CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

In September 2000, 189 member states of the United Nations (UN) at the Millennium Summit adopted the Millennium Declaration, committing to poverty eradication, development and protecting the environment. Many of these commitments were drawn from agreements and resolutions of world conferences and summits organized by the United Nations during the preceding decade.[1] A year later the UN Secretary General's Road Map for implementing the Millennium Declaration formally unveiled eight goals which became known as the Millennium Development Goals (MDGs).[2] The MDGs were time-bound targets, set to be realised by the year 2015. The targets were:

1. Eradicate extreme poverty and hunger
2. Achieve universal primary education
3. Promote gender equality and empower women
4. Reduce child mortality
5. Improve maternal health
6. Combat HIV/AIDS, malaria, and other diseases
7. Ensure environmental sustainability
8. Develop a global partnership for development

These are very laudable and worthy objectives and like the governments of other UN member states, the Nigerian government also supported the initiative. In 2011, the United Nations Secretary-General established the UN System Task Team to support UN system-wide

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[1] UN Post 2015 Development Agenda. Available at http://www.sos-usa.org/get-involved/advocate for children/post. Accessed 16/05/16

[2] UN Millennium Project/About the MDGs. Available at http://www.unmillenniumproject.org/goals/ accessed 16/05/16

preparations for the post -2015 development agenda, in consultation with all stakeholders. The Task team brought together senior experts from over 50 UN entities and international organizations to provide system-wide support to the post-2015 consultation process. The summit discussed post-2015 development agenda which proved to revolve around "Addressing Inequalities The heart of the post-2015 agenda and the future we want for all"

The discussion reiterated the collective responsibility of mankind to uphold the principles of human dignity, equality and equity at the global level. It also pointed out the duty of leaders to all the world's people, especially the most vulnerable, and in particular, "the children of the world, to whom the future belongs"[3]. In its concluding remarks, the team stated that "addressing inequality alongside human rights, peace, security and sustainability should be the cornerstone of the post-2015 agenda. A more inclusive and equal society is more likely to be sustainable"[4]

In 2012, a consortium of UN agencies launched a global thematic consultation on "addressing inequalities in the post-2015 agenda" the objective was to stimulate wide-ranging global discussion on the various forms of inequalities and present findings to key decision-makers and world leaders. To help frame the debate, individuals, academics and organizational partners were invited to submit papers, to present findings from completed research or to present on-going work that raises methodological or conceptual issues. Proposals were also invited that present robust findings from policy and field research that demonstrates sustainable strategies for resolving specific inequalities, and addressing their root causes. A good number of the papers sent in had to do with "inequality between children and adults"

[3]General Assembly Resolution, A/RES/55/2, United Nations Millennium Declaration (New York, 2000).

[4]. UN System Task Team on the Post-2015 UN Development Agenda, May 2012.

and the need to fight "adultism" in order to liberate children from adult domination and oppression.[5]

Being conscious of the fact that like the MDGs, the outcome of the discussion will also prove to be of global application, the researcher decided to look into this inequality and discrimination, domination and oppression issue. What is inequality as it concerns children in relation to adults? Is it possible that with all the laws we have in place, children are still inadequately protected?

1.2 Statement of problem

Children are different from adults and there are things children may not do that adults are permitted to do. In the majority of jurisdictions, for instance, children are not allowed to vote, to marry, to buy alcohol, or to engage in paid employment.[6] As far as children are concerned, laws have always contained exceptions, a different yardstick for measurement as a testament to their immaturity.

The Convention on the Rights of the Child which was first adopted in 1989 is the most globally accepted document for regulating children's rights. The Convention accords to children a wide range of rights including, most centrally, the right to have their 'best interests' be 'a primary consideration' in all actions concerning them.[7]

The Convention vested the duty to interpret its provision on the Committee on the Rights of the Child. The Committee on the rights of the child in interpreting the fundamental rights for children as provided in the Convention, insists on equal application of these rights for the child. This leaves children basically untrained, unrestrained and free to make choices and decisions that will impart their life and their future regardless of the importance of these

[5] For example see H. Shier, What Does "Equality" Mean for Children in Relation to Adults?
[6] DW, Archard, *Children's Rights*, in EN, Zalta (ed), The Stanford Encyclopaedia of Philosophy (Palo Alto CA: Stanford University Press, 2014).
[7] Article 3.

decisions. As a consequence, parental authority is greatly undermined, the teachers' authority is also greatly undermined, leaving children on their own. Children are neither mature nor experienced enough to make decisions in a way that will impart their future positively.

1.3 Purpose of study

This study seeks to portray that equality as a concept is relative, and that the interpretation presently accorded this concept with regard to rights, especially as it concerns adult and children's rights is erroneous. In the words of a prominent jurist:

> …equality examined from human rights perspectives, does not actually mean treating everyone in the same manner. This is because it is a truism that when people are unequally placed, treating them in the same manner in reality breeds and perpetuates injustice, instead of curing injustice. … Violations of rights and their solutions cannot be addressed without recognition of the unequal positions of men and women (and children)[8] in the society.[9]

The present agitation for realisation of equal right for children is a result of the misinterpretation and misunderstanding of the primary human rights texts.

1.4 Scope of study

Child rights issue is a global issue, therefore this work does not conform to localisation, it extends into international frontiers. In the area of rights however, this work is limited. Considering the magnitude of the laws and rules protecting children's rights, it would be practically impossible to touch on every aspect of rights. Finding it a bit tough also to decide

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[8] My addition

[9] J. Mertus, et al, *Local Action/Global Change,*(UNIFEM and the Center for Global Leadership, 2008) p.2.

on a particular selection of rights, the researcher decided to go with the fundamental rights, though this research may touch on a number of other issues regarding child rights in passing. What do these rights translate to when applied to the child?

1.5 Significance of Study

Equality of rights is a very significant and widely accepted concept. This fine concept however, when applied without coatings and finery to real life situations between the child and adults; for instance between a child and his parents, a child and his teachers, begins to pull a frown. Are the absurd and unreasonable conclusions that are cropping up what was envisaged to be the result of equality of rights for children? The significance of this study is basically expository and informatory. It intends to give a fairly good look before any decision on whether to take a leap or not can be made. It is hoped that our lawmakers and policy makers will take notice, and take note.

1.6 Methodology

The methodology employed in this research work is doctrinal, comprising critical assessment of existing laws as well as interpretations given these laws by relevant bodies; comparative analysis and the use of already existing materials from the internet. Textual review of scholarly and juristic writings is also employed.

1.7 Literature review.

There is sizeable literature on different opinions and theories which seek to portray why or why not equal rights should be ascribed to children.

Brennan[10] in her 'Children's Choices or Children's Interests: Which Do Their Rights Protect?' asserts that the often posed dichotomy between the interest and choice theory of

[10] S Brennan, 'Children's Choices or Children's Interests: Which do their Rights Protect?' in D. Archard and C. Macleod (eds) *The Moral and Political Status of Children: New Essays* (Oxford: Oxford University Press, 2002).

rights can blur the proper understanding of children's rights. She argues that rights for children initially function to protect their interests but that, as they grow and develop into full-fledged autonomous choosers, rights function to ensure that their choices, even those that do not serve their welfare, are respected. She therefore argues for a gradualist model in which the ground for attributing rights to a person changes in response to the development of autonomy. Brennan's contention for a gradual acquisition of rights and the development of autonomy is the state of the law presently in most nations of the world and the position the researcher is upholding.

Brighouse[11] in his 'What Rights (if Any) Do Children Have', he argues that children especially when they are very young, do not have rights to control their own lives. Some adult or some combination of adults, may properly control their lives. The adults authorized to exert control are children's parents. These adults do not have the power of life and death over the children – other adults hold them in check in various ways – but they are the primary bearers of authority over and responsibility for the children. He argues that it is natural to describe these adults as having rights over their children. they are legally authorised to exercise a great deal of discretion over the conditions in which their children are raised, the kind of education they will receive, what they will eat and do with their spare time, with whom they will play, and so on. In essence, he argues that parents do have rights with respect to their children, that it is morally permissible for parents to pursue certain of their own interests at some cost to their children's interest, that it is wrong for the state to prevent them from exercising that permission. It is also argued that there are things that it is permissible for parents to do to, for, and with their children that it is not permissible for anyone else to do, the exclusive situation being justified not merely by reference to the interests of the children

[11] H Brighthouse, 'What Rights (if any) do Children Have?' in D. Archard and C. Macleod (eds) *The Moral and Political Status of Children: New Essays,*(Oxford: Oxford University Press, 2002).

but by reference to the interest of the parents. Whilst children lack agency they certainly have fundamental interests meriting protection and thus at least have welfare rights. It is generally accepted and the researcher agrees that children have welfare rights.

