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GENERAL LEGAL FRAMEWORK AND RESPONSES TO CHILD LABOUR PRACTICE IN NIGERIA: A FOCUS ON KWARA STATE

By

*Fatimoh Funsho Abdulrazaq**

1.0 INTRODUCTION

The campaign against child labour has received both national and international recognition. This is so because such children became vulnerable to harm, which may affect their health, physical mental, moral and social development. The federal and states governments and particularly, Kwara State have passed the law on eradication and minimisation of child labour.¹ This policy² ensures that children are protected against all types of exploitation and that they have rights to live, better lives, acquire sound education and have a sense of belonging in the society.

Apart, from the Kwara State Child Right Laws, there are various international instruments which are legal responses towards child labour. These legal responses thrived to safeguard the rights of children. Such legal responses include the 1924 League of Nation Declaration of the Rights of Child; 1959 United Nations Declaration of the Rights of Child; 1929 Declaration of the Rights and Welfare of the African Child; International Programme on the Elimination of Child Labour 1982; United Nations

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¹The Child Rights Act, 2003 and the Kwara State Child Rights Law, 2006

²*Ibid*

Optional Protocol on the Rights of Child; United Nations Convention on the Child; Nigerian Child Rights Act 2003 to the most recent; The Kwara State Child Right Law of 2006. It must therefore be noted that the emergence of the current legal response to child labour in Kwara State cannot be considered in isolation of the various international legal responses already in existence before its enactment. Thus, in this chapter we will discuss the general legal framework and responses to child labour practice in Kwara State by first and foremost examining, in chronological order, the various international instruments that form the foundational basis of children rights as we have it today.

Rights of a Child 1989; 1999 African Charter on the Rights and Welfare of the Child; Nigerian Child Rights Act 2003 to the most recent; The Kwara State Child Right Law of 2006. It must therefore be noted that the emergence of the current legal response to child labour in Kwara State cannot be considered in isolation of the various international legal responses already in existence before its enactment. Thus, in this chapter we will discuss the general legal framework and responses to child labour practice in Kwara State by first and foremost examining, in chronological order, the various international instruments that form the foundational basis of children rights as we have it today.

2.0 LEGAL REGIMES ON CHILD RIGHTS

(a) 1924 League of Nations Declaration on The Rights of the Child

The 1924 League of Nations Declaration on the Rights of Child was built on the Geneva Declaration as the root of the rights of children. On 23 February 1923, the International Save the Children Union at its 4th General Assembly adopted the first of the declaration of the Rights of the child.³ On 28 February, 1924, the draft was ratified during the fifth general assembly.

³*Ibid*

Jebb later sent this document to the League of Nations, saying "We should claim certain Rights for the children and Labour for their universal recognition."⁴ On 26 September, 1924, the League of Nations adopted the Declaration and titled it the Geneva Declaration. Thus, history was rewritten, as for the first time specific rights for children were given recognition and affirmation.

The 1924 Geneva declaration as the corner stone of all the legal responses towards child labour stated that humanity "owes to the child the best that it has to give." Given a literary interpretation, the declaration simply identifies the responsibility of adults to children. The declaration however summarized the fundamental needs of children into five:

- i. The well-being of children;
- ii. The children's right to development;
- iii. Assistance;
- iv. Relief; and
- v. Protection;

In spite of the fact that the 1924 declaration addressed certain fundamental rights of children, it was not legally binding. This is largely due to the problem of enforcement in the members states.

Children's Rights.⁵ An attempt to bridge some gaps in the 1924 League of Nations instrument led, in 1959, to the United Nations Declaration of the Rights of child.

⁴ Geneva Declaration of the Rights of the Child, 1924', available at [https://www.humanium.org > Geneva-declaration.pdf](https://www.humanium.org/Geneva-declaration.pdf) accessed on 24 October 2015.

⁵ *Ibid*

In 1934, the Geneva Assembly of the League of Nations approved the Geneva Declaration and the signatories promised to insert the declaration into their international laws, but still it was not legally binding.⁶ Despite this short-coming of the 1924 League of Nations Declaration of the Rights of Child, it still remains the first International Human rights document in the history that addressed the problem of enforcement in the members states.

In 1934, the Geneva Assembly of the League of Nations approved the Geneva Declaration and the signatories promised to insert the declaration into their international laws, but still it was not legally binding.⁷

(B) 1959 United Nations Declaration on The Rights of the Child

In 1959, the United Nations adopted the Declaration of the Rights of the Child. One of the main significances of this is that it marked the first major International consensus on the fundamental principles of Rights of the Child.

The United Nations (UN) was founded after World War II and took over the Geneva Declaration in 1946. With the adoption of the Universal Declaration of Human Rights in 1948, the short comings of the Geneva Declaration was revealed. However, there was a call for a convention which could serve as an international tool that would legally bind the states; unfortunately this proposal was not adopted. As a result of this, a second declaration of the rights of the child was drafted, stating that "mankind owes to the child the best that it has to owe."

⁶ *Ibid*

⁷ *Ibid*

On 20 November, 1959, the declaration on the Rights of the child was adopted unanimously by all 78 member states of the United Nations General Assembly in Resolution 1386.⁸ The contents read thus:

The child is recognized, universally, as a human being who must be able to develop physically, mentally, socially, morally and spiritually, with declaration on the Rights of the child therefore lays down ten (10) principles thus:⁹

1. The Right to equality without distinction on account of race, religion in national origin;
2. The Right to special protection for the child's physical, mental and social development;
3. The right to a name and a nationality;
4. The right to adequate nutrition, housing and medical services; freedom and dignity.

An appraisal of both the 1924 Geneva Declaration and the 1959 Declaration on the Rights of the child revealed that while the former could be said to be the root of the Rights of the child, the latter seemed to have expanded on the former by giving the Declaration an International recognition and pronouncement. Declaration on the Rights of the child therefore lays down ten (10) principles thus:¹⁰

1. The Right to equality without distinction on account of race, religion in national origin;
2. The Right to special protection for the child's physical, mental and social development;
3. The right to a name and a nationality;
4. The right to adequate nutrition, housing and medical services

⁸ (XIV) of 20 November 1959.

⁹ Geneva Declaration of the Rights of the Child, 1924', op cit.

¹⁰ Geneva Declaration of the Rights of the Child, 1924', op cit.

The right to special education and treatment when a child is physically or mentally handicapped;

6. The right to understanding and love by parents and society;
7. The right to recreational activities and free education;
8. The right to be among the first to receive relief in all circumstances;
9. The right to protection against all forms of neglect, cruelty and exploitation; and
10. The right to be brought up in a spirit of understanding, tolerance, friendship among people, and universal brotherhood.

Thus, the 1959 United Nations Declaration of the Rights of Child is an advancement of the 1924 League of Nations Declaration of the Rights of the Child in the sense that it provides identifiable and specific rights of the child for member's states to take into consideration.

