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East African Journal of Peace and Human Rights 216-247 at 220.

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ADOPTING A RIGHTS-BASED APPROACH TOWARDS THE LEGAL PROTECTION OF THE NIGERIAN CHILD

O.L. NIYI-GAFAR*

&

O.B. IGBAYILOYE*

Abstract

Despite Nigeria ratifying international instruments protecting children, the legal protection of children has not been effective in Nigeria. Issues on child abuse, domestic violence and sexual assault have still not been curtailed in Nigeria. Although the reasons for this may vary, this article addresses this discourse from a human rights-based approach. Under a human rights-based approach, there are five basic principles otherwise known as the PANEL principles; under which the legal protection of the Nigerian child may be realised. These principles- Participation, Accountability, Non-discrimination, Enforcement and Legal redress serve as a framework to ensure the legal protection of the Nigerian child. The PANEL principles incorporate a human rights standard to realising that the rights of children are protected. As such, this paper proposes that the Nigerian child participates actively in the issues that concern them such as having access to information, identifying the authorities that are in charge of their needs; not been discriminated against based on their background, their gender or their physical capabilities (such as persons with disabilities); being empowered with access to information on the laws that protect them and having access to courts by themselves or their guardians to seek legal redress where their rights have been violated. As such in five structures it identifies who a child is in the Nigerian Society and identifies the laws and institutions put in place towards the legal protection of the Nigerian child. Against the backdrop of international human rights instrument, it suggests a rights-based approach towards an effective legal protection of the Nigerian child and gives recommendations that may enhance the legal protection of the Nigerian child.

1. Introduction

The legal discourse over the protection of children's rights under international human rights law is extensive and varies according to society and concerns of

* Lecturer, Department of Jurisprudence and International Law, Faculty of Law, University of Ilorin, Ilorin; Email: ol.niyigafar@gmail.com

* Lecturer, Department of Jurisprudence and International Law, Faculty of Law, University of Ilorin, Ilorin.

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¹ See for example, C rights of children a rights law. See Olov of Islamic legal the his book analysed African values and Charter on the Rig University Law Pre ²African Charter on (1990) entered into

³ Adopted and open resolution 44/25 of Conventions on the

⁴ See Conventions o Human and Peoples I.L.M. 58 (1982), e

⁵ Oloko, S.B.A., "Th Nigerian Current La

⁶ United Nations Mil 2 para VI, "protectin (accessed 1 Septemb

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academic scholars.¹ Apart from the contribution this article adds to the legal discourse, it focuses on the Nigerian child and the legislative framework put in place for their legal protection. It is observed that international human rights law especially the African Charter² and the Convention on the Rights of a Child³ makes provisions for the legal protection of the child with regards to having the best interest of the child in consideration.⁴ These laws have provided albeit adequately for the protection of children no doubt. The concern however is the awareness and implementation of these laws especially in Nigeria which has ratified both instruments.

On March 21, 1991, Nigeria along with 70 other countries participated in the World Summit for Children in New York and signed the United Nations Convention on the Rights of the Child. Subsequently, Nigeria also signed the African Charter on the Rights of the Child. The Convention and the Charter of which Nigeria is a signatory contain articles which stipulate high ideals concerning provision of the basic necessities of life, protection of children from physical, social and moral threats, provision of special care to children who are particularly vulnerable because of disability, dislocations in their families and communities and armed conflict. In view of the glaring inadequacies in the provision of basic necessities of life and protection of children from harm, as well as provision of special care for vulnerable children in Nigeria, and also participatory rights of children, it is obvious that the implementation of the Convention on the Right of the Child and the African Charter on the rights of the child will require a re-orientation of national planning, new national laws or decrees and research, which culminated in the enactment of the Child Rights' Act of Nigeria, 2003.⁵

Also, it is to be noted that in 2000, the United Nations General Assembly adopted two optional protocols to the Convention on the involvement of children in Armed Conflict, and on the sale of Children, Child Prostitution and Child Pornography.⁶

¹ See for example, Olowu in his article focused on the Islamic legal theory pertaining to the rights of children and the understanding of children's rights under international human rights law. See Olowu, D., "Children's rights, international human rights and the promise of Islamic legal theory" (2008) 12 (2) *Law, Democracy & Development* 62-85. Kaime in his book analysed the rights and welfare of the African Child wherein he focuses on African values and cultural heritage of the African Child. See Kaime, T., *The African Charter on the Rights and Welfare of the Child: A socio-legal perspective*. (Pretoria University Law Press, Pretoria, 2009).