Cohen[12] in his, 'Equal Rights for Children', contended fundamentally that, on grounds of social justice, children ought from birth to be accorded all the rights which adults currently enjoy. He rejects the view that the absence of certain capacities render children relevantly different from adults with respect to rights. He notes that in order to exercise their rights, adults often borrow capacities which they themselves do not possess, thus employing lawyers, doctors, and accountants etc. to handle specific matters for them. Consequently, he argues that the lack of some capacity is not a reason against granting a right. He went further to describe a system of child agents designed to lend children the necessary capacities. While Cohen holds that capacity or lack thereof is of no consequence in the exercise of rights, the researcher views it as being of paramount importance.

Farson[13] in his, 'Birthrights', which he called a Bill of Rights for Children' asserts that children are handled by adults in ways that deny them their rights as humans. According to him, that state of affairs has resulted in the marginalization and oppression of children. He proposes a restructured American society in which children can vote, work, reject compulsory education, choose their guardians, enjoy the other privileges of adulthood and in fact have the right to have sex with anybody they choose regardless of age. The denial of rights to children, on the account of capacity, is one significant element in a culture that serves artificially to maintain children in their childlike state of dependence, vulnerability, and immaturity. He concedes that children of a very young age are not capable enough to have rights, and will not acquire that capacity even if given rights yet insists that the denial of

[12] H Cohen, *Equal Rights for Children,*(Totowa, NJ: Littlefield, Adams, and Co. 1980).
[13] R Farson, *Birthrights*, (London: Collier Macmilliam, 1974).

rights to children of a certain age on account of their alleged incapacity is simply self-confirming. They cannot have rights because they are incapable but they are incapable only because they do not have these rights. Children should be allowed at law to behave in ways that encourage their development into mature rights-holders. He argues that giving rights to children will play an important part in their acquiring the qualifying capacity. It is not thus argued that children are capable now and are illegitimately denied their rights. It is rather that they will only—or at least will more readily or will at an earlier stage—acquire that capacity if given their rights. Farson's argument is that children lack capacity because they are denied rights while the researcher argues that children are denied certain rights because they lack capacity to exercise them.

Griffin[14] In his 'Do Children Have Rights?' argues that the question of qualification is the question of whether children have the requisite capacity for rights. The capacity to exercise choice is a necessary condition of having a right. If children lack such a capacity they cannot, on the will theory at least, possess rights. If they do have a capacity of choice then, on the will theory at least, they can have rights. The relevant capacity qualifying children for possession of rights is that of the ability to choose. But there is a more general issue of capacity that is in dispute whatever theory of rights is defended and that follows from attention to the fact that rights have a content. Each right is a right to do, to be or to have something. Arguably only those rights can be possessed whose content can be appropriately attributed to their owner. A right to free speech cannot properly be possessed by an entity incapable of speech. One conventional way to think of rights in terms of their content is to distinguish between liberty rights (rights to choose, such as to vote, practise a religion, and to associate) and welfare rights (rights that protect important interests such as health). A child's

[14] J Griffin, 'Do Children Have Rights?' in D. Archard and C. Macleod (eds) *The Moral and Political Status of Children: New Essays*, (Oxford: Oxford University Press 2002) 19-30.

incapacity, would seem to disqualify him from having liberty rights. Someone incapable of choosing cannot have a right whose content is a fundamental choice. If, all human rights are best interpreted as protecting human agency and its preconditions, then it would follow that those incapable of agency, such as young children, should not be accorded human rights. Griffin's argument that children are incapable of exercising certain rights ties with the view of the researcher, however the researcher disagrees with his conclusion that children should not be accorded human rights. Children should have human rights because they are human, they only need to grow into their right with time and experience.

Sumner[15] in his 'The Moral Foundation of Rights' addressed the question of 'rights'. What does it mean for someone to have a moral right to something? He asserts that while rights are indispensable to our moral and political thinking, they are also mysterious and controversial. He argues that the ascription of adult rights to children is inappropriate because it displays a misunderstanding of what childhood is, what children are like, or what relationships children stand in to adults. He believes that given the nature both of rights and of children it is wrong to think of children as right-holders. This is similar to Griffin's argument. Children are right holders, just not on the same level as adults.

Steiner[16] In his, 'An Essay on Rights' addresses the question, what is Justice? He departs from the usual idea that justice entails fairness and impartiality to seek the answer through an exploration of the nature of rights. He argues that for a set of rights to be just, they must at least be mutually consistent; and expressed concern at the proliferation of rights. Rights are, now promiscuously ascribed in two ways. First, the list of right-holders has been extensively lengthened. Second, many more demands are expressed as rights claims. The concern is that the prodigality of rights attributions is damaging to the cause of rights. If you give away too

[15] L W Sumner,*The Moral Foundation of Rights*, (Oxford: Clarendon Press, 1987).
[16] H Steiner, *An Essay On Rights*, (Oxford: Blackwell, 1984)

many rights they may cease to have the value and significance they once had, and ought still to have. A favoured metaphor in this context is monetary: the inflation of rights talk devalues the currency of rights. This author is more concerned with the proliferation of rights devaluing the quality of rights while this work is concerned with the proliferation of children's rights dwindling the authority of parents, teachers and children's care givers.

What does it mean for someone to have rights? In his work 'Children's Rights', Archard[17] identified two major theories

1. The 'will' or 'choice' theory which sees a right as the protected exercise of choice. In particular to have a right is to have the power to enforce or waive the duty of which the right is the correlative. What it means, on this theory, for one to have the right to education is for one to have the option of enforcing the duty of some other person or persons to provide one with an education, or to discharge them from the responsibility of doing so.
2. The 'welfare' or 'interest' theory which sees a right as the protection of an interest of sufficient importance to impose on others certain duties whose discharge allows the right-holder to enjoy the interest in question. What it means, on this theory, to have a right to education is for one to have an interest in being educated which is so important that others are under an enforceable duty to provide one with an education.

Children in general lack certain cognitive abilities—to acquire and to process information in an ordered fashion, to form consistent and stable beliefs, to appreciate the significance of options and their consequences. They also lack certain volitional abilities—to form, retain and act in the light of consistent desires, to make independent choices.

[17]Archard, David William, *Children's Rights*, in E N Zalta (ed), The Stanford Encyclopeadia of Philosophy (Palo Alto CA: Stanford University Press, 2014).

Schoeman[18] in his 'Rights of Children, Rights of Parents, and the Moral Basis of the Family' expressed general scepticism about rights in the context of adult-child relations which emphasises the particular character of the family. This view draws attention to the quality and nature of the relationships within a family. These are marked by a special intimacy and by deep, unconditional love between its members. The ideal family is a distinctive, and distinctively valuable, form of human association. What follows from this ideal of the family is the inappropriateness of asserting or claiming rights. For to do so would be to subvert and ultimately destroy what constitutes the family as the distinctive form of human association it is. Appeal is being made here to a familiar and oft-drawn distinction between two ways in which individuals engaged in a common enterprise or bound together in some enduring association can be assured of their beneficent, or at least minimally good, treatment of one another. One way is by the recognition—in law or custom or shared morality—of rights that all individuals can claim, or by rules of justice—similarly and generally recognised—which provide an assurance of fair treatment. Another way is by reliance on the dispositions or attitudes that the individuals bound together have—spontaneously and naturally—towards one another. Thus, for instance, if each is motivated by general benevolence in respect of all then no one has any need to claim or assert what is due to him as of right or rule. In the case of the family, it is argued, neither justice nor benevolence suffices but love does. Of course children may have rights against those who are not family members (a right, for instance, that their school teachers provide them with information and skills). Some rights are held against particular individuals. He advocates that, because relationships of intimacy such as the one between children and their parents, require privacy and autonomy, it is best maintained and fostered when coercive state intervention is prevented. In line with this research work, this

[18] F Schoeman, 'Rights of Families: Rights of Parents, and the Moral Basis of the Family', (1980) *Ethics*, 91(2) pp. 6-19.

author advocates that the government should not interfere in family issues. The research however allows interference in certain cases. For instance where there is evidence of abuse.

Sandel[19] in his 'Liberalism and the Limits of Justice' toed the line of Schoeman, arguing for the preservation of the family ideal. He further and quite distinct argued that not only is there no need for any claims of rights for the child, but that allowing them to be made will erode, and in due course destroy, the dispositions and attitudes that rendered the need for rights and rules of justices unnecessary in the first place. In the context of the family the claim is that granting its members rights will subvert and bring about the end of the love between them that made rights superfluous in the first place.

Purdy[20] in her 'In their Best Interest? A Case Against Equal Rights for Children', took the argument further and considered what would actually follow from granting rights to children. The argument is that we need as adults to have acquired certain traits of character if we are to be able to pursue our goals and lead a valuable life. To acquire these traits it is essential that we not be allowed as children to make our own choices. Granting children the liberty to exercise rights is destructive of the preconditions for the possibility of having fulfilling adult lives. The central argument is that children do not spontaneously grow into adults. They need to be nurtured, supported, and, more particularly, subjected to control and discipline. Without that context giving children the rights that adults have is bad for the children. It is also bad for the adults they will turn into, and for the society we share as adults and children.