(c) 1979 Declaration on The Rights And Welfare Of African Child

The 1979 Declaration of the Rights and Welfare of African Child (DRIVA) builds upon rights that had been set forth in the 1924 League of Nations Declaration on the Rights on the child, 1959. However, the Declaration entailed the provisions that are modeled after those of the Convention on the Right of the Child (CRC). "The main difference is in the provision concerning children's duties, in Article 31, in line with the African human rights charter." The preamble states that "the child occupies a unique and privileged position in the African society" and requires legal protection as well as "particular case with regard to health, physical, mental, moral and social development."¹¹

¹¹ Declaration and Resolutions adopted by the sixteenth Ordinary Session of the Assembly

- The principles of this declaration advocate for non-discrimination of children and opined that children's rights are to be protected by law. According to the declaration, the death sentence is not to be imposed on crimes committed by children.¹²

In line with the declaration, children have a right to a name and nationality as well as to freedom of expression, association and peaceful assembly, thought, religion and conscience, privacy, education and movement.¹³ And for the first time in the history of the rights of child, handicapped children's right were considered as the Declaration states that handicapped children should enjoy physical, mental, and spiritual health.¹⁴

The declaration extended the rights of children to cover rights to freedom from all forms of economic exploitation and dangerous tasks and all forms of torture, maltreatment, and abuse, harmful social and cultural practices; all forms of sexual abuse; the use of harmful drugs such as cocaine, Indian hemp, and so on and abduction, sale of children, child trafficking and street begging. Thus, the declaration, for the first time in Africa, recognized the need to take appropriate measures to promote and protect the rights and welfare of the African child. The declaration also observed that children, due to the needs of their physical and mental development, require protection on these needs.¹⁵

¹² *Ibid*

¹³ Von Braun, (ed.) 'Employment for Poverty Reduction and Food Security', IFPRI Occasional Papers; Inter food policy Res Inst., 1995, p. 35. ISBN 978-089629-332-8. Accessed on 20 June, 2014.

¹⁴ See 'Declaration and Resolutions adopted by the sixteenth Ordinary Session of the Assembly of the Head of State and Government, 17 – 20 July 1979', op cit.

¹⁵ *Ibid*

The declaration also reaffirmed the principles of the rights of the child as contained in the 1959 United Nations Declaration on the Rights of the Child and other legal instruments of child rights.¹⁶ This declaration further stated that the family is the natural unit and basis of society and should receive the protection and support of the state.¹⁷ The provision added that obligations rest largely on parents or family and states to ensure that the rights and children are duly protected and taken care of.¹⁸

The 1979 Declaration can however be described as an international law that has transformed then Human rights bestowed on the child. This Declaration, as an international and regional legal instrument, has contributed immensely to other children-rights related instruments on child protection and placement. It has, in a long way, promoted African child welfare reforms and responded positively to child labour in African as its principles regulated child labour and provided for compulsory education of the African children. Hence, this declaration of the right children are duly protected and taken care of.¹⁹

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¹⁶ *Ibid*

¹⁷ Article 18 provides that "family shall be the natural unit and basis of society. It shall enjoy the protection and support of the state for its establishment and development."

¹⁸ *Ibid*

¹⁹ *Ibid*

and welfare of the African child will always be seen as one of the major international legal instruments on children's rights that forms part of the larger international legal responses towards child labour in Africa. It is the first regional treaty on children's rights in the African continent.

(d) International Programme on The Elimination Of Child Labour, 1982

Child labour has been described as any work or job that deprives children of their childhood, potential, dignity, and which can be harmful to their physical and mental development.²⁰

According to Edmonds,²¹ child labour refers to work that is mentally, physically, socially or morally dangerous and harmful to children; interferes with their schooling; deprives them of the opportunity to attend school; obliges them to leave school prematurely; or requires them to combine school attendance with excessively long and heavy work.

Child labour can also include dangerous work; children being exposed to serious diseases or illness, separating children from their families; leaving children in a disadvantageous position e.g making them to be left by themselves; involving them in street begging or involving them in hazardous jobs in large cities or any other similar tasks that can amount to the abuse of the child's rights.²²

It has however been established that what constitute child labour depends on child's age or maturity age as the age varies from one country to another as well as among states within a country just as we have Nigeria today.

Hence, the International Programme on the Elimination of Child Labour, 1982, is an International Labour Organization (ILO)²³ response to child labour; it was created with the goal of eliminating child labour which is achievable through a strengthening of the capacity of countries to fight child

²⁰ Child Labour- Nigeria, 2006 UNICEF, 2007.

²¹ Eric V. Emonds, 'Definition of Child Labour', *A Review of the Definitions of the Child Labour in Policy Research*, Working Paper Delivered in Geneva, November 2008, available at <<https://www.ilo.org/product/download.htm>> accessed on 26 October 2015

²² *Ibid*

²³ "National Programme on the Elimination of Child Labour in Nigeria" ILO: 2005

labour across the globe. In spite of this, some parts of the world, like Asia, employ over 60 percent of the World's child labour, often in intolerable forms.²⁴ This means that eliminating child labour entails eliminating the deep rooted poverty in our societies and as such it is impossible for child labour to disappear overnight.²⁵ Child labour can be eliminated only through step- by- step, long term approaches within each country as well as states within a country.

It is worthy of note that despite the fact that child labour is a pervasive problem, with the help of international organizations and Instruments like the International Programme on the Elimination of Child Labour, 1982, many countries have been achieving visible education. Nigeria, for example, is on a leading edge on the eradication of child labour. Nigeria's Child Right Act is now part of its Labour Act, and it prohibits exploitative labour from children. Some states, like Kwara State, Lagos State, Edo State, Anambra State, etc have also banned children from working during school

²⁴ United Nation Optional Protocol. Accessed on 20 June, 2014.

