronting children in attempt to receive religious instruction and knowledge which has resulted into the undignified practice of almajeri in most parts of Northern Nigeria

IV. The state should setup more serious monitors of children welfare in the society so as to address on daily basis problems affecting children such as

hawking, truancy, presence in brothels and cinema halls and other negative behaviour emanating from children

V. Widen the locus standi for the initiation of criminal proceedings for the protection of the interest and welfare of the Nigerian Child to permit the various non-governmental organizations that exist in the country that are interested in the welfare of the Nigerian Child to proceed to the court at any time to seek for the protection of the welfare of the Nigerian Child when ever they are seised of the facts concerning the abuse or neglect of any child in Nigeria.

Conclusion

Elaborate as the legal framework for the protection of the Nigerian Child is, it will sail better if some of the socio-legal problems identified in some of the Laws are revisited, particularly the setting up of a more elaborate body for the monitoring and reporting on the plight of children in Nigeria down to the grassroots. Also for the provision of the law on the protection of the Nigerian Child to be effective, the state should endeavour to fight and suppress the socio-cultural practices that have continued to inhibit the effectiveness of the laws in guaranteeing full protection to the Nigerian Child. The state can achieve this by way of orientation or through public campaign carried out in radio programmes, newspaper interviews and the influence of such social institutions like the church, mosque, community meetings and associations. Also more suitable penalties should be provided for the existing socio-cultural practices that have continue to inhibit the effectiveness of the laws for the protection of the Nigerian Child. The state should also be more vigorous in evolving socio-economic policies that deals with the fundamental problem of poverty and illiteracy which has led to the ignorance of the people in complying with the laws in order to enhance the protection of children in Nigeria.