O'Neill[21] In her 'Children's Rights and Children's Lives' argues that talk about rights misses what is distinctively different about children as a group. This is that childhood is not a

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[19] M Sandel, *Liberalism and the Limits of Justice*, (Cambridge: Cambridge University, 1982)

[20] L M Purdy,*In Their Best Interest? The Case Against Equal Rights for Children*, (Ithaca and London: Cornell University Press, 1992)

[21] O O'Neill,'Children's Rights and Children's Lives', (1988) *Ethics,* 98(38) pp. 445-463.

permanently maintained status associated with oppression or discrimination. It is rather a stage of human development which all must go through.

Brennan and Noggle[22] In 'The Moral Status of Children: Children's Rights, Parents' Rights, and Family Justice' asserted that although children are entitled to the same moral consideration as adults it does not follow that children should possess the same package of rights as adults. Since children are humans they are surely entitled to the basic human rights. But there are some rights possessed by adults which children cannot possess. The rights which adults possess are 'role-dependent rights'. These are rights associated with particular roles, and possession of the relevant right is dependent on an ability to play the role. Thus doctors have rights that their patients do not, and car-drivers have rights that those who have not passed their driving test do not. Noggle and Brennan however contend that children do have the basic human rights that adults have. For central amongst these rights is that of self-determination, that is the right to make choices in respect of one's own life. This right is the basis of derivative rights to marry, have sex, choose one's work, pause a course of education, and so on. But it is just this right that is normally denied to children, Noggle and Brennan do deny, in effect, that children have this right. If parents can, as Brennan and Noggle think they may, overrule a child's life-choice it is hard to see how nevertheless the right of choice does not vanish. This work affirms that contrary to Brennan and Noggle's supposition, children do have rights, just not on the same level as adults.

As we shall see in chapter three, children already have rights, a very long list of them. However, according to equal rights agitators, those rights are only protective and not liberating like adult rights. The researcher agrees with some of the above authors that the rights of children should increase gradually, in tandem with their level of maturity. The

[22]Brennan, S. and Noggle, R., 'The Moral Status of Children: Children's Rights, Parents' Rights, and Family Justice',(1997)*Social Theory and Practice*, 23(1) pp. 1-26.

researcher tried to bring into visibility, the reality of equal rights for children in everyday living. The researcher contends that erstwhile human rights document do not support equal rights for children, the researcher also portrays the fact that these issues are already leaving the realm of theory and agitation, and are gradually entering into policy, being driven by the Committee on the Rights of the child. Finally the researcher calls for a rejection of these views and consequently of the CRC.

1.8 Organisational layout

This work is divided into six chapters. Chapter one covers the general introduction, comprising the background of the study, the statement of problem, the purpose of study, the scope of study, the significance of study, methodology, literature review and the organisational layout.

Chapter two embodies the definition of terms, traces the historical evolution of human rights and child rights and establishes the legal perception of the child.

In chapter three, an attempt is made to wade through the legal and institutional framework for child protection, tracing the laws that have been made so far in this area, and the bodies charged with ensuring compliance. The jurisdiction of the family court is also discussed in this chapter.

Chapter four deals with the question of equal rights for children, should every area of the law and every conceivable right be ascribed to the child in the same way, magnitude and extent as it applies to adults? This chapter looks at the arguments for and against, as well as the views of the researcher. The fundamental rights are also discussed, what they mean for children, how the equal application of these rules would affect the child, the family and the society. Chapter five has the conclusion and the recommendations.

CHAPTER TWO

EVOLUTION OF CHILD RIGHTS PROTECTION

2.1.1 Rights

The word 'right' is derived from the Latin word *rectus* which means correct, straight, right as opposed to wrong. It may also mean in accord with the law, morality and justice. As a norm it may mean that to which a person has a just and valid claim, whether it be land or the privilege of doing or saying something such as the right of free speech.

Black's Law Dictionary defines 'right' as:

> that which is proper under the law, morality and ethics. Something that is due to a person by just claim, legal guarantee, or moral principle, like the right of liberty. A power, privilege, or immunity secured to a person by law, like the right to dispose of one's estate. A legally enforceable claim that another will do or will not do a given act; a recognized and protected interest the violation of which is a wrong, that is, a breach of duty that infringes one's right.[23]

Gray defines right thus:

Right is a correlative to duty; where there is no duty, there can be no right.

> But the converse is not necessarily true. There may be duties without rights. In order for a duty to create a right, it must be a duty to act or forbear. Thus, among those duties which have rights corresponding to them, do not come duties if such there be which call for an inward state of mind, as distinguished from external acts or forbearances. It is only to acts and forbearances that others have a right. It may be our duty to

[23] B A Garner, *Black's Law Dictionary*, (8th edn, U.S: West Publishing Co, 1999) p.1347.

love our neighbour, but he has no right to our love.[24]

Holmes J of the U.S Supreme Court (as he then was) opined in the case of *American Bank &Trust Co. v. Federal Reserve Bank of Atlanta*[25] that “the word ‘right’ is one of the most deceptive of pitfalls; it is so easy to slip from a qualified meaning in the premise to an unqualified one in the conclusion. Most rights are qualified.” According to Oputa J.S.C. (as he then was) “a right in its general sense is either the liberty (protected by law) of acting or abstaining from acting in a certain manner, or the power (enforced by law) of compelling a specific person to do or abstain from doing a particular thing.”[26]

Many jurists, especially of the Positivist school of thought hold that right is no right except when it is backed by positive law. Thus Jeremy Bentham posited:

> Rights is a child of law, from real laws come real rights, but from imaginary laws of nature come imaginary rights, a bastard opposed to, and in contradiction to real rights which is simple nonsense, natural and imprescriptible rights, are rhetorical nonsense-nonsense upon stilts…[27]

In accord with the above postulation, C. Oputa defines right protected by law thus:

> a legal right is the capacity residing in one person of controlling, with the assent and assistance of the State, the action of others. Thus every right involves a person invested with the right, or the person entitled, a person or persons on whom that right imposes a correlative duty or obligation; that is, a person or thing to which the right has reference, as

[24] G Chipman *, The Nature and Sources of the Law*. Quoted in Bryan A Garner *ibid*
[25] (1921) U.S 350.
[26] CA Oputa, *Human Rights in thePoliticaland Legal Culture of Nigeria,* Second Justice Idigbe Memorial Lecture, Uniben, 1986.
[27] Bowring ,Anarchical FAllacies Works, volume II. Pages 479, 500 and 501. Quoted in C Arinze-Umobi, *Gender Rights Law in Nigeria*

> in the case of ownership. A right therefore in general, is a well-founded claim; and when a given claim is recognized by the civil law, it becomes an acknowledged claim or legal right enforceable by the power of the State[28]

2.1.2Human Rights

Human Rights have been variously defined as "rights which every civilized society must accept as belonging to every person as a human being".[29] "Human Rights represent demands and claims which individuals or groups make on the society, some of which are protected by law and have become part of *lex lata* while others remain aspirations to be attained in future".[30] "Human Rights are simply the rights that every human being possesses and is entitled to enjoy for the mere fact that he or she is a human being"[31]

According to the *Black's Law Dictionary*, Human Rights are "the freedoms, immunities and benefits that, according to modern values (especially at an international level), all human beings should be able to claim as a matter of right in the society in which they live". Per Justice Chukwudifu Oputa, distinguishing between Human Rights and Fundamental Rights,

> Not every civil or legal right is a fundamental right. The idea and concept of a fundamental right both derive from the premise of inalienable rights of man… life, liberty and the pursuit of happiness. Emergent nations with written Constitutions have enshrined in such Constitutions some of these basic human rights or fundamental rights. Each right that is thus considered fundamental is clearly spelt out.[32]

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[28]CA Oputa, *Human Rights in the Political and Legal Culture of Nigeria*, *op cit*
[29] Ezejiofor in "*Text for Human Rights Teaching in Schools*." Constitutional Rights Project 1999, p.8
[30] OC Eze, *"Human Rights in Africa: Some selected problems."* Nigeria Institute of International Affairs (NIIA) (Macmillian Nigeria Publishers, 1984) p.5

[31] MA Schuler, et al, *Women's Human Rights step by step*, (Women Law and Development International Washington, 1997) p.8
[32]*Ransome Kuti V A.G Federation* (1985) 8 NWLR, Pt 6, p.211

2.1.3 History of Human Rights

The belief in the sanctity of human life has ancient precedents in many religions of the world. Some notions of righteousness present in ancient law and religion are sometimes retrospectively included under the term “human rights”. While enlightenment philosophers suggest a secular social contract between the rulers and the ruled, ancient traditions derived similar conclusions from notions of divine law and in Hellenistic philosophy, natural law. The fight for freedom is as old as time but the idea of “human rights”, that is the notion that a human being has a set of inviolable rights simply on the grounds of being human began during the era of renaissance humanism.[33]

In 539 B.C., the armies of Cyrus the Great, the first king of ancient Persia, conquered the city of Babylon. He freed the slaves, declared that all people had the right to choose their own religion, and established racial equality. These and other decrees were recorded on a baked clay cylinder in the Akkadian language with cuneiform script. Known today as the Cyrus Cylinder, this ancient record has now been recognized as the world’s first charter of human rights. It is translated into all six official languages of the United Nations and its provisions parallel the first four Articles of the Universal Declaration of Human Rights.[34]

From Babylon, the idea of human rights spread quickly to India, Greece and eventually Rome. The concept of democracy and the right of citizens to be involved in the affairs of his state was first born in Greece, on the downside however, slavery was also rife in Greece during that era.