²⁵ In this respect, certain provisions of our law ought to be given primacy to ensure alleviation of poverty which has been the root cause of child labour. Most international legal instrument impose duties on government across the world to ensure poverty alleviating by provision of basic amenities in their countries. This basic amenities are contained in virtually all the national constitutions in the world over and are referred to as the Fundamental Objective and Directive Principles of State Policy. In the Nigerian situation, they are contained in Chapter Two of the Constitution of the Federal Republic, 1999 (as amended). What is therefore disheartening is the political will towards eradication of poverty because as robust as those provisions touching on provision of basic and social amenities, they continue to be non-justiceable. This makes the obligation to fight poverty in the country not to be on the neck of the government. Thus, as long as poverty continues to exist, its attendant consequences will continue to be felt by all and sundry most especially in relation of the prevalence of child labour.

hours.²⁶ However, child labour is still prevalent in Africa, particularly in Nigeria, due to poverty and other socio-economic factors.²⁷ To eliminate child labour, it must be seen as a capital offence attracting several capital punishment, an option which the International Labour Organizations (ILO) has failed to take into consideration. We contend in this present study if it is adopted eliminating child labour will be realisable.²⁸

(e) United Nations Convention on The Rights of The Child, 1989

This Convention was resolved on the 20th November, 1989 and came into force on the 2nd September, 1990. It was ratified by the Nigerian government on the 26th January, 1990 since Nigeria, due to poverty and other socio-economic factors.²⁹ To eliminate child labour, it must be seen as a capital offence attracting several capital punishment, an option which the International Labour Organizations (ILO) has failed to take into consideration. We contend in this present study if it is adopted eliminating child labour will be realisable.³⁰

Nigeria is one of the signatories to this Convention. It thus became part of our Municipal law pursuant to Section 12 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

²⁶ Akpan N. and Oluwabamide A. J., 'The of Child Abuse in Nigeria: A Case Study of Street Hawking in Uyo, Akwalbom State', *Journal of Social Science*, Vol 24(3), 2010, pp. 189-192, available at <https://www.krepublishers.com> > JSS > JSS-24-3-189-192.pdf> accessed on 23 October 2015.

²⁷ *Ibid*

²⁸ *Ibid*

²⁹ *Ibid*

³⁰ *Ibid*

The 1989 United Nations Convention on the rights of a child can be described as the most legally pronounced of all conventions on the Rights of a child. It is still a product of the 1924 Declaration of the right of child as it tapped its core resources from the declaration.³¹

The range of protection granted by this Convention covers and encompasses the whole range of human rights – civil, political, economic, social and cultural. These rights provided by the Convention are broader than that provided under the 1999 Constitution of the Federal Republic of Nigeria (as amended).³² The objective of this convention is to protect children from discrimination, neglect and abuse as stipulated in its provisions. It had also been described as the principal children's treaty. It grants rights for children in peacetime as well as during armed conflict and creates room for the implementation of those rights. This convention can best be described as a key legal instrument that has responded to child labour. It is also the first convention which is a legally binding international treaty to give universally-recognized norms and standards for the protection and promotion of children's right in a single text.

In addition, it is the most rapidly and widely ratified international human rights treaty in the world. However, this unprecedented wide participation clearly shows a common political will to improve the situation of children. It is the first convention to combine civil and political rights with economic, social and cultural rights of a child. It however advocates that enjoyment of one right cannot be separated from the enjoyment of the others.

It demonstrates that the freedom a child needs to develop, his or her intellectual, moral and spiritual abilities is dependent on a healthy and safe environment, access to care, and minimum standard of foods, clothing, and shelters among other things. In a nutshell, protection of child against all forms of the child labour, amongst others, is the hallmark of the Convention.³³

³¹ 1924 League of Nation Declaration of the Right of Child.

³² Sections 32 - 45 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)

³³ Article 2 of the Convention on the Rights of the Child 1989.

It is equally of importance to note that, the Convention, provides for the whole interest, rights and protection of the child and rested the responsibility of achieving the said interests on parents, legal guardians and other individuals responsible for him or her.³⁴ States parties to this Convention are encouraged to put appropriate measures (legislature, administrative and other measures into place to ensure the implementation of these rights as guaranteed a child under the Convention.³⁵ It is equally important to note that every child is guaranteed the right to life and states parties must ensure the survival and development of the child.³⁶

Furthermore, no child should be separated from his or her parents against their will except in accordance with the applicable law and procedures.³⁷ The foregoing provision readily comes within the purview of the prevalence form of child labour in Nigeria and particularly in Kwara State. It is disheartening to note that children are separated from their parents against their will to engage in domestic service and other kinds of child labour. Article 18 of the Convention is to the effect that even where a child is separated from one or both parents, personal relations and direct contact with the parents must be maintained.³⁸

³⁴ Article 3 *Ibid*

³⁵ Article 4 *Ibid*

³⁶ Article 2 Declaration of the Right and Welfare of African Child states that "a child means every human being below the age of 18 years.

³⁷ Article 9 *Ibid* (1)

³⁸ Article 18 provides that "family shall be the natural unit and basis of society. It shall enjoy the protection and support of the state for its establishment and development".

It is not out of place to state that where a child is a subject of hard labour, his physical, social and moral development are affected, thus, state parties are encouraged to put in place appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect treatment, maltreatment as well as economic exploitation.³⁹ Where for any reason serving the best interest of the child, a child is to be deprived of his or her family environment then, such a child shall be exposed to special protection and assistance by the state or whoever that is responsible for the deprivation⁴⁰

Similarly, a child shall be entitled to a standard of living adequate for the child's, physical, mental, spiritual, moral and social development. A situation where a child subjected to forced labour can rarely meet those standards as a child is vulnerable to all sorts of exploitation.⁴¹

The child being engaged in labour rarely has access to education. Thus, the Convention provides state or whoever that is responsible for the deprivation⁴² Similarly, a child shall be entitled to a standard of living adequate for the child's, physical, mental, spiritual, moral and social development. A situation where a child subjected to forced labour can rarely meet those standards as a child is vulnerable to all sorts of exploitation.⁴³

The child being engaged in labour rarely has access to education. Thus, the Convention provides that a child shall by right be entitled to education⁴⁴.

³⁹ Article 19, of the Convention on the Rights of the Child 1989.

⁴⁰ Article 20, *Ibid.*

⁴¹ Article 22, *Ibid.*

⁴² Article 20, *Ibid.*

⁴³ Article 22, *Ibid.*

⁴⁴ Article 28, *Ibid.*

Specifically, primary education shall be made compulsory. This is in tune with the practice in Nigeria through the Universal Basic Education (UBE) introduced by the Federal government of Nigeria which has been replicated by all the States⁴⁴ of the Federation. However, it is one thing for the policy to be in existence, it is another thing for it to be implemented. This is because most children still roam our high ways hawking while their colleagues are in school.⁴⁵

The failure and neglect of the parents and whoever has control over a child to ensure the child has rest and leisure also constitutes a breach of the child's rights as guaranteed by the Convention.⁴⁶ A child, who is subjected to labour rarely, has time to rest and leisure and this in turn affects his/her mental, moral, social, and physical development. A child under service as house help rarely has time to participate in cultural life as is he is pre-occupied with house work day and night.⁴⁷ Significantly, a child is entitled to be protected from economic exploitation and from performing any work that is likely to be hazardous or interferes with his education. Every state party is commanded to put in place, legislative, administrative, social and educational measures to ensure the implementation of these stated rights.⁴⁸

⁴⁴ For instance, the States that have introduced the programme in Nigeria include Taraba State, Yobe State, Osun State, Cross Rivers State, Kwara State, amongst others. See generally, Amuchie A. A., et al, 'An Appraisal of the Universal Basic Education in Nigeria', *Global Journal of Management and Business Research*, Vol XIII, Issue XI, Version I, 2013; Daura H. D., Audu A. R., 'Challenges of the Implementation of the Universal Basic Education Programme in Yobe State, Nigeria and the Prospects for 2015 and Beyond', *Global Journal of Politics and Law Research*, Vol. 3, June, 2015, pp. 72-96; and Etuk G. R., et al, 'Nigeria's Universal Basic Education (U.B.E.) Policy: A Sociological Analysis', *American International Journal of Contemporary Research*, Vol. 2, No. 7, July 2012, pp. 179-183.