² African Charter on the Rights and Welfare of the Child OAU Doc. CAB/LEG/24.9/49 (1990) entered into force November 29 1999 (hereafter African Charter).

³ Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990 (hereafter Conventions on the Rights of a Child).

⁴ See Conventions on the Right of a Child Ibid Article 3 and African (Banjul) Charter on Human and Peoples' Rights adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986 Article 4.

⁵ Oloko, S.B.A., "The Rights of the Child in Nigeria", in Ayua I.A., & Okagbue I.E., (eds.), *Nigerian Current Law Review* (Nigerian Institute of Advance Legal Studies, 1996) 320.

⁶ United Nations Millennium Declaration Resolution adopted by the General Assembly 55/2 para VI, "protecting the vulnerable" available at <http://www.un-documents.net/a55r2.htm> (accessed 1 September 2016).

implementation. It suggests the adoption of a rights-based approach in law and implementation.

2. Child Rights Protection under International Human Rights Law

There are several provisions under international human rights instrument where the rights of children are protected. Three of these instruments are identified as they relate specifically to children. These are the Universal Declaration of Human Rights 1948, the Convention on the Right of the Child 1989 and the African Charter on the Rights and Welfare of the Child 1990.

2.1. Universal Declaration of Human Rights 1948 (UDHR)

The Universal Declaration of Human Rights¹⁴ contains two Articles that specifically refer to children - Article 25 and Article 26.¹⁵ The instrument notes the importance of childhood and states that irrespective of the status of their birth (whether children are born to married parents or born out of wedlock) they all are entitled to special care and assistance and should enjoy same social protection.¹⁶ The UDHR also provides for the educational rights of children and deals both with access to and the aims of education. Education is expected to be free, at the elementary and fundamental stages while the former, elementary education should be compulsory.¹⁷

2.2. Convention on the Rights of the Child 1989 (CRC)

The Convention on the Rights of the Child was adopted by the UN General Assembly on November 20, 1989, and entered into force in 1990.¹⁸ The CRC is the most comprehensive document on the rights of children. This instrument is primarily concerned with four aspects of children's rights which are referred to as the four 'P's - participation, protection, prevention and provision. Children are expected to participate in decisions that affect them. To a large extent the age of the child would determine what kind of participation or role the child would play in decision making. However participation would include the rights, to be heard, for freedom of expression, information and association. This is expected to create a new type of social paradigm between adults and children. Children are to be protected from all forms of discrimination, neglect and exploitation. This would include sexual abuse, child trafficking and child labour. Harm may be in various forms which include physical or mental or even social harm, children are expected to be prevented from all such harms. The fourth aspect of a child's rights involves provision. The basic needs of children include water, education, food and health care.

¹⁴ Universal Declaration of Human Rights, signed 10 December, 1948, G.A Res. 217A (III), U.N Doc. A/810, (1948).

¹⁵ *Ibid.*

¹⁶ *Ibid.*, Art 25 (2).

¹⁷ *Ibid.*, Art 26.

¹⁸ Convention on the Rights of the Child adopted by the UN General Assembly on November 20, 1989, entered into force in 1990 GA res. 44/25 (XLIV), 21 UN GAOR, 44th Session, Supp. No 49 at 167, UN Doc. A/44/49.

Similarly, in 2002, World leaders made a commitment to fulfil child rights at the 2002 United Nations Special Session on Children, encapsulating their determination in a compact entitled 'A World Fit for Children'. These statement urged governments to complete⁷ the agenda of the 1990 World Summit, adhere to the standards of the Convention and achieve internationally agreed developmental objectives and goal-including those incorporated in the 2000 United Nations Millennium Declaration.⁸ A further call to action was made at the close of the World Fit for Children +5 special session in December 2007, when a new 'declaration on children'⁹ was adopted by more than 140 governments. This latest declaration acknowledges the progress achieved towards meeting child rights and the challenges that persist. It reaffirmed commitment to the World Fit for Children compact as well as to the Convention of the Right of the Child and its optional Protocols.¹⁰