In Rome the concept of “natural law” arose, in observation of the fact that people tended to follow certain unwritten laws in the course of life, and Roman law was based on natural ideas

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[33]History of Human Rights, wn.m.wikipedia.org/wiki/History_of_human_rights. Retrieved 17th January 2016.
[34]ibid

derived from the nature of things.[35] Documents asserting individual rights, such as the Magna Carta (1215), the Petition of Right (1628), the US Constitution (1787), the French Declaration of the Rights of Man and of the Citizen (1789), and the British Bill of Rights (1791) are the written precursors to many of today's human rights documents.

The Magna Carta is an English charter originally issued in 1215 which influenced the development of the common law and many later constitutional documents, such as the United States Constitution and the Bill of Rights. Magna Carta was originally written because of Pope Innocent III, King John and the English barons about the rights of the King. Magna Carta required the King to renounce certain rights, respect certain legal procedures and accept that his will could be bound by the law. It explicitly protected certain rights of the king's subjects, whether free fettered – most notably the writ of habeas corpus allowing appeal against unlawful imprisonment. For modern times, the most enduring legacy of the Magna Carta is the writ of habeas corpus, the right to due process is also included: "No Freeman shall be taken or imprisoned, or be disseized of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or otherwise destroyed; nor will we not pass upon him, nor condemn him, but by lawful judgment of his Peers, or by the Law of the Land. We will sell to no man, we will not deny ordefer to any man either Justice or Right".[36]Sadly this otherwise fine provision obviously regard certain humans as not "Freemen" and therefore not entitled to the protection stipulated.

The conquest of the Americas in the 15th and 16th centuries by Spain, during the Age of Discovery, resulted in vigorous debate about human rights in Colonial Spanish America. This led to the issuance of the Laws of Burgos. Among the provisions of that law were: child labour; women's rights; wages; suitable accommodations; and rest/vacation.Two major

[35]A Brief History of Human Rights. http://www.humanrights.com/what-are-human-rights/brief-history/cyrus-cylinder.html. 14/10/15
[36]History of Human Rights. https://en.m.wikipedia.org/wiki/History-of-human-rights

revolutions occurred during the 18th century in the United States (1776) and in France (1789). The Virginia Declaration off Rights of 1776 sets up a number of fundamental rights and freedoms. The later United States Declaration of Independence includes concepts of natural rights and famously states ”that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness”. Similarly, the French Declaration of the Rights of Man and Citizen defines a set of individual and collective rights of the people. These are, in the document held to be universal – not only to French citizens, but also to all men without exception.[37]

The League of Nations was established in 1919 at the negotiations over the Treaty of Versailles following the end of World War I. The League's goals included disarmament, preventing war through collective security, settling of disputes between countries through negotiation, diplomacy and improving global welfare. Enshrined in its charter was a mandate to promote many of the rights which were later included in the Universal Declaration of Human Rights.[38]

In 1945 in San Francisco, 50 nations adopted the United Nations Charter, a document setting forth the United Nations' goals, functions and responsibilities. Article 1 of the Charter states that one of the aims of the UN is to achieve international cooperation in all without distinction as to race, sex, language or religion.

2.2 Inalienability of Human Rights

The preamble to the Universal Declaration of Human Rights stated that the "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."

[37]ibid
[38]ibid

The American revolution of 1776 was hinged on the following declaration-

> We hold these Truths to be self-evident, that all men are equal,
> that they are endowed by their Creator with certain inalienable rights
> e.g. right to life, right to liberty and the pursuit of happiness. That to
> secure these rights, Governments are instituted among men, deriving
> their just powers from the consent of the governed, that whenever, any
> form of government becomes destructive of these ends, it is the right
> of the people to alter or to abolish it, and to institute new government,
> laying its foundation on such principles and organizing its powers in such
> form, as to them shall seem most likely to effect their safety and happiness.[39]

What is inalienability? Inalienability presupposes absoluteness, that which cannot be taken away. Are human rights truly inalienable? Hardly. It is a trite saying that "to every rule, there is an exception." This is particularly true with regard to rights. Most instruments that purpose to protect human rights also contain riders limiting such rights. For instance, the British bill of human rights (Magna Carta) declares:

> No free man shall be seized or imprisoned or stripped of his
> rights or possessions, or outlawed or exiled or deprived of his
> standing in any other way, nor will we proceed with force against
> him, or send others to do so, **except** by the lawful judgment of his
> equals, or in accordance with the law of the land[40]

The 1999 Constitution of the Republic of Nigeria has incorporated into it, the fundamental human rights, incorporated also are the limitations to those rights. The fundamental human rights are in sections 33 – 42 of the 1999 Constitution, they are:

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[39] The American Declaration of Independence, adopted in congress on July 4, 1776. available at http://www.kidport.com/reflib/usahistory/americanrevolution/DecInd.htm. Accessed 6/11/15

[40] Magna Carta, 1215 articles 39, available at http://www.fordham.edu/halsall/source/magnacarta.html. Accessed 6/11/15

1. The right to life. Section 33(1) provides that “every person has a right to life, and no one shall be deprived intentionally of his life, **save** in execution of a sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.
2. Right to dignity of the human person. Section 34(1) provides that “every individual is entitled to respect for the dignity of his person, and accordingly -

   (a) no person shall be subjected to torture or to inhuman or degrading treatment;

   (b) no person shall be held in slavery or servitude; and

   (c) no person shall be required to perform forced or compulsory labour.

   Section 34(2) went on to exclude from the ambit of “forced or compulsory labour,” among other exceptions, any labour required which is reasonably necessary in the event of an emergency or calamity threatening the life or well-being of the community, any labour or service that forms part of a normal communal or other civic obligations for the well-being of the community, any labour required in consequence of a sentence or order of a court.
3. Right to personal liberty. Section 35 provides that “every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law -

   (a) in execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty;

   (b) by reason of his failure to comply with the order of a court or in order to secure the fulfillment of any obligation imposed upon him by law;

   (c) For the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence;

(d) In the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;

(e) In the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community ; or

(f) For the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto.

4. Right to fair hearing. Section 36(1) provides that "in the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality. Even this all important right is still subject to exceptions. Subsection (4) provides for public trial within a reasonable time and by a court or tribunal in criminal cases. Yet where the interest of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of eighteen years, the protection of the private lives of the parties and in some circumstances which the court may consider it necessary, the requirement of publicity may be dispensed with.
5. Right to private and family life. Section 37 provides that "the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected."
6. The right to freedom of thought, conscience and religion. By Section 38(1), every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community

with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.

7. Right to freedom of expression and the press. By Section 39 (1), every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference. This does not however invalidate any law which is reasonably justifiable in a democratic society - for the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts; or imposing restrictions upon persons holding office under the Government of the Federation or of a State, members of the armed forces of the Federation or member of the Nigerian Police Force or other Government security services or agencies established by law.[41]
8. Right to peaceful assembly and association. Section 40 provides that every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests. Still the Independent National Electoral Commission has powers to deal with such a party in a certain manner if the party is not recognized by it.
9. Right to freedom of movement. Section 41 (1) of the 1999 Constitution provides that every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom. Notwithstanding then above provision, section 41 (2) affirms any law which - imposes restrictions on the residence or movement of any person who has committed or is reasonably suspected to have committed a criminal offence in order to prevent him from leaving Nigeria; or provides for the removal of any person from Nigeria to any other country to be tried for any criminal offence; or

[41] 1999 Constitution *ibid,* S. 39(3) (a) & (b),

undergo imprisonment outside Nigeria in execution of the sentence of a court of law in respect of a criminal offence of which he has been found guilty. This will obtain only if there is reciprocal agreement between Nigeria and such other country in relation to such matter.

10. Right to freedom from discrimination. Section 42 provides that "a citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person -

   (a) be subjected either expressly by, or in the practical application of any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions are not made subject.

   Notwithstanding the provisions of Section 42(1), section 42(3) affirms the validity of any law which imposes restrictions with respect to the appointment of any person to any office under the State or as a member of the armed forces of the Federation or a member of the Nigeria police Force or to an office in the service of a body corporate established directly by any law in force in Nigeria.

The qualification to the right to life has been widely criticized since various jurists hold capital punishment to be a violation of that right. If the right to life is absolute, then all other fundamental rights by extension should be absolute also. The right to personal liberty will then presuppose that convicted criminals can no longer be imprisoned. In the same vain, the right to dignity of the human person will presuppose the abolition of corporal or any other form of punishment. When these are removed, then there will be no more need for trials and the law; ultimately a return to jungle justice and survival of the fittest.