⁴⁵ Amuchie A. A., et al, 'An Appraisal of the Universal Basic Education in Nigeria', opcit.

⁴⁶ Article 31.

⁴⁷ Lana O., 'Child Labour; the Effect on the Child. Causes and Remedies to the Revolving Menace', Thesis presented to the Department of Human Geography, University of Lunds, Sweden, available at <https://www.lup.lu.se/luur/download?html> accessed on 26 October 2015.

⁴⁸ Article 32 (1) and (2), *Ibid.*

the principle of the Convention (Article 3) is that the best interest of the child must be of primary consideration "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies;. This is in addition to the joint responsibility of parents to the child. "The best interests of the child will be their basic concern."⁴⁹ How do we determine what actions are in the best interest of child?⁵⁰ In large part, this judgment is based on social science and health care. This is the principle that provides a fit between the developmental needs of the child and the rights of the child under the Convention.⁵¹

The convention is also a historical landscape in the child's rights as it created a new vision for children and catered for the autonomy of all children.⁵² On the whole therefore, wherever a child is subjected to any form of psychological or physical trauma the Convention provides for recovery, rehabilitation and the social reintegration of a child victim of exploitation, neglect, abuse and child labour generally.⁵³

The United Nations Optional Protocol On The Rights Of The Child

Two optional protocols were adopted by the UN General Assembly on 25 May, 2000. The first optional protocol restricts the involvement of children in military conflicts, and the second optional protocol prohibits the sale of children. The two protocols have been ratified by many states.

Article 18, Convention on the Rights of the Child

There is no standard definition of "best interest of the child". This generally refers to the deliberation that courts undertake when deciding what type of services, actions and orders will best serve a child as well as who is best suited to take care of a child. The term is not capable of a precise definition. Best interest determinations are generally made by considering a number of factors related to the child's circumstances and the parent or the guardian circumstances and capacity to parent with child's ultimate safety and well-being as the paramount concern. See generally, 'Definition of the best interests of the child'- Child Welfare Information Gateway, available on <<https://www.childwelfare.gov/pubsPDFS>> accessed on 26 October 2015.

Catherine Covell, (Ph.D), 'The Rights of the Child' available at <<http://www.aboutkidshealth.com>> Accessed on 28 June, 2014.

Ikelly, op cit.

Article 39 *Ibid*

The first United National optional protocol on the involvement of children in armed conflict requires parties to ensure that children under the age of eighteen are not recruited compulsorily into the military.⁵³ This protocol however requires the government of every nation to make sure that, members of their armed forces who are under eighteen years of age do not take part in hostile actions.⁵⁴ This protocol came into force on 12 July, 2002.⁵⁵

The United Nations General Assembly adopted the treaty as a supplementary protocol to the Convention on the Rights of the Child. This first protocol with a clear interpretation of the sentence "states parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities",⁵⁶ does not require a complete ban on the use of children in conflict. But rather requires the parties in question to "take all necessary measure." Furthermore, the words "take all feasible measures" does not create room for a total prohibition of taking children into armed forces.⁵⁷

The United Kingdom which recruits citizens under the age of 18 years into its army clarified her position where it states that "whilst Army personnel under the age of 18 may continue to undertake a limited range of duties with resident units in northern Ireland, they do not participate in activities in direct support of the civil power. UK military personnel under the age of 18 years are not deployed as air crew, and in line with UN policy, personnel under the age of 18 years are not deployed on UN peacekeeping operations."⁵⁸

⁵³Revas C.R., 'The Optional Protocols to the UN Convention on the Rights of the Child on Sex Trafficking Child Soldiers', available at

<<https://www.index.justice.gov.il/Units/MainDocs/pdf>> accessed on 26 October, 2015.

⁵⁴ *Ibid*

⁵⁵ Child Labour-Nigeria, 2006 UNICEF, 2007

⁵⁶ *Ibid*.

⁵⁷Revas C.R., 'The Optional Protocols to the UN Convention on the Rights of the Child on Sex Trafficking Child Soldiers', op cit.

⁵⁸ Explanatory Memorandum on the Optional Protocol to the United Nations Convention on the Rights of the Child-Command Paper Number: 5759.

The second optional protocol on the sale of children, child prostitution and child pornography, requires parties to prohibit the sale of children, child prostitution and child pornography. It came into being on 18 January, 2002. As at 19 June, 2014, 167 states are parties to the protocol and another 10 states have signed but have not ratified.⁵⁸ The best interests of the child must be legally protected against sexual exploitation and abuse as well as child labour. Commercial sexual exploitation of children, such as the sale of children, child prostitution, child sex tourism and child pornography, are prevalent all over the world today.⁵⁹ There have been widespread campaign against this, in different international fora but the practice continues to thrive. Thus, collective effort is required to adequately address these social vices.

Article 34 and 35 of the Convention on the Rights of the Child say that governments should protect children from all forms of sexual exploitation and abuse and take all measures possible to ensure that they are not abducted, sold or trafficked. This protocol also protects children from being sold for non-sexual purposes such as other forms of forced labour, illegal adoption, baby factories etc. The protocol provides definitions for the offences of sale of children, child prostitution' and 'child pornography'. It also creates obligations on governments to criminalize and punish the activities related to these offences.

It requires punishment not only for those offering or delivering children for the purpose of sexual exploitation, transfer of organs or children for profit or forced labour but also for anyone accepting the child for these activities.

⁵⁸ United Nation Treaty collection: Optional Protocol to the convention on the Rights of the child on the sale of children, child prostitution and pornography. Accessed on 20 June, 2014.

⁵⁹ *Ibid*

It also protects the rights and interests of child victims as governments at all levels must provide legal and other support services to child victims. This obligation includes considering the best interests of the child in any interactions with the criminal justice system. Children must also be supported in their rehabilitation and reintegration. Thus, as a complement to the convention on the Rights of the child interpretation of the optional protocol's text must always be guided by these principles discrimination, best interests of the child and Child participation.