The document is a unique one and it is one of the treaties on human rights that have been widely endorsed and it has been celebrated for 26 years. It lists universal standards for the care, treatment and protection of all individuals below age 18 and is currently ratified by 193 States parties.¹¹ During the past two decades, the Convention has transformed the way children are viewed and treated throughout the World. It has exerted a pervasive and profound influence on national and international legislation, policy and programmes, public and private institutions, families, communities and individuals. And it has supported marked advances in survival, development, protection and participation across the world.¹² Despite the numerous challenges that remain in realising children's rights, the Convention offers a vision of a world in which all children survive and develop, and are protected, respected and encouraged to participate in the decisions that affect them. This vision promotes a world of peace, tolerance, equity, and respect for human rights and shared responsibility, which is in short, a world fit for children.¹³ This paper proceeds by identifying who a child is and what legal protection the international human rights law provides them. It then conceptualises the Nigerian child according to society and law and analyses the provisions of the Nigerian law as it concerns their protection. It argues that even though the laws are to a certain extent sufficient, there exist the gap of institutional establishment and

⁷ United Nations Special Sessions on Children 'A world fit for Children' available at <http://www.unicef.org/specialsession/wffc/> (accessed 30 August 2016).

⁸ The United Nations Millennium Declaration resolution considered with reference to children, the opportunity to complete a primary education, a reduction of under-five child mortality, special assistance to children orphaned by HIV/AIDS.

⁹ UNICEF Declaration world fit for children +5 Declaration available at http://www.unicef.org/media/media_42201.html(accessed 30 August 2016).

¹⁰ UNICEF "The State of the World's Children", celebrating 20 years of the Convention on the Rights of the Child, Special ed., (November, 2009) 6 available at http://unicef.in/Uploads/Publications/Resources/pub_doc4.pdf (accessed 29 August 2016).

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid.*

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2.3. African Charter on the Rights and Welfare of the Child 1990

The African Charter on the Rights and Welfare of the Child (ACRWC) is the first regional treaty on children's rights and it builds on the 1979 Declaration on the Rights and Welfare of the African Child, most of its provisions however are modelled after those of the Convention on the Rights of the Child.¹⁹ The main difference however lies in the existence of provisions concerning children's duties.²⁰ The Preamble states that the child occupies a unique and privileged position in the African society and requires legal protection as well as particular care with regard to health, physical, mental, moral and social development. The provisions under international human rights law are comprehensive and cover various aspects of the protection of a child.

3. Legal Protection of the Nigerian Child

This part is structured in three parts. The first, examines who a child is in Nigeria under culture and under the law. The second section identifies and examines the laws that are in place for the protection of the Nigerian child. The third identifies the institutional framework and the lacuna in the protection of the Nigerian child.

3.1. The Nigerian Child

Defining who a child is in Nigeria can be as complicated as the variance in cultural and religious beliefs in the society.²¹ The first issue in this paper is placing the age of the child. It is impossible to commit crimes against children if they are not properly defined. In other words, to understand the person whose rights are being protected it is important to define or describe them. A Child is defined further as: a son or daughter of any age, sometimes including biological offspring, unborn children, adopted children, stepchildren, foster children and children born outside of marriage; or a person under an age specified by law, often 14 years or 16 years. For example, state law may require a person to be over the age of 14 to make a valid will, or may define the crime of statutory rape as sex with a person under the age of 16. In this sense, a child can be distinguished from a minor, who is a person under the age of 18 years. A person below the specified legal age who is married is often considered an adult rather than a child. At common law, a child is described as a person who has not reached the age of 14. A child according to the Black's law dictionary²² is described as "a person who has not reached the age of 14 years, though the age varies from jurisdiction to jurisdiction..."

¹⁹ OAU Doc. CAB/LEG/24.9/49 (1990).

²⁰ The African Charter on the Rights and Welfare of the Child, adopted on July 11, 1990, entered into force on November 29, 1999, Article 31.

²¹ Nigeria has over 400 ethno-linguistic groups ranging from the major tribes of Hausas, Ibos and Yoruba. See Alemika E, Chukwuma I, Lafratta D, Messerli D & Souckova J. "Rights of the Child in Nigeria", Report on the implementation of the convention on the rights of the child by Nigeria prepared for the committee on the rights of the Child 38th Session (Geneva, January 2005) 4.

²² Bryan A.G., *Black's Law Dictionary*, 7th ed. (St. Paul Minnesota 1999) 232.