Section 45(1) of the 1999 constitution provides that "nothing in sections 37, 38, 39, 40 and 41 of this constitution shall invalidate any law that is reasonably justifiable in a democratic society -

(a) In the interest of defense, public safety, public order, public morality or public health; or

(b) For the purpose of protecting the rights and freedoms of other persons

Nigerian courts have upheld the provisions qualifying the absolute exercise of human rights in various cases. For instance, in the case of *Brian Anderson v Federal MinistryofInternal Affairs*,[42] the applicant, a British citizen resident in Nigeria alleged the infringement of his rights to personal liberty. In the application for the enforcement of his fundamental rights, he sought an order restraining the respondent from expelling him from Nigeria. The court rightly dismissed the application and held that the right to personal liberty could not be invoked to prevent the lawful expulsion of an alien from Nigeria. In *Mrs Yetunde Ogungbesan & others v Honourable Minister of Health and Social Services*,[43]applicants whowerenurses, had sued the respondents for their right to freedom of association. The learned judge rightly held that since the applicants were engaged to provide essential services, their rights to embark on industrial action was properly curtailed by the Trade Dispute (Essential Services) Act in the interest of public health. In *Chief Obafemi Awolowo v The Honourable Mallam Usman Sarki & Another,*[44] the court held that the right of the applicant to a legal practitioner of his choice was limited to lawyers who could enter into Nigeria as of right. This view was confirmed by the Supreme Court in the case of *Director, State Security Services v Olisa Agbakoba,*[45]where it was stated that only Nigerians have the exclusive right to move in and out of the country at will. Those who kick at these balances seem to totally overlook the importance of "order" in

[42] (1984) FHCLR 29
[43] (1995) FHCLR 168, 190
[44] (1966) All NLR 1. 71
[45] (1999) 3 NWLR, pt 595, pg 314

every civilized society. They seem to be equally ignorant of the fact that "rights" without limits is the very cradle of anarchy and chaos.

2.3 Who is a Child

The Constitution of the Federal Republic of Nigeria[46] does not define the word "child". Therefore we have to look to the dictionary and subsidiary laws for definition. The new *LexiconWebster's Encyclopaedic Dictionary* of the English Language[47] defined a child as a boy or girl at any age between infancy and adolescence, a new-born baby, a person of any age in relation to his parents. *Black's Law Dictionary*[48] defined a child as a person under the age of majority. The Encarta Dictionary defined a child as "somebody not yet of age, somebody under the legally specified age who is considered not to be legally responsible for his or her actions; a young human being between birth and puberty."[49] Canada's Supreme Court in the case of *Ogg-Moss v R*[50] defined a child thus: "both in common parlance and as a legal concept, the term child has two primary meanings. One refers to chronological age and is the converse of the term adult; the other refers to lineage and is the reciprocal of the term parent. For the purpose of being definitive, we will turn to our statute books.

The Factories' Act[51] defines a child as a person from the age of fourteen years but under the age of eighteen years. The Labour Act[52] defines a child as a young person under the age of twelve years, and a young person as one under the age of fourteen years. S.2 of the

Children and Young Persons' Act[53](hereinafter referred to as CYPA) defined a child to mean "a person under the age of fourteen years", it also defined a young person to mean "a person

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[46] Constitution of the Federal Republic of Nigeria 1999.

[47] D O Bolaner *et al* (eds),*Lexicon Webster's Encyclopedic Dictionary* (Deluxe edition U.S.A, Lexicon Publications inc, 1990) p.281

[48] B.A Garner , *Black's Law Dictionary, op cit*, p.254

[49] 1993-2008 Microsoft Corporation.

[50] (1984) 2 SCR 173

[51] Cap F1 Laws of the Federation of Nigeria 2004

[52] Cap L1 LFN, 2004

who has attained the age of fourteen years and is under the age of seventeen years.[54] The African Charter on the Rights and Welfare of the Child[55] defined a child as "every human being below the age of eighteen years" The United Nations' Convention on the Rights of the Child[56] defines a child as a person below the age of eighteen years except in the law applicable to the child the age of majority is attained earlier. The proviso to this definition renders it nothing more than a suggestion. Some statutes, while not out rightly giving definition to the term, make provisions, some for the protection of young persons, others to debar young persons from taking on certain responsibilities. Some of these provisions specify the age of a child to be below eighteen years, others include persons below the age of twenty one years. We will bear that in mind as we move on, we will also bear in mind the assertion of Cohen J in *Re Carlton*[57] that the meaning of the word "child" depends on and must be taken from the context in which it appears.

According to the Child's Rights Act which is the current authority as regards the protection of children's rights in Nigeria, "a child is a person below the age of eighteen years."[58] It must be noted of course, that legislation on issues concerning children in Nigeria is in the residuary legislative list and as such depends on the state. Individual states are meant to adopt and adapt the Child's Rights Act. Most states of the Federation have adopted the CRA and in the process of adapting, some states changed the definition of "child". In some states, a child is a young person under the age of thirteen years, in others like Akwa Ibom State, he/she is a young person under the age of sixteen years.[59] Customarily, the definition of child varies in line with the variations in customary beliefs and practices. For some groups, one is a child

[53] Cap 32, Laws of the Federation of Nigeria and Lagos 1958.
[54] Except for restriction on punishment as provided in S.11 of the CYPA, there is no difference between a child and a young person.
[55] Article 2, ACRWC 1999
[56] CRC, 1989 which Nigeria ratified in 1991and domesticated in 2003
[57] (1945) 1 CH. 372
[58] Child's Rights Act 2003, S. 277.
[59] N B Isua, *Juvenile Justice and the Jurisdiction of the Family Court*, presented at the 2009 All Nigerian Judges Conference, Abuja. P.8

until he is old enough to contribute to community development; for others, one is a child until he is initiated into the age group. The most accepted and widespread belief however, is that one is a child until he/she reaches puberty.[60] This belief fosters unequal treatment for people of the same age because; due to differences in sex and body mechanism, all do not attain puberty at the same point in time. When all is considered, I tend to agree with the admission in Nigeria's 2005 State Report to the Committee on the Rights of the Child that the perception of age as a definition of 'child' in Nigeria depends on who is defining and varies according to cultural background. The lack of a comprehensive definition that is applicable throughout the nation is an all-encompassing handicap with regard to the just application of the provisions of the law.

2.4 History of child protection

There has never been a time when children were completely bereft of protection; evenbefore the era of legal protection, adults were aware when a child was being maltreatedand tried to help. In America, criminal prosecution has long been used to punish flagrantabuses of children. In 1807, for example, a New York shop keeper was convicted of sadistically assaulting his slave and her three year-old daughter.[61] In 1869, an Illinois father was prosecuted for confining his blind son in a cold cellar in the middle of winter.[62]Defence counsel argued that parents had the right to raise their children as they see fit, but the Illinois Supreme Court disagreed, holding that "authority must be exercised within the bounds of reason and humanity. If the parent commits wanton and needless cruelty upon his child, the law will punish him." In 1856, the first rape conviction in the history of California reached the Supreme Court,[63] the victim was thirteen years old.

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[60] O Ikpeze, lecture notes on Women and Minority Rights (unpublished), 2003.
[61] E.B Myers, *A Short History of Child Protection in America*, Family Law Quarterly, 2008, Volume 42, No 3.
[62]*Fletcher v People* (1869) 52 Ill. 395 (1869)
[63]*People v Benson* (1859) 6 Cal. 221

Prosecution was not the only remedy. As early as 1642, Massachusetts had a law that gave magistrates the authority to remove children from parents who did not "train up" their children properly.[64] In 1737, an orphaned girl in Georgia was rescued from a home where she was sexually abused.[65] In 1866, Massachusetts passed a law authorizing judges to intervene in the family when "by reason of orphanage or of the neglect, crime, drunkenness or other vise of parents, a child was growing up without education or salutary control, and in the circumstances exposing said child to an idle and dissolute life"[66] Whether or not a statute authorized intervention, judges had inherent authority to stop abuse. Joseph Story wrote in 1886:

> For although in general parents are entrusted with the custody of the persons of their children, yet this is done upon the natural presumption that the children will be properly taken care of. But whenever this presumption is removed, whenever (for example) it is found that a father is guilty of gross ill treatment or cruelty towards his infant children…in every such case the court of Chancery will interfere and deprive him of the custody of his children.[67]

Organized child protection emerged from the rescue of nine-year-old Mary Ellen Wilson. She lived with her guardians in one of New York's worst tenements. Mary Ellen was routinely beaten and neglected. A religious missionary named Etta Wheeler learned of the child's plight and determined to rescue her. Wheeler consulted the police, but they declined to investigate. She sought advice from Henry Bergh, the influential founder of the American

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64 EB Myers, *op cit*

65 C.E Buckingham, *Early American Orphanages,* Ebenezar and Bethesda, Soc. Forces" (1948), 311.

66 E.B Myers, *op cit*, at 450.

67 J Story, *Commentaries on Equity Jurisprudence as Administered in England and America.* (13th edn 1886) p.1341.

Society for the Prevention of Cruelty to Animals. Bergh asked his lawyer, Elbridge Gerry, to find a legal mechanism to rescue the child. Gerry employed a variant of the writ of habeas corpus to remove Mary Ellen from her guardians.[68] Following the rescue of Mary Ellen, Bergh and Gerry decided to create a nongovernmental charitable society devoted to child protection, and thus was born the New York Society for the Prevention of Cruelty to Children (NYSPCC), the world's first entity devoted entirely to child protection.[69]

For many years, responsibility for child protection was left almost entirely to private agencies. Great sections of child population were untouched by them and in many other places the services rendered was perfunctory and of poor standard. The belief had become increasingly accepted that if children are to be protected from neglect, the service must be performed by public agencies.[70] In 1912, the Federal Children's Bureau was created, followed by the Sheppard Towner Act which provided federal money for health services for mothers and babies. The Social Security Act which was created in 1935, made provision for the Children's Bureau to cooperate with state public-welfare agencies in establishing, extending, and strengthening, especially in predominantly rural areas, (child welfare services) for the protection and care of homeless, dependent and neglected children and children in danger of becoming delinquent.