The value of international cooperation and education are also stressed in the protocol. International cooperation is important as a means of combating these often transactional activities. Public awareness, information and education campaigns also help to protect children from these violations of children's rights.⁵⁷

In addition, a third protocol, the optional Protocol to the Convention on the Rights of the Child on a communications procedure, came into being and it allows children or their parents or representatives to file individual complaints for violation of their rights as stipulated in the convention. This was adopted in December, 2011 and opened for signature on 28th February, 2012.⁵⁸

(g) African Charter On The Rights And Welfare Of The Child

This Charter came into force on 29th November, 1999. Nigeria is one of the signatories and parties to this Charter and became part of the country's municipal law pursuant to the relevant provisions of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

A child enjoys a variety of rights under this Charter irrespective of the child's parent's or legal guardians' race, ethnic group, colour, sex, language, religion, political or other opinion national and social origin, fortune, birth or other status⁵⁹

⁵⁷ *Ibid*

⁵⁸ See 'Explanatory Memorandum on the Optional Protocol to the United Nations Convention on the Rights of the Child' - Command Paper Number: 5759.

⁵⁹ Article 3 *Ibid*

The overall interest of the child is also the hallmark of this Charter and it stipulates that it shall be the primary and paramount consideration in all judicial or administrative pronouncements.⁶³

Similarly, the survival and development of a child is given prominence by the Charter. Every child shall have an inherent right to life which shall be protected by law. The maximum possibility of survival, protection and development of the child shall be the responsibility of the states parties.⁶⁴

The significance of this is that the Charter prohibits all forms of child labour and abuse. This is because the practice of child labour is a serious threat to the child's survival, protection and development. Child labour subjects the child to various conditions in which this cannot be achieved. Hence, for the state parties to live up to their responsibilities under the Charter, they must tackle the problem in their countries. In addition, every child shall have the right to education. The acquisition of such education shall be directed towards the promotion and development of the child's personality, talents and mental and physical abilities.⁶⁵

A child is also entitled to leisure, recreation and cultural activities.⁶⁶ A child subjected to labour who is deprived of leisure, recreation and cultural activities will adversely be affected mentally, socially, physically, morally and psychologically. State parties are thus encouraged to provide for leisure recreation and cultural activities for the child for his survival and development. In specific terms, every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with his / her physical, mental, spiritual, moral and social development.⁶⁷

Thus, it is provided that the state parties shall put in place appropriate legislative and administrative measures so as to ascertain full implementation.

⁶³ Article 4 *Ibid*

⁶⁴ Article 5 *Ibid*

⁶⁵ Article 11 *Ibid*

⁶⁶ Article 12 *Ibid*

⁶⁷ Article 15 *Ibid*

It is also provided that states parties shall take specific legislative, administrative, social, and recreational measures to protect the child from all kinds of torture, inhuman or degrading treatment and especially physical or mental injury or neglect and maltreatment.⁷¹

It is further provided that every child shall be entitled to the enjoyment of parental care and protection and shall, whenever possible, have the right to relate with his or her parents. No child shall be separated from his parents against his will except in accordance with the appropriate law.⁷²

Thus, a situation where a child is given out as house help negates the provision of this Charter as it tends to affect the moral, mental and social development of a child. It is also important that, whatever shall be the best interest of the child shall be ensured by the parents so as to enhance mental and physical development of the child.⁷³

(h) The Child Rights Act, 2003

Against the international condemnation of child trafficking and exploitation of the child economically across the globe, Nigeria as a nation took a giant stride in 2003 by enacting the Child Rights Act, 2003. The enactment of this Act has received both national and international commendations. This is evident in the enactment in some States in Nigeria, of the Child Rights Law.⁷⁴ The Child Rights Act is a very comprehensive Act touching almost every issue relating to the welfare, interest and protection of a child.

⁷¹ Article 19, Convention on the Rights of the Child states that children has the right to be protected from being hurt and mistreated, physically or mentally. Government should ensure that children are properly care for and protect them from violence, abuse and neglect by their parents or anyone else who looks after them. In terms of discipline the convention does not specify what forms or punishment parent should use. However, any form of discipline involving violence is unacceptable. These are ways to discipline children that are effective in helping children learn about family and social expectations from their behavior ones that are non-violence are appropriate to the child level of development and take the best interest of the child into consideration. In most countries law already define what sort of punishments and considered excessive or abusing. It is up to each government to review those laws in the light of government to review those laws in the light of the convention.

⁷² Article 19, *Ibid*

⁷³ Lana O., 'Child Labour: the Effect on the Child, Causes and Remedies to the Revolving Menace', *op cit*.

⁷⁴ A case in point is the Kwara State Child Rights Law enacted in 2006.

Thus, the salient provisions that are relevant to this work are examined.⁷³ It is to be noted that, one of the fundamental provisions in the Act is the provision touching on the paramount interest of a child.⁷⁴ The provision is to the effect that in every action concerning a child, all and sundry, individual, public or private body and or government institutions are to ensure that the interest of a child takes priority.

The provisions in Chapter II of the 1999 Constitution (as amended) are considered inalienable rights of a child and this is to further stress that every child has a right to survival and development.⁷⁵ Specifically, a child's right to leisure, recreation and cultural activities as recognized by international legal instrument on the protection of child is also guaranteed.⁷⁶ It is also provided that a child shall be entitled to parental care and protection and accordingly, no child shall be separated from his parents against the will of the child except under certain conditions permissible by the court.⁷⁷ Fundamentally, the Federal Government of Nigeria has made basic education compulsory for all Nigerian children. Thus every child has the right to free compulsory and universal basic education from primary school to junior secondary education.⁷⁸ It is equally important to note that every child shall be given special protection measures appropriate to enhance his physical, social, economic, emotional and mental needs.⁷⁹ This is important in order to achieve the survival and development of the child to live a better life.⁸⁰

Thus, every parent, institutions, persons/authority saddled with the responsibility of taking care, maintaining, bringing up, educating, training, socializing, employing and rehabilitating their child has the duty to provide necessary guidance, discipline, education and training for the child for the survival and development of such child.⁸¹

⁷³ See Sections 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 20, 25, 26, 37, 28, 30, 31, 32, 33 and 34 of the Child's Right Act, 2003.

⁷⁴ Section. *Ibid*

⁷⁵ Sections 5-11, *Ibid*

⁷⁶ Section 12, *Ibid*

⁷⁷ Section 14, *Ibid*

⁷⁸ Section 15, *Ibid*

⁷⁹ *Ibid*

⁸⁰ Section 16, *Ibid*

⁸¹ Section 20, *Ibid*

It is to be noted that, using a child as house-help or any other form of exploitation has been given credence to by law in Nigeria.⁸⁰ Thus, it is prohibited to employ, use or involve a child in any activity involving leading to the commission of any of the offences related thereto.