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and (ACRWC) is the first 1979 Declaration on the rights of children. The provisions are however modelled on the UN Convention on the Rights of the Child. The main difference between the two is that the ACRWC focuses on children's duties.¹⁹ The UN Convention places children in a privileged position in the family and provides for special care with regard to their rights. The provisions under the Convention cover various aspects of

who a child is in Nigeria. The first identifies and examines the child. The third identifies the rights of the Nigerian child.

the variance in cultural practices. This paper is placing the age of children if they are not married whose rights are being protected. It is defined further as: a child is defined as a male or female offspring, unborn or born, and children born outside the country, under 14 years or 16 years. A child is a person under the age of 14 to make a valid contract. A child who is a person under the age of 14 who is married is often referred to as a child. A child is described as a person under the age of 14 years, according to the Black's law dictionary.

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major tribes of Hausas, Ibos and Yorubas. & Souckova J. "Rights of children: A study on the rights of the child 38th Session (Geneva, 1990) 232.

Ordinarily, one would have been tempted to state the age of a child at 19 or even 20 in order to cover all the different definitions of a child in the various legislations but this would not be accurate. Many governments have gone even further, enacting legislation, creating mechanisms and putting into place a range of creative measures to ensure the protection and realization of the rights of those under the age of 18. This is because the Child's Rights Act 2003²³ gives the age of a child as not more than 18 years. However this does not apply in all jurisdictions in Nigeria. The reason is that some states still use the old law which fixed the age of a child at 21 but for states that have incorporated the Federal Legislation into their state laws like Anambra State, Imo State and Ogun State, the age of a child is fixed at 18 years. The CRC also defines a child as a human being who is below the age of 18.²⁴ For the purpose of evidence, civil liabilities and criminal liabilities, the age of a child varies. Descriptions are also given to a child according to the various laws that provide for their welfare and sometimes for the purposes of marriage, a child is described by virtue of its age. Some examples are described below:

- A child includes a step-child, a child whose paternity has been acknowledged, a child under the law, a child legitimized and a child *en ventre sa mere*²⁵.
- A child can also be described as he or she relates to a marriage that is a child within the marriage is described as one who is not likely to have attained the age of 16 years.
- In India according to the Child Marriage Restraint Act, 1929, a 'child' refers to a male younger than twenty-one years of age, and a female younger than eighteen.²⁶

Children have also been described as developing beings whose moral status gradually changes thus demanding a realistic understanding of their interests within the families and the larger social context.²⁷

The Child especially the girl child remains the most vulnerable of groups in the Nigerian polity. This explains the various issues of discrimination meted out on them. It is not contestable that the Nigeria Child suffers domestic violence and sexual violence. The high standard of proofing rape and sexual assault leaves much to be desired.²⁸ Consequently, it is the authors' position that engaging the various international and regional laws seeking to protect the rights, legal protection and development of the child in Nigeria be examined.

3.1.1. The Law on the Protection of the Nigerian Child

Nigeria has ratified international instruments which defines a child, create or pronounces their rights and further provide for the protection of these rights.

²³ Gazette Federal Republic of Nigeria 116 Vol. 90.

²⁴ Child's Right Act 2003, Section 277.

²⁵ Abayomi, K., *Wills: Law and Practice* (Mbeyi and Associates, Lagos, 1998) 268.

²⁶ Section 2, the Child Marriage Restraint Act No 19 of 1929.

²⁷ Archard, D., & Macleod, C., (eds.), *Introduction to Philosophical Views of Children: A Brief History in the Moral and Political Status of Children* (University Press, Oxford, 2002).

²⁸ See 197 of the Nigeria Evidence Act, 2011 as amended.

Some of these instrument are; the Convention on the Rights of the Child, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment and the Convention on the Elimination of All Forms of Racial Discrimination. Nigeria is also a party to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights. Furthermore, Nigeria ratified regional instruments such as the African Charter on Human Rights and People's Rights.²⁹ These are the Universal Declaration of Human Rights 1948, the Convention on the Right of the Child 1989 and the African Charter on the Rights and Welfare of the Child 1990.