Another important innovation that appeared alongside nongovernmental child protection was the juvenile court. The world's first juvenile court was established in Chicago in1899. Although the reformers who created the juvenile court were concerned primarily with delinquent children, juvenile courts from the outset had jurisdiction to intervene in cases of abuse and neglect.

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[68] E B Myers, *op cit*, p. 3.
[69] *ibid*
[70] D. P Falconer, ‹Child and Youth Protection›, Social Work Yearbook, (1935) vol. 3, p 63

In Nigeria, the issue of child protection was non-existent for a long time due to rule by colonial government. The welfare of the Nigerian child was not particularly an issue of major concern to the colonial masters. The first attempt at legislation geared towards child protection in Nigeria was in 1943, when the Children and Young Persons' Act (CYPA) was promulgated for application in any part of the protectorate of Nigeria on the order of the Governor-in-Council. However, the cultural outlook was that children do not belong to their parents but to the community. Community heads, elders' councils, kindred and family units were there to ensure that children were not abused by their parents or guardians. Stubborn and headstrong children were also dealt with by these groups.

2.5 Child Rights Evolution

The idea of Children's Rights is a relatively new concept. Although Human Rights have been discussed since the 17th century, it was not until the 19th and 20th

Centuries that the rights of children began to be considered. With regard to the child, the word right appears to have two very different and very definite meanings. They have been identified as:

1. Protective rights and
2. Liberating rights

Initially, discussion of children's rights tended primarily to be focused on protection rights e.g. outlawing of child labour, rather than any notion that children were entitled to their own rights as equal citizens of the world.

At the beginning of the 20th century, millions of children died in the First World War and many more were orphaned by the fighting. The League of Nations was formed after the war. As an inter-governmental organization, its aim was to try to protect basic human rights

standards. In 1924, the League of Nations adopted the Geneva Declaration on the Rights of the Child which is the first international instrument concerning children's rights[71]. It declares that "mankind owes the child the best it has to offer" It was designed to put pressure on governments to protect children. However, with the advent of the Second World War, millions of children were again left unprotected

– killed, gassed or orphaned. The atrocities of the Second World War were the catalyst to

setting up a way of internationally regulating human rights. World War II left thousands of children in dire situations, precipitating the formation of the United Nations Fund for Urgency for the Children in 1947. This organization transformed into UNICEF and was granted the status of a permanent international organization in 1953. From inception, UNICEF focused particularly on helping young victims of WW2, taking care mainly of European children. In 1953, its mandate was enlarged to a truly international scope and its actions expanded to developing countries. UNICEF has since put in place several programs for helping children in their education, health and their access to food and water.

In the Universal Declaration of Human Rights, adopted by the UN in 1945. The rights of

children were implicitly included and many argued that the special needs of children justified

an additional separate document. In 1959, the United Nations General Assembly adopted the Declaration of the Rights of the Child (DRC). Meanwhile the United Nations Human Rights Commission group started to work on the draft of the Convention on the Rights of the Child (CRC). Non-governmental organisations were critical to the drafting of the Convention.

The year 1979 was declared the International Year of the Child by the UN. That year saw a real change of spirit as Poland made the proposal to create a working group within the Human Rights Commission which was to be in charge of writing an international charter. The

[71] Humanium, Children's Rights History. http:www.humanium.org. Accessed 6/11/15

result is the Convention on the Rights of the Child which was unanimously adopted by the UN General Assembly on November 20, 1989. Its 54 articles describe economic, social and cultural rights of children. The 1990 World Summit for Children organized by UNICEF promoted the widespread ratification of the UN CRC in the largest ever meeting of Heads of State.[72] The Summit Pledged thus: "The well-being of children requires political action at the highest level, we are determined to take that action. We ourselves make a solemn commitment to give priority to the rights of children".

The CRC has the status of international law. It entered into force on the 2nd of September 1990.[73] In article 3(1), it provides that "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration"

This provision has been entrenched in our law by section 1 of the Childs' Rights Act[74] which says "in every action concerning a child, whether undertaken by an individual, public or private body, institutions of service, court of law, or administrative or legislative authority, the best interest of the child shall be primary consideration" A replica of the provision is also found in Article 4(1) of the African Charter on the Rights and Welfare of the Child[75]

Bearing in mind the fact that the CRC has been ratified by almost all the member states of the United Nations Organization, the "best interest of the child" principle would appear to be the norm presently, both internationally and otherwise. However, a consensus on the notion is one thing but how to actualize the idea is another. It involves all of determining what is in the best interest of the child in every conceivable situation, entrenchment through positive legislation and the colossal issue of enforcement. In appropriate situations, it may also entail

[72] Juddith Ennew,The History of Children's Rights: whose story? http://www.culturalsurvival.org/ourpublication.
[73]History of Children's Human Rights. http://www.childrensrightswales.org.uk/history-of-children-rights.aspx. 12/10 15
[74] Child's Rights Act 2003.
[75] African Charter on the Rights and Welfare of the Child, July 1999.

the necessity to repeal inappropriate legislations. More so, the fact that the best interest of the child "shall be a **primary** consideration" in the decision affecting the child is an indication that the best interest of the child will not always be the single, overriding factor to be considered[76]; but in the administration of justice, there may be competing or conflicting human rights interests; for instance between individual children, between different groups of children and between children and adults.[77]

2.6 The Legal Perception of the Child

The Preamble to the Declaration of the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1959 stated that "the child by reason of his physical and mental **immaturity,[78]** needs special safeguards and care including appropriate legal protection before as well as after birth" Having regard to the said immaturity, laws have been made through time, designed to protect children in their dealings with adults or to preclude children from taking on certain adult responsibilities. Some of such laws are discussed below.

2.6.1 Contractual Capacity of the Child

Contracts made by children were governed by the rules of common law which were later entrenched in the Infant Relief Act 1874 of England (which as a Statute of General Application in force in England by 1900 is applicable to Nigeria though various states have passed their own Infants' Laws). It placed the age of a child for contractual purposes below twenty one years. The Nigerian court in the case of *Labinjo V. Abake*[79] stated that the age of responsibility for contractual purposes is twenty one years. The Infant Relief Act declared three types of contract with children as void; these are:

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[76] *Human Rights in the Administration of Justice*: A manual on Human Rights for Judges, Prosecutors and Lawyers UN. New York and Geneva, 2003. http://www.ohchr.org/Documents/Publications/training9Titleen.pdf
[77] Implementation Handbook for the Convention on the Rights of the Child (New York, UNICEF, 1989) P. 681.
[78] Emphasis mine.
[79] (1924) 5 NLR 33

(a) Contract of loan (lending money to a child)

(b) Contract for goods (except for necessary goods)

(c) Account stated[80]

It has been recognized that a child is obliged to pay for necessaries[81] that had been supplied to him. In the case of *Peter V Fleming*[82] it was held that a watch was a necessary for an undergraduate. Goods will not be deemed necessary if the child already has sufficient supply of same; thus in the case of *Nash V Inman*[83] where an undergraduate contracted with a tailor to have eleven fancy waist coats made for him, the court held that the child was under no obligation to pay the tailor since he already had enough waist coats suitable for his circumstances.

In *Mercantile Union Guarantee Co Limited V Ball*[84], it was held that a contract under which goods were supplied to a child for the purpose of trading is not a contract for necessaries, a child is therefore not bound to pay for such goods. In *Cohen V Nields*[85] a child hay supplier who had been paid in advance for his goods was not liable to refund the money when he failed to supply the goods.

Money paid by an infant for goods in a void contract is recoverable by him but money or property paid or transferred to him under a void contract are not recoverable from him. Accordingly all loans of money to a child are irrecoverable. In *Cidduts Co. V Browne-Lecky*[86] it was held that the guarantor to a loan given to a child was not liable for the guarantee since the principal debt was itself void.