*In specific terms, the Act prohibits child labour. Thus, no child shall be subjected to any forced or exploitative labour, or to work in any capacity that may affect his mental, physical and psychological growth and development.*⁸¹

At this juncture, it is important to note that the Act recognized the application of some salient provisions in the Labour Act⁸² which provisions are relevant for the safety and protection of the child against forced labour. It is also important to note that the Act also prohibits buying, selling, hiring or otherwise dealing in children for the purpose of hawking or begging for alms or prostitution.⁸³ Thus, a Nigerian child shall have and be given the opportunity to attend and remain in school as provided for under the Compulsory Free Universal Basic Education Act⁸⁴

Hence, the Nigerian Child Right Act, 2003 is a response to past international declarations and conventions. Its provisions fell short of the rights afforded by the African Charter on the Rights and Welfare of the Child (ACRWC), the United Nations Convention on the Rights of the Child (CRC), and United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

- General Ibrahim Babangida came into power and ratified the ACRWC in February 1989 and the CRC in March, 1991. While Nigeria is a signatory without reservation to CRC and the ACRWC, the conventions have not been incorporated into domestic law and thus have no legal force in Nigeria.⁸⁵

⁸⁰Section 25, 28, 30, 31 and 34 Kwara State Child's Rights Law, 2006 and Section 25, 26, 37, 28, 30, 31, 32, 33 and 34 Child's Right Act, 2003.

⁸¹Section 28, *Ibid*

⁸²Sections 28, 59, 60, 61, 62 and 63 of the Labour Act Cap. L1, Laws of the Federation of Nigeria 2004

⁸³Section 30 of the Child's Rights Act 2003

⁸⁴Section 2

⁸⁵The Rights of the Child, Nigeria', UN.Doc. CRC/15/Add. 257 (2005) available at <[http://www1.umn.edu/Humanrts/Crc/Nigeria 2005.htm](http://www1.umn.edu/Humanrts/Crc/Nigeria%2005.htm)> Accessed on 29 June, 2014.

For the fact that Nigeria signed the CRC and the national legislative has passed the Child Rights Act, the law still appears to have differing levels of acceptance and implementation among Nigerian states. Abuja territory, Ebonyi State, Ogun State are among those states in Nigeria that have passed the bill into their own local laws.

Hence, the law had little effects on child's rights in Nigeria due to lack of implementation and in other states of the federation because they have their own governments and judiciary. While some describe the Child Rights Act 2003 as legally binding, others argue that despite the passing of the law, there is no provision for national force that truly protects children against abusive conditions, and that in many states child protection activities in Nigeria still rest largely on the shoulder of NGOs.⁸⁷ However, another cause of the ineffectiveness and lack of proper implementation and acceptance of this act micro is the customary variation that exists in Nigeria. Contrary to the opinion that there is no effective national force on the protection of child, the 1999 Constitution of the Federal Republic of Nigeria contains an elaborate bill of rights. These rights include the right to life, the right to personal liberty; the rights to fair-hearing; and the right to freedom of movement among others.⁸⁸ Sources have however pointed out that in Nigeria around 43% of women under 18 years are married.⁸⁹ One source of legislation that was first brought forward in 1991 and which became national law in 2003 is "the Child Rights Act" sections 21 & 23- "Prohibition of child marriage" and "Punishment for Child Marriage and Betrothal."⁹⁰ This act made it illegal to marry off a child below the age of 18. "If a husband consummates a marriage with a child, it is considered rape."⁹¹

⁸⁷ Akinwumi, Olayinka Silas (2010) 'Legal Impediment on the Practical implementation of the Child Right Act 2003', *International Journal of Legal Information*: Vol. 37/ss.3, Article 15 available at <<http://scholarship.kw.cornell.edu/ijli/vol37/iss3/10>> Accessed on 29 June, 2014.

⁸⁸ Chapter iv of 1999 Constitution of the Federal Republic of Nigeria (as amended).

⁸⁹ 'Children and Allied Laws', Olakanmi & Co: Lawlords Publications, 2008.

⁹⁰ Jain, Saranga and Kurz, Kathleen. "View Insights on Preventing Child Marriage: A Global Analysis of factors and Programs". International Center for Research on Women April, 2007.

⁹¹ Toyo, Wyoko "Revisiting Equality as a Right: The Minimum age of Marriage Clause in the Nigeria Child Rights Act, 2003", *Third World Quarterly*, vol., 27 No 7, the Politics of Rights: Dilemmas for Feminist praxis (2006), pp. 1299, 1372.

There are, however, several factors militating against human rights as well as the child's rights and which make the enforcement and implementation of the Child Rights Act difficult in Nigeria.

One of this is national acceptability of the act in its definition of "child". In line with The Conventions on the Rights of the Child, the Child's Rights Act, 2003 defines a child as a person who has not attained the age of 18. This means that any person from zero years to 17 years old is considered a child.⁹⁵ There are, however, several factors militating against human rights as well as the child's rights and which make the enforcement and implementation of the Child Rights Act difficult in Nigeria.

One of this is national acceptability of the act in its definition of "child". In line with The Conventions on the Rights of the Child, the Child's Rights Act, 2003 defines a child as a person who has not attained the age of 18. This means that any person from zero years to 17 years old is a child while a person of 18 years and above is an adult. This definition, plausible, as it is, is one major reason some states have refused to pass the Child's Rights Law.

Since, Child Rights Act prohibits the betrothal and marriage of a child, some states⁹⁶ see it as contradicting their religion and culture. So some states that have adopted this bill have taken the age of 16 and under to represent a child.⁹⁷ Someone who may be regarded as a child in one part, could also be regarded as a marriageable adult in another state. Regardless to these criticisms, the Child Rights Act is a welcome legal response towards child

⁹⁵Toyo, Wyoko "Revisiting Equality as a Right: The Minimum age of Marriage Clause in the Nigeria Child Rights Act, 2003", *Third World Quarterly*, vol., 27 No 7, the Politics of Rights: Dilemmas for Feminist praxis (2006), pp. 1299, 1372.

⁹⁶Though the Act is expected to be domesticated into law by all the 36 States in Nigeria, however, only 14 States of the federation have complied to domesticate it. These are the States in Southern part of Nigeria. The core Northern States have refused to domesticate the Act because of the contradictions in the Act which attempt to certain religious beliefs in Nigeria. See generally, O. Abifarin, F.F. Abdulrasaq and O. Sola, 'Reflections on the Marriageable Age, Child Act Rights and the Health of the Child in Nigeria', pp. 157-178, available at <https://www.unilorin.edu.ng/abdulrazaqff/Reflections%20on%20the%20Marriageable%20Age%20Child%20Act%20Rights%20and%20the%20Health%20of%20the%20Child%20in%20Nigeria.pdf> accessed on 26 October 2015.

⁹⁷See for instance the Kwara State Child Rights Law, 2006.

labour in Nigeria as it has adopted all the fundamental human rights set out in the 1999 constitution of the Federal Republic of Nigeria.

In addition, the act also has specific rights specially provided for the children.