Nigeria has instituted various legislative and institutional measures at both the Federal and State level where are Federal and state laws that protect the Nigerian Child. However the policy on the protection of the Nigerian child is rooted in the Child Rights Act of 2003. Prior to the enactment of the Child's Rights Act, children's right have been poorly protected because the legal framework for such was weak and uncoordinated.³⁰ The Nigerian government entrenched the provision for the protection of the rights of children in Section 17 of the 1999 Constitution is directed at protecting the child particularly in (3) (f). According to this section: "the State shall direct its policy towards ensuring that- Children, young persons and the aged are protected against any exploitation whatsoever and against moral and material neglect".³¹

The Child's Rights Act has 278 sections and 11 schedules which is aimed at a uniform standard throughout the country; this is so as it covers the constitutional jurisdiction of both the Federal and State governments. The fact that it was an international treaty further enhances its enactment both at the National Assembly and the states Houses of Assembly. The Child Rights Act was enacted in 2003 and it repealed the Children and Young Persons Act.³² States are expected to domesticate it as state laws since it has been enacted at the national level. Issues concerning child rights protection are on the residual list of the Nigerian Constitution, giving states exclusive responsibility and jurisdiction to make laws relevant to their specific situations. State laws may also be required to be amended or annulled in order to conform to the Act and to the Child Rights Convention.

The Act aims to regulate and protect the rights of children enshrined in the 1999 Constitution and other subsidiary legislations. The protection of a child is fully provided for in part III part IV and part V of the Act. It broadened the law in relation to children's rights and responsibilities of children, protection of the rights of children, wardship of children, fostering, adoption, guardianship, institutional treatment, custody, supervision and care, survival and protection of Nigerian children. Furthermore, it orders that parents, guardians, institutions among others

make it their responsibility parental care, protection marriage of children,³⁴ protection of drugs by children,³⁶ trafficking labour,³⁷ Freedom from duty a child to commit crime imprisonment.³⁸ It took court challenged and street child

The Child's Rights Act directed the government and institutions provides for the enforcement for abuses, creating the Framework to global standard.³⁹ The survival rights, development According to Olarinde, the welfare Rights; these are rights; these are rights the (iii) autonomy rights; the decisions.⁴¹

Taking a cursory look at rights a child is expected a child of a marriage with and sheltered. Physical at various ages, a child supervision of the parent Olarinde⁴² the protection safety and to also keep means by which children adults or institutions that These and more are what

Furthermore, the Act is applicable to all the 36 states

²⁹ (CAP 10) Laws of the Federation of Nigeria, 2004.

³⁰ Akwara, Azalahu Francis, Soyibo, Adekunle G, Agba, Michael, S, "Law and Children's Rights Protection: The Nexus for a Sustainable Development in Nigeria", (2010) 6(2) *Canadian Social Science* 26-33 at 30.

³¹ Section 17 (3) (f) 1999 Nigerian Constitution.

³² Enacted in 1943

³³ Section 14.

³⁴ Sections 21 & 22.

³⁵ Section 24.

³⁶ Section 25.

³⁷ Sections 28-30

³⁸ Sections 26 & 27

³⁹ Akwara, Soyibo, & Agba

⁴⁰ Child's Rights Act 2003

⁴¹ Olarinde, E.S., "Reflections on the Child's Rights Act, 2003" (2005)

⁴² *Ibid.* See also, section 2

⁴³ Sections 1, 2, 11 & 4, C

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make it their responsibility to provide for the welfare of the child. The right to parental care, protection and maintenance,³³ prohibition of the betrothal and marriage of children,³⁴ prohibition of tattooing or marking a child³⁵ and trafficking of drugs by children,³⁶ trafficking of children, Child abduction and forced exploitative labour,³⁷ Freedom from discrimination, the Act equally forbids anyone from using a child to commit criminal offences and this offense carries a penalty of imprisonment.³⁸ It took cognizance of the less privileged; the mentally or physically challenged and street children are likewise protected.

The Child's Rights Act defined the welfare, responsibilities of children including the government and institutions to be established for children. The Act equally provides for the enforcement of the rights of children by imposing strict penalties for abuses, creating the Family Court, and bringing of Nigeria's child's rights law to global standard.³⁹ The rights as provided by the Act can be classified into survival rights, development rights, participation rights and protection rights.⁴⁰ According to Olarinde, the rights of a child can be divided into 3 which are: (i) welfare Rights; these are the rights of children to be provided for; (ii) protection rights; these are rights that ensure safety and also keep off danger and harm; and (iii) autonomy rights; these are the rights of the children to make choices and decisions.⁴¹

Taking a cursory look at these categories, one cannot but agree because all the rights a child is expected to enjoy can be found under these categories. For example a child of a marriage within the Nigerian family should be fed, clothed, educated and sheltered. Physical and emotional harm should be kept away from a child and at various ages, a child can exercise his or her autonomous rights based on the supervision of the parents or guardians. Going by the description or definition of Olarinde⁴² the protection rights of children are described as rights that ensure safety and to also keep off danger and harm. These rights as earlier stated are means by which children are guided and guarded from exploitation, abuse by adults or institutions that threaten their development, dignity and even survival. These and more are what Child's Rights Act of 2003 seeks to protect.⁴³

Furthermore, the Act ensures that the minimum age for criminal responsibility is applicable to all the 36 states of the federation including the FCT, and guarantees

³³ Section 14.