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[80] An account stated is a balance that parties to a transaction or settlement agree on, either expressly or by implication. *Black's Law Dictionary,op cit*

[81] Things that are indispensable to living (a child's necessaries include food, shelter and clothing) *ibid*

[82] (1840) 6 M&W 42

[83] (1908) 2 KB 1

[84] (1937) 2 KB 498

[85] (1912) 2 KB 419

[86] (1942) KB 104

If a child obtains goods by fraud and remains in possession of them, he can be made to return them to the owner under the doctrine of restitution. If however he has parted with such goods, he will not be liable to replace them, or to restore the value of them, or even to restore another article for which they have been exchanged; for such liability would in effect amount to enforcing contract declared void by statute. This was the view expressed by Lord Summer in *Leslie Limited V Sheill.*[87]

A child may however bind himself by a contract of apprenticeship or of service since it is to his advantage that he should acquire a means of livelihood.[88] The doctrine of legal protection for children in contractual matters has been enshrined in the CRA[89] having regard to the provision of S.277 0f the CRA which pegged adulthood at eighteen, it would appear that the legal age for contractual responsibility is eighteen years.

2.6.2 Child Marriage

Marriage is seen by many as a form of contract. According to *Black's Law Dictionary*,[90] it is a legal union of a couple as husband and wife. It also stated that for a marriage to be valid,

- the parties must be legally capable of contracting to marriage,

-there should be mutual consent or agreement and

-an actual contracting in the form prescribed by law.

In the bid to protect children from the consequences of leaping into the adult game of marriage without looking properly, or of being pressured into it by parents or guardians, the law has made provisions as to what must obtain before a marriage involving a child could be

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[87] (1914) 3 KB 607 at p.267
[88]*Francisco V Barnum* (1870) 45 CH.D 430
[89]*Op cit,* S.18
[90]*Op cit p.*992

seen as valid. S. 3(1)(d) of the Matrimonial Causes Act[91] provides that a marriage in which the consent of either of the parties is not a real consent is void. Two out of the reasons given that would make consent short of real could easily apply to a child, *viz*

- if consent was obtained by duress or fraud,

- if a party is mentally incapable of understanding the marriage contract.

The importance of consent was reiterated in the cases of *Okpanum V Okpanum*[92] and *Osamawoyin V Osamawoyin*[93] stressing the fact that consent is essential even in customary law marriages. Towing the same line, lord Penzance in *Hyde V Hyde*[94] defined statutory marriage as "**voluntary** union for life of one man and one woman…" The Age of Marriage Laws[95] provides in section 3 that a marriage between or in respect of a person under the age of sixteen shall be void. That law was upheld in the case of *Emeakuana VUmeojiako.*[96] The Marriage Act[97] requires parental consent in a marriage where one of the parties is not up to twenty one years old. In *Agbo V Udo*,[98]the court held that parental consent is an essential ingredient.

The monitoring team of CEDAW[99] (CEDAW Committee) also recommends eighteen as the marriageable age, commenting that when men and women get married, they have responsibilities and so they should not embark on marriage until they have the maturity and capacity to act responsibly.[100] The CRA[101] makes the marriage of a person under eighteen

[91] MCA Cap M7 LFN 2004
[92] (1972) 2 ECSLR 561
[93] (1973) 1 NMLR, 25 G
[94] (1866) LR IP&D 130
[95] Cap 6, Laws of Eastern Nigeria, 1963 (it governs customary law marriages).
[96] Suit No AA 11A/76 Unreported, High Court, Awka. October 15 1976. Quoted in Domestic violence *opcit* p.91.
[97] Cap 218, LFN 1990
[98] (1947) 18 NLR 152
[99] Convention on the Elimination of all Forms of Discrimination Against Women.
[100] F. Anyaogu, *Women's SexualRights and Vulnerability to HIV/AIDS in Nigeria* (Gender Rights Law in Nigeria) *op Cit,* p. 265
[101]*Op cit*S.21

years of age null and void. In S.23, it seals the protection by making it an offence for a person to-

(a) Marry a child, or;

(b) Have a child betrothed to him, or;

(c) Promote the marriage of a child, or;

(d) Betroth a child.

Any person who commits such offence is liable on conviction to a fine of N500,000.00 or imprisonment for a term of five years or both such fine and imprisonment. Beautiful law, nonetheless handicapped by the existing legal system in the country; the testimony of which can be seen in the case of a prominent Nigerian, Senator Ahmed Sani Yerima who got married to an Egyptian girl suspected at the time to be no more than thirteen years old. Confronted by National Agency for Prohibition of Trafficking in Persons and other related matters (NAPTIP), he said that as long as he has not infringed the provisions of the Koran, he has not committed any offence. On another occasion he had this to say "The Child's Rights Act they are talking about was brought to me in Zamfara as a governor, my people rejected it, so also other states in the North. It was rejected by the State Assembly because it is against their religion"[102]

2.6.3 Child Abuse

Child abuse has been defined as "an intentional or neglectful physical or emotional harm inflicted on a child, including sexual molestation; especially a parent's or caregiver's act or failure to act that results in a child's exploitation, serious physical or emotional injury, sexual

[102] *Child Marriage-Yerima Quized, Granted Bail*,Vanguard Newspapers, 18 May 2010 p.13.

abuse, or death."[103] The Nigerian Criminal Code provides that any person who unlawfully abandons or exposes a child under the age of seven years, in such a manner that any grievous harm is likely to be caused to it, is guilty of a felony, and is liable to imprisonment for five years.[104] What is not clear in the provision is whether any form of abandonment or exposure is lawful. It provides in section 371 that any person who with intent to deprive any parent, guardian or other lawful person who has lawful care of a child under twelve years, of the possession of such child or with the intent to steal any article upon or about the person of any such child:

(1) forcibly or fraudulently takes or entices away or detains the child; or

(2) receives or habours the child, knowing it to have been so taken or enticed away or detained.

Section 52 of the CRA makes provisions for maintenance of a child where the parents or other caregivers are unable or refuse to provide the necessary care. The affected child would be placed under protection or under the care of the person responsible for his or her maintenance. In cases where the person is able to maintain the child but has wilfully refused to do so, the court can order such a person responsible for the child to pay a specified monthly sum for the child's maintenance while under placement.

2.6.4 Child Labour

In every society, children are required to do some work and such work may differ depending on the society involved. This type of work is an important part of a child's basic education and a means of handing over necessary skills from parents to children. This kind of work is beneficial to the mental, physical, spiritual, moral and social development of the child

[103] *Black's Law Dictionaryop cit* p. 10
[104] The Criminal Code Act, Cap C38, LFN 2004, S.341.

provided it does not interfere with schooling, recreation and rest. Child labour in contrast is work by children under conditions harmful to their health, usually for long hours and very low wages. Such work is destructive and exploitative. Children are not physically suited to long hours of strenuous and monotonous work. They are not usually aware of dangers; neither do they have knowledge of the precautions they should be taking.[105]

The Labour Act[106]in S.59 provides that a child under the age of twelve cannot be employed or work in any capacity except where he is employed by a member of his family on light work of an agricultural, horticultural or domestic character. He cannot be required to lift, carry or move anything so heavy as to likely injure his physical development[107] and he should not be prevented from returning to his parents at the end of each day[108]. All the provisions of the Labour Act as it concerns the protection of children were adopted by the CRA[109]. The African Charter on the Rights and Welfare of the Child provides for the protection of children against economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual moral or social development[110]. Similar provision can be seen in article 18 of the CRC which particularly emphasized that any work done by a child should not interfere with his/her right to education and development. Work done by children in technical schools or similar approved institutions which is supervised by the appropriate authority is not exploitative labour.[111]

The Companies and Allied Matters Act[112] provides that a person shall not join in forming a company if he is under eighteen years[113] except where two other people not disqualified have

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[105] O. Ohia,*et al, Child Abuse and Neglect*, Women's Aid Collective, 2002, P.4.
[106] Labour Act, Cap L1, LFN 2004

[107]*Ibid* S.59(10)(b)
[108]*Ibid* S. 59(3)
[109]*op cit,* S.29
[110] ACRWC, article 15
[111] CRA *op cit* S.28(2).
[112] CAMA, Cap C20, Laws of the Federation of Nigeria, 2004.
[113] *ibid,* S. 20(1)(a)

subscribed under the memorandum of the company.[114] Such a person (who joined in the formation of the company through the operation of the exception) shall not be counted for the purposes of determining the legal minimum of members of the company.[115] These provisions presuppose that a child is not civilly responsible. Section 257(a) of CAMA which disqualifies a person under the age of eighteen years from being a director of a company intends to protect the child from assuming responsibilities which directors are bound to take up in the event of the company going into bankruptcy.

2.6.5 Trafficking in Children

"Trafficking", is defined in section 50 of the Trafficking in Persons Act[116] to include 'all acts, attempted acts involved in the recruitment, transportation within and across Nigerian borders, purchases, sale transfer, receipt or harbouring of a person involving the use of deception, coercion or debt bondage for the purpose of placing or holding the person whether for or not in involuntary servitude (domestic, sexual or reproductive) in forced or bonded labour, or in slavery-like condition". Although any person can fall victim to this crime, children are in more grievous danger of being trafficked.