Some of these rights include:

- (i) Right to a name;
- (ii) Right to survival & protection;
- (iii) Right to dignity;
- (iv) Right to parental care, protection and maintenance;
- (v) Right to free, compulsory and universal primary education;
- (vi) Right to freedom from discrimination;
- (vii) Right to private and family;
- (viii) Right to freedom of movement;
- (ix) Right to thought, conscience and religion;
- (x) Right to leisure, recreational and cultural activities;
- (xi) Right to health and health services;
- (xii) Right of a child in need of social care and protection;
- (xiii) Right to the urban child to protection against harmful social and cultural practices;
- (xiv) Right not to be imprisoned with the mother; and
- (xv) Right to have his best interest considered paramount in any matter involving him and right to protection against abuse or torture.

It should however be noted that these rights have provisos but time and space may not allow us to list out these provisos.

In spite the factors working against the Child's Rights Act of 2003 and its short-comings as discussed above, the act can simply be described as the first legal national instrument to specifically give a national recognition to the child's rights in Nigeria taking after other international related legal instruments on child labour.

3.0 THE CHILD RIGHTS LAW OF KWARA STATE, 2006 IN PERISCOPE

The Kwara State Child Rights Law, 2006, is the current legal response to the menace of child labour in the state.⁹⁸ It taps its root from the Child Rights Act, 2003. The Kwara State Child Rights Law has enormous provisions directly touching on the issues relating to children rights and protection.

However, the focus of this thesis relates to the Kwara State Child Rights Law is the protection of children against the menace of child labour. To this end, certain provisions of the Kwara State Child Right Law shall be appraised vis-à-vis the current practice of Child Labour in Kwara State. Hence, sections 28 and 29 of the Law call for consideration.

Section 28 of the Kwara State Child Rights Law, 2006 prohibits exploitative Labour when it provides thus:

1. Subject to this Law, no child shall be:
 - a. Subjected to any forced or exploitative Labour; or
 - b. employed to work in any capacity except where he is employed by a member of his family in light work of an agricultural, horticultural or domestic character: or
 - c. required, in any case, to carry, or move anything so heavy as to be likely adversely affect his physical, mental, spiritual, moral or social development; or
 - d. employed as a domestic help outside his own home or family environment.

⁹⁸The Kwara State Child Rights Law as enacted in Kwara State during the administration of the Governor Bukola Saraki. The law is not only a legal response to the odious practice of child labour in Kwara State, it is also a follow up to the Child Rights Act enacted by the National Assembly in year 2003. With the emergence of the Kwara State Child Rights Law, Kwara State of Nigeria is becomes one of the States that have shown positive commitment to tackle the menace Child Labour practice in Nigeria.

2. No child shall be employed or work in an industrial undertaking and nothing in this section, subsection shall apply to work done by children in technical schools or similarly approved institutions if the work is supervised by the appropriate authority.

Looking at the above quoted provision, the practice of child labour which the law seeks to eradicate are in four (4) folds, viz:

- i. Forced or exploitative labour;
- ii. Employment in any capacity except light work of an agricultural or domestic character by family member;
- iii. Employment as domestic help outside the child's home or family environment; and
- iv. Employment or work in an industrial undertaking.

Before examining the above one after the other it is instructive to note that the law out rightly prohibits a child in any case whatsoever to lift, carry or move anything so heavy as to be likely to adversely affect the child's physical, mental, spiritual, moral or social development.⁹⁹

I. Forced or exploitative Labour;

Section 28 of the Kwara State Child Rights Law, 2006, is silent on the meaning of forced or exploitative labour. Even under the definition/interpretation¹⁰⁰ section of the Law, forced or exploitative labour is not part of the words specifically defined. Hence, recourse shall be made to external aid.

The international Labour Organization (ILO)¹⁰¹ defines forced labour as work or service exacted from a person under threat or penalty, which includes penal sanctions and the loss of rights and privileges, where the person has not offered himself/ herself voluntarily. Certain rights are accorded the children under the Kwara State Child Rights Law, thus, any

⁹⁹Section 28(1) (c) of the Kwara State Child Rights Law, 2006.

¹⁰⁰ Section 277 Of the Kwara State Child Rights Law, 2006

¹⁰¹ The Forced Labour Conventions No. 29 (1930) (ILO 2001a: 9)

involuntary labour to which a child may be subjected to which is capable of denying the child of his/her guaranteed rights under the law is seriously prohibited.

II Employment In Any Capacity Except On Light Work Of An Agricultural Or Domestic Character By Family Member:

This subsection of the law out rightly prohibits the employment of a child to work in any capacity whatsoever. But there is the exception of light work that is of agricultural, horticultural and domestic character in which the employer is a family member.¹⁰² Perhaps, the reason the law has allowed this exception is to strike a balance between the rights of the child and the cultural values. This is because agricultural, horticultural and domestic services by children are one of cultural practices children are prepared and equipped with to face future challenges and to smoothly integrate them into the society.

However, notwithstanding these exceptions, the choices of words by the legislators were mindful of the likely abuse. Thus, although the law allows that a child could be employed by a family member to engage in agricultural, horticultural or domestic service, such work must only be of light nature.¹⁰³ This is in line with the express provision of the law that stipulates that a child shall not be required in any case to lift, carry or move anything so heavy as to be likely to adversely affect this physical, mental, spiritual, moral or social development.¹⁰⁴

There is a general perception that a child is cherished by his family members, that is why the law has restricted the exception to a family member with a condition precedent that in any of those circumstances, the work must be of a light nature that will not have negative impact of any sort on the child.¹⁰⁵

¹⁰² Section 28(1) (b) of the Kwara State Child Rights Law, 2006

¹⁰³ Section 28 (1) (c) *Ibid*

¹⁰⁴ *Ibid*

¹⁰⁵ *Ibid*

III Employment as Domestic Help Outside The Child Home Or His Family Environment:

It is clear that the law prohibits the child from being employed as a domestic help outside his home or family environment.¹⁰⁶ This prohibition becomes necessary because the instances in which child labour and abuse have been recorded are usually when a child is engaged in domestic service outside his home and family environment. In this situation, the child is kept far away from his parents and because the child is being paid some amount for his domestic service, the employer may subject the child to work beyond his capacity. Even where he makes a single mistake, rather than corrective measures severe punishment could be meted out to him.

The prohibition of the engagement of the child in domestic service outside his home or family environment is based on the fact that the child is a stranger outside his home or family environment and in this circumstances, he becomes vulnerable to the attendant abuse.

To safeguard the interest of the child, therefore the law has put an outright prohibition on the employment of a child as a domestic help outside his home or family environment.¹⁰⁷

IV Employment Or Work In An Industrial Undertaking

Generally, industrial work exposes workers to hazards or risks that are beyond the control of both the employer and the workers. This is why the law seeks to protect the children who are naturally vulnerable against these risks by prohibiting their employment or work in an industrial undertaking.¹⁰⁸ This prohibition has certain exception where the law provides that nothing in this subsection shall apply to work done by children in technical schools or similar approved institutions if the work is supervised by the appropriate authority.¹⁰⁹

¹⁰⁶ Section 28(1) (d) of the Kwara State Child Rights Law, 2006.