³⁴ Sections 21 & 22.

³⁵ Section 24.

³⁶ Section 25.

³⁷ Sections 28-30

³⁸ Sections 26 & 27

³⁹ Akwara, Soyibo, & Agba, *op. cit.*, at 26.

⁴⁰ Child's Rights Act 2003, Section 10.

⁴¹ Olarinde, E.S., "Reflections on the Basic Rights of the Nigerian Child under the Child Rights Act, 2003" (2005) 4 *University of Ibadan Journal, Private and Business Law* 87.

⁴² *Ibid.* See also, section 28 Child Right Act.

⁴³ Sections 1, 2, 11 & 4, Child Rights Act 2003.

the right to appropriate legal assistance and defense. The law also requires speedier fair trials and provides for alternative measure of last resort for the shortest possible time, thereby eliminating the culture of imprisoning children on slightest opportunity.⁴⁴ The enactment of the Child Rights Act of 2003 is a step to the solution of the problems children have if it is adopted by all the states in Nigeria and if it is not treated as just a paper work. The problem of child labor for example, is being addressed as using children as housemaid, for hawking is greatly reduced in the country. Citizens are advised to send their wards to school or at least to learn a trade. People who do not comply with these when caught are being arrested by the police. This however does not hold as some of them pay their way out of such arrests.⁴⁵

The Trafficking in Persons (Prohibition) Law Enforcement and Administration Act was also passed in 2003.⁴⁶ It provides for the prohibition and prescription of punishment for traffic in persons, particularly women and children. It protects children and women against criminal networks. It also establishes a National Agency for the Prohibition of Traffic in Persons and other Related Matters (NAPTIP) vesting it with the responsibility for investigation and prosecution of offenders thereof and the counseling and rehabilitation of trafficked persons. The act provides a strong legal framework to combat human trafficking.

4. Institutional Framework and the Lacuna

The National Agency for the Prohibition of Trafficking in Persons and Other Related matters (NAPTIP) was established to fight human trafficking through investigation of cases, prosecution of criminals, rescue and rehabilitation of victims. As mentioned above, NAPTIP was created as a result of the 2003 Anti-Trafficking Law and it is focus primarily on investigation and prosecution of perpetrators. It promotes collaboration with more experienced organisations, such as UNICEF. NAPTIP's activities also include rehabilitating victims, collaborating with other national and international bodies and creating public awareness of trafficking. Institutions like the Federal Ministry of Women Affairs and state ministries of Women Affairs, The Nigerian Police Commission, and Special Presidential Committee on Human Trafficking, Child Labour and Slavery are also government bodies responsible for monitoring issues in respect of children. The National Human Rights Commission of Nigeria established by *Decree No. 22 of 1995* is mandated to promote, protect, investigate and monitor human rights violation as well as receive and treats complaints from citizens including children about violations of

their rights. However, international instruments between law and practice rights at present. Corruption and indisciplined operatives and official protection of children are thrown out in the instances, the police parts of the parents are denied justice and forever.⁴⁷ The implication from sex offenders and rights as enshrined in The passage of the children represents despite this, implement governments. However state assemblies also that "Member State and take all appropriate implementation of The reports on the implementation of the Child stated throughout society established a comprehensive violations of children resourcing has also

5. Rights-Based

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⁴⁴ Adam E.M., "An Appraisal of the Regime of Juvenile Justice Under the Child's Right Act in Nigeria" (2013) 2(8) *Arabian Journal of Business and Management Review (OMAN Chapter)* 13.

⁴⁵ Section 28 Child Right Act.

⁴⁶ National Agency for Prohibition of Traffic in Persons and Other related Matters (NAPTIP) came into being on the 26th of August, 2003; Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003, No. 24 as Amended by Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2005.