¹⁰⁷ *Ibid*

¹⁰⁸ See section 28(2) of the Kwara State Child Rights Law, 2006.

¹⁰⁹ *Ibid*

This exception is worthy of careful interpretation. It could be said that a child is permitted to work in an industrial undertaking that took place in a technical schools and other similar approved institutions but this work must be supervised by the appropriate authority. This exception does not amount to an abuse, the appropriate authority so appointed for the supervision of the work must ensure that there is adequate compliance with the provision of the law.¹¹⁰ Thus, while the law gives room for the exception, the engagement of a child in an industrial undertaking in an approved technical school must not violate the provision of 28(1)(c) which emphatically states that a child shall not be required in any case to lift, carry or move anything so heavy as to be likely to adversely affect his physical, mental, spiritual, moral or social development.

4.0 APPLICATION OF LABOUR ACT:

In order to ensure adequacy of its provisions on child labour and to avoid conflict and confusion in the operation of the law, the Kwara State Child Rights Law, 2006 incorporated certain provisions of the Labour Act, cap L1, L.F.N., 2004.¹¹¹ These provisions are Sections 58, 59, 60, 61, 62 and 63 of the Labour Act. Section 29 of the Kwara State Child Rights Law is emphatic when it provides that:

Rights Law, 2006 incorporated certain provisions of the Labour Act, cap L1, L.F.N., 2004.¹¹² These provisions are Sections 58, 59, 60, 61, 62 and 63 of the Labour Act. Section 29 of the Kwara State Child Rights Law is emphatic when it provides that:

The provisions relating to young persons in section 58, 59, 60, 61, 62 and 63 of the Labour Act shall apply to children under this Law.¹¹³ The above sections of the Labour Act incorporated into the Kwara State Child Rights Law generally deal with the provisions relating to the employment of a child in domestic service and ultimately proscribe the employment of such because it is injurious to the child's health and wellbeing.¹¹⁴

¹¹⁰ Section 28(1) (c) of the Kwara State Child Right Law, 2006.

¹¹¹ Section 29 *Ibid*

¹¹² Section 29 *Ibid*

¹¹³ *Ibid*

¹¹⁴ Section 59(6) of the Labour Act, cap. L1, LFN, 2004

Our Act ensure that everywhere a child has been employed in such a dangerous and hazardous work, upon notification by either the parent or guardian, the employer is duty bound to discontinue the employment without prejudice to the right of the young person to be paid such wages as he may have earned up to the date of discontinuance.¹¹⁴ The provision of the labour law also regulates the employment of young person's at night and shipping amongst others.¹¹⁵

Incorporation of Sections 58, 59, 60, 61, 62 and 63 of the Labour Act into the Kwara State Child Rights Law enhances adequacy of the provisions of the law on child labour and avoid conflict of law in the application of the (2) legislations on the same subject of child labour in Kwara State.

KWARA STATE CHILD RIGHT LAW AND CHILD LABOUR PRACTICE IN THE STATE.

Like what is obtainable before the enactment of the Kwara State Child Rights Law, 2006, Child labour practice has now been expressly defined as a criminal offence with distinctive punishment in case of commission and subsequent conviction.¹¹⁶ The provisions of Section 28(3) and (4) are very precise they provide thus:

"Any person who contravenes any provisions of subsection (1) or (2) of this section commits an offence and is liable on conviction to a fine of not exceeding ₦50,000 or imprisonment for a term of five years or to both such fine and imprisonment."
"Where an offence under this section is committed by a body corporate, any person who at the time of the commission of the offence was a proprietor, director, general manager or other similar officer, servant or agent of the body corporate shall be deemed to have jointly and severally committed the offence and may be liable on conviction to a fine of ₦250,000."

¹¹⁴ *Ibid*

¹¹⁵ Sections 60, 61, 62 and 63 *Ibid*

¹¹⁶ This is in compliance with the provision of section 6 (12) of the constitution of the federal Republic of Nigeria, 1999 (as amended).

From the above quoted provisions, child labour practice in Kwara State is a serious offence and if committed attracts specified punishment. The law is commendable for the fact that it takes care of those perpetuating child labour under the veil of incorporation.¹¹⁸ The reason being that in the event the offence created under Section 28 is committed by a body corporate, any person, which at that time of the commission of the offence was a proprietor, Director, General Manager or other similar officer, servant or agent of the body corporate is deemed to have jointly and severally committed the offence and is personally liable.¹¹⁹ Thus, the provision of the Kwara State Child Rights Law, 2006 on child labour in the state is commendable, but not adequate to tackle the menace of child labour practice. However, the child labour practice continues to thrive in Kwara State owing to lack of adequate implementation of the provision of the law.

It is hoped that if the provisions of these laws are fully operational and implemented, with time or in a not too far distant future, the issue of child labour may be reduced. Today, it is evident in Kwara State that children are involved in different forms child labour and risk being abused. For instance, children are involved as bus-conductor and garage boys at different Motor parks, as sales boys and girls during and after school hour, and so on. All these occur at the expense of the Kwara State Child Rights Law already in existence because the law is not properly enforced and implemented.

6.0 CONCLUSION

It has been established in this paper that child labour is an age long phenomenon which has been the subject of successive international conventions, declarations, treaties, charters, programmes, and so on. These international instruments, no doubt, serve as existing legal responses to the menace of child labour. As plausible as these international legal instruments, their common problem is that they not legally binding. Nigeria, being a signatory to these major international instruments, went a step further to solve the problem of non legal binding of these instruments at least domesticating the Convention on the Right of the Child in 2003 through the Child Rights Act, 2003. Hence, the Child Rights Act became the major legal response to child labour and allied activities in the country.

¹¹⁸ Section 28(4) of the Kwara State Child Rights Law, 2006

¹¹⁹ *Ibid*

er, due to the federating nature of the country, where each state of the union is autonomous, the Child Rights Act was a toothless bull dog until as domesticated by the states of the federation for easy enforcement and implementation. The Kwara State government has domesticated the Child Rights Act with some modification into its local legislation¹²⁰ by enacting the Kwara State Child Rights Law, 2006. As plausible and commendable as the provisions of the law are enforcement and implementation become problematic. As the study revealed the government in the state lacks the zeal, determination, focus and will to implement the provisions of the law with a view to ensure that it achieves the primary purpose for which it was enacted.

¹²⁰ Under the Child Rights Act, a child is regarded as a person under the age of eighteen (18); whereas under the Kwara State Child Rights Law 2006 a child is regarded as a person under the age of sixteen (16).