⁴⁷ Onwubiko E, Inst www.premiumtimeschild-by-emmanuel

⁴⁸ Jones N Project 62_Strengthening_1 accessed on 24 July

⁴⁹ Jones N, Presler-N child protection and wcaro/wcaro_UNIC

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their rights. However, despite copious provisions in our municipal laws and international instruments on the rights of the child, there appears to be a gap between law and practice resulting in gross inability of the child to realise these rights at present.

Corruption and indiscipline coupled with the lack of professionalism among the operatives and officers of the contributed to the challenges surrounding the protection of children. Cases of rape of children increase by the day since cases are thrown out in the courts for want of diligent prosecution by the Police. In some instances, the police close investigation of rape cases if there are accord on the parts of the parents and the relations of the sex offenders and the innocent children are denied justice and left with the scar of being sexually violated and maimed forever.⁴⁷ The implication of this is that the Nigerian child are not always protected from sex offenders and as such are not allowed to enjoy their fundamental human rights as enshrined in chapter four of the constitution of Nigeria.

The passage of the Child Rights Act by the federal government in Nigeria for children represents the country's commitment to the United Nations CRC and despite this, implementation is weak.⁴⁸ It has been ignored by a number of state governments. However, the law was passed at federal level, and is effective only if state assemblies also enact it. The Convention on the Rights of the child stipulates that "Member States shall undertake to disseminate the Convention's principles and take all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present Convention."

The reports on the implementation of the UNCRC to the Committee on the Rights of the Child stated that the best interest of the child is not imbedded in institutions throughout society by the government. It also pointed out that they have not established a comprehensive database to document the extent of and trends in violations of children's protection rights.⁴⁹ The limitation of financial and human resourcing has also hampered the Act's effectiveness.

5. Rights-Based Approach towards the Legal Protection of the Nigerian Child

The rights based approach evolved from human rights organisations and the idea that rights are asserted through responsibilities, duties, transparency and accountability. The Secretary General to the United Nations in 1997 suggested that human rights be mainstreamed into all the work of the United Nations. As such in 2003, United Nations agencies met to develop a common understanding of

⁴⁷ Onwubiko E, Institutional Inequities against the Nigerian Child, May 27, 2013 <http://www.premiumtimesng.com/opinion/136271-institutional-inequities-against-the-nigerian-child-by-emmanuel-onwubiko.html> accessed on 31 July 2015.

⁴⁸ Jones N Project *Briefing No 62* (2011) available at http://www.unicef.org/nigeria/62-Strengthening_linkages_between_child_protection_and_social_protection_system.pdf accessed on 24 July 2015.

⁴⁹ Jones N, Presler-Marshall E, Cooke N and Akinrimisi B, "Promoting synergies between child protection and social protection in Nigeria" February 2012 available at www.unicef.org/wcaro/wcaro_UNICEF_ODI_5_Child_Protection.pdf (accessed on 25 July 2015).

human rights-based approaches.⁵⁰ A rights-based approach is therefore a contemporary approach developed by United Nations agencies to promote human rights issues following a uniform approach across board. This approach was developed to ensure a common framework for the measurement of human rights developments. Six principles of this approach evolved from their "common understanding" which is Universality and inalienability, indivisibility, interdependence and inter-relatedness, equality and non-discrimination, participation and inclusion and accountability and the rule of law. All these principles are human rights-based as they put human beings at the center of development. The principles of the human rights based approach has been further simplified as the PANEL principles.⁵¹ These principles participation, accountability, non-discrimination, empowerment, and legal redress can be adopted in Nigeria to enhance the protection of children in Nigeria in the following ways:

Participation: the principle of participation refers to the involvement of all stakeholders in the decision making to express their demands, views and concerns. In this regard, children should be incorporated in organisations or group where they share or express their views and understanding on the decisions made for them or on their behalf which may affect their lives.⁵²

The Convention on the rights of a Child emphasises the need for a child who is capable of forming his own views the right to freely express those views. The provision of the convention goes on to state that in judicial or administrative proceedings such a child should be provided an opportunity to be heard.⁵³ Shier notes that the provision of article 12 of the Child rights convention is one of the most disregarded and violated in any spheres of children's lives.⁵⁴

Accountability: for the promotion and protection of human rights, accountability cannot be neglected⁵⁵ as same is indispensable in protecting and promoting human rights.⁵⁶ The principle of accountability under a human rights-based approach is grounded in the identification of duty bearers and right holders. The duty bearers in this instance are persons saddled with the responsibility of protecting the rights of children. These duty bearers could either be the parents, the teachers or even

⁵⁰ "The human rights based approach to development cooperation: towards a common understanding among United Nations agencies" available at <http://hrbportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies> accessed 12 June 2014.

⁵¹ Frankovits, A., *The Human Rights Based Approach and the United Nations System* (United Nations Educational, Scientific and Cultural Organisation, 2004) 54.

⁵² United Nations CRC, Art 12 (1).

⁵³ *Ibid*, Art 12 (2).

⁵⁴ Shier H "Pathways to participation: Openings, opportunities and obligations A new model for enhancing Children's participation in decision-making, in line with article 12.1 of the United Nations Convention on the rights of the Child" (2001) 15 (2) *Children and society* 107-117 at 108.

⁵⁵ See generally, Frankovits A "Rules to Live By: The Human Rights Approach to Development" (2002) 17(1) *PRAXIS The Fletcher Journal of Development Studies*.

⁵⁶ *Ibid* at 7.

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the state. The rights holders on the other hand are the children. There is a relationship amongst duty bearers. For example parents should be held accountable when children are not in school, the state may be held accountable when an enabling environment is not created for education and teachers can be held accountable when they do not carry out their duty of teaching the children. Accountability may be difficult to apply as there are no punitive measures that can be applied to the duty bearers or even the state where the duty bearers do neglect their responsibilities.

The principle of non-discrimination refers to the rights of all children irrespective of race, poverty or disability. No child should be discriminated against. In other words where facilities for children are put in place, such facilities should be seen as accommodating all children. An example can be given of schools where the only access to classes are via stairs, children who use wheel chairs may not be able to access such class rooms as such adopting a human rights based approach in this regard would include building a structure that can be accessed by all irrespective of a disability challenge.

The principle of empowerment lies in the ability of the right holders (children) to demand their entitlements in general. This would include education, food, water, and health amongst many others. In Nigeria empowering children would include creating institutions which are "children-friendly." These institutions would be made available in all parts of Nigeria and readily accessible to children. Such institutions should be departmentalised to handle all sorts of concerns of children including their welfare needs.

Legal redress is the last of the principles of the rights-based approach. This approach deals with the provisions of the law and the courts which interpret the laws and how they affect or promote the rights of the child. It is suggested here that Nigeria should create "child courts" where children are free to express themselves and their views. The judge in such cases should be experts on children issues and child laws and such environment should be free from encumbrances that would affect a free expression.

6. Conclusion and Recommendations

Child protection needs to be prioritised in Nigeria. As such Government must ensure that laws promote the right of children. It is essential that they allocate sufficient resources in order to achieve good quality of life for the children and also the next generation. Government at all levels must ensure that enlightenment campaign for the promotion of the right of the children reaches the grassroots. The Nigerian government should also make a serious commitment to the letter or the spirit of the Convention. It should take steps to ensure that states that are yet to adopt the act domesticate it. This will result in uniformity in the country also the fulfillment of the obligation of the nation to the CRC. In addition, major stakeholder's should rise up to the challenge to absorb the spirit of selflessness and demonstrate true love for the nation by accomplishing their responsibilities in the protection of the Nigerian child. In like manner, punitive measure is required to be in place to achieve such. This will invariably enable them enjoy all their fundamental right as provided for by the Child Right Act. As a matter of fact, our

laws can be said to be perfect but the implementation are very weak. Skilled personnel should be introduced to be part of Implementation and monitoring bodies. Also parents should be enlightened more on the rights of their children as well as children too. Centres where they can report the infringement of their rights should be created and children should be informed of places where they can go to for help should the need arise. The centres must also be easily accessible to them. From the foregoing, it is apparent from the discuss that a lot of efforts have been made to ensure the protection as well as the dignity of the Nigerian Child, but there is still much to be done in the area of implementing the law enacted to protect them. It is also clear that the Convention on the Right of the child which the Nigerian Child Rights Act closely followed, is more than a treaty with a monitoring arm, it is a far-reaching opus on the care and protection of children in practical and moral term and without the Government of Nigeria putting in place a perfect machinery for the implementation of the Child Rights' Act, the realisation of its objectives will be a mirage. Similarly, it is obvious that, the incorporation of many of the Convention's articles and principles into our national legal structures, like the Child's Right Act, gives children and youth hope that one day their rights will be realised. However, it is safe to conclude that monitoring of the implementation of the laws is yet to be well followed up.

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