According to Section 179(a) of the Act, any person who conspires with another to induce any person under the age of eighteen years by means of any false pretence or other fraudulent means, permits any man to have unlawful carnal knowledge of such person commits an offence and is liable on conviction to imprisonment for five years. Again , any person who detains a child against her will in or upon a premises for the purpose of being carnally known by a man, whether a particular man or not, commits an offence and is liable on conviction to imprisonment for ten years. It is also an offence attended by life imprisonment, to either: export from Nigeria to any other place, any person under the age of eighteen years with the

[114] *ibid,* S. 20(2)
[115] *ibid,* S. 80
[116] Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003

intent or knowing it to be likely that such a person will be forced or seduced into prostitution in that place; or import into Nigeria a person below the age of eighteen with the intent or the knowledge of the likelihood of that person being forced into prostitution anywhere in Nigeria.[117]

2.6.6 Sexual Offences against Children

Rape and other forms of sexual abuse have always been viewed by the law as serious offences, attended by serious punishment. When children are found at the receiving end of such abuse, stiffer penalties have been prescribed against offenders. The Criminal Code Act[118] provides in section 218 that anybody who has unlawful carnal knowledge of a girl under thirteen years is guilty of a felony and is liable to imprisonment for life. An attempt to commit the offence attracts fourteen years imprisonment. If the girl is thirteen years or above but under sixteen years, the punishment for either the action or the attempt is two years imprisonment.[119] It is an offence for an owner or occupier of any premises, to induce or knowingly permit a girl child to be upon such premises for the purpose of being defiled.[120]

By section 222, unlawful and indecent dealing with a girl under the age of thirteen years attracts imprisonment for three years but where the girl is thirteen years and above but below sixteen years, the punishment of the offender is two years imprisonment. Under section 216, any person who indecently deals with a boy under the age of fourteen years is guilty of a felony and is liable to imprisonment for seven years. By Section 222A whoever, having the custody, charge or care of a girl under the age of sixteen years, causes or encourages the seduction, unlawful carnal knowledge or prostitution of, or the commission of an indecent assault upon such a girl, is liable to imprisonment for two years. Again, whoever, having the

[117] *ibid,* S. 11
[118] Cap C38, LFN 2004.
[119] *ibid,* S. 221(1)
[120] *ibid,* S. 219

custody, charge or care of a child or a young person who has attained the age of four years and is under the age of sixteen years, allows that child or young person to reside in or frequent a brothel, shall be liable to imprisonment for six months with or without a fine.[121]

Under the CRA, sexual intercourse with a child is tantamount to rape and is attended by life imprisonment.[122] Unlike in the Criminal Code, the fact that the offender believed the child to be above the stipulated age is not a defence. That the child consented to the act is also immaterial. Juxtaposing this proviso against the provisions of the Act which protect the child's right to freedom of expression and the right to his/her privacy, one wonders at the intent of the law. If an adult who has sexual intercourse with a child is to go in for rape even where the child consented to the Act, the law is obviously disregarding both the opinion of the child and his/her right to privacy, right to life (by extension that is freedom to live the kind of life he/she wants). The law is conceding that the child does not know what is best for him/her.

In order to ensure that children whose parents are divorced are taken care of, the law provides that in divorce cases, where there are children of the marriage who are under the age of sixteen years, the decree *nisi* shall not become absolute unless the court decrees that it is satisfied that proper arrangements in all the circumstances have been made for the welfare, and where appropriate, for the advancement and education of those children.[123]

2.6.7 The Child in Military Service

A person apparently under the age of eighteen years shall not be enlisted into the armed forces[124], unless consent in writing has been given by the person's parents or guardian. Where the parents or guardian of the child are dead or unknown, the chairman of the Local

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[121] *ibid,* S. 222b
[122] CRA *op cit,* S. 31
[123] Matrimonial Causes Act, Cap M7 LFN 2004, S.57(1)(a).
[124] Armed Forces Act, Cap A20 LFN 2004, S.28(2).

Government in which the child resides can write such a letter. Even when such a child is enlisted, the terms of his service in the military begins only when he turns eighteen. The CRA disagreed with the proviso contained in the Armed Forces Act; itprovides in section 34(1) that "no child shall be recruited into any of the branches of the armed forces of the Federal Republic of Nigeria." By section 34(2), "the Government or any other relevant agency or body shall ensure that no child is directly involved in any military operation or hostilities."

2.7.1 The Age ofCriminal Responsibility

The age of criminal responsibility has become an issue of much controversy. Section 30 of the Criminal Code[125] provides that:

> a person under the age of seven years is not criminally responsible for any act or omission. A person under the age of twelve years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission, he has capacity to know that he ought not to do the act or make the omission. A male person under the age of twelve years is presumed to be incapable of having carnal knowledge.[126]

Article 40(3)(a) of the CRC adjures States Parties to promote the establishment of a minimum age below which children will be presumed not to have the capacity to infringe the penal law. Rule 4 of the Beijing Rules provides that the age of criminal responsibility for children should not be set too low, bearing in mind the emotional, mental and intellectual immaturity of children. The Committee on the Rights of the Child[127] went on to say that the age of criminal responsibility should not be set too low, yet the committee did not venture to

[125] Criminal Code Act, *op cit*
[126] The same provision is found in Section 50 of the Penal Code Law (for the northern states) Cap P3 LFN 2004.
[127] The body set up under the convention to monitor its implementation.

advocate any specific age. For South Africa and Sierra Leone,[128] the minimum age for criminal responsibility is ten years; for India, seven years. The Afghan juvenile code adopted in 2005 established twelve years as the minimum age for criminal responsibility.[129] These limits were viewed by the Committee as too low. This is a very delicate issue because while it is important to have children protected, it is even more important to protect the public from crime unleashed by young people. The provisions of the law presupposes that any child below the age of criminal responsibility should not be tried or punished regardless of the seriousness of the act perpetrated by such a child. Considering the kinds of things very young children keep getting involved in, it would be exposing the public to obvious danger if the age of criminal responsibility is set too high.

The provisions of the CYPA and the CRA protecting the privacy of child offenders do not allow for information concerning the kinds of offences children are often involved in. In America, there is no such requirement and I will therefore draw inferences from there to buttress this point. On the 20th day of August 2010, an American daily carried a headline – "Pasco county cases put spotlight on kids who commit sex crime." The paper went on to report that three 13-year-old boys were arrested the same week on charges of sexually abusing younger children. The cases were not related, the teenagers were said to live in different towns. One of the boys was accused of raping an 8-year-old girl; he told the authorities he could not control his urges. Another boy was accused of repeatedly molesting a 6-year old girl, he told his father he had ruined the girl's life, and he learned to do what he did from sex education and watching TV. The third was accused of forcing himself on a 3-year old child. The Paper concluded by saying that more than one third of sex offences against children are committed by juveniles.[130] In 2000, a 13-year-old American from Michigan was

[128] UN Doc. CRC/C/94. Committee on the rights of the child: Report on the twenty third session (2000) para. 58.
[129] Justice for Children: The situation for children in conflict with the law in Afghanistan, UNICEF, P.12.
[130] St. Petersburg times, Friday 20 August 2010. available at http://www.tampabay .com/news/publicsafety/crime/pasco-county-cases.

convicted of second degree murder of an 18-year-old. He had told his friend he was going to shoot somebody, practiced his aim on stationary targets, shot the victim in the head and bragged about it the next day.[131] He was sentenced to youth detention till the age of 21. With very young children committing more serious crimes every day, it would be a disaster to set the age of criminal responsibility too high. In serious cases like murder and rape, it is also important to restrict the freedom of movement of the child offender for a while so that the victim of the crime or the family of the victim might have the opportunity to recuperate without having the added trauma of seeing the offender around.

The CRA is silent on the issue of minimum age for criminal responsibility, but provides in S.204 that "no child shall be subjected to the criminal justice process or to criminal sanctions, but a child alleged to have committed an act which would constitute a criminal offence if he were an adult shall be subjected only to the child justice system and processes set out in this Act." Where there is no criminal sanction or punishment for anything done by any child, it then means that no child is criminally responsible. By implication, the age of criminal responsibility in Nigeria is 18 years. One wonders whether this was what the draftsman intended to convey.

2.7.2 Determination of Age

When the age of any person is in issue, evidence of the parents or any person present at his birth together with his identity or opinion of experts may be used. A non-expert can also testify to the age of any person.[132] When a person testifies of his own age, it is hearsay or opinion evidence[133] which is admissible subject to the fulfilment of required conditions.

[131] Jet Newspapers, 31st January 2000

[132] *R V Cox,* (1898) 1 QB 179.

[133] *Modupe V State***,** (1988) 4 NWLR pt 87 at 130. The trial court rejected the evidence of the accused as to his age. On appeal, it was held that the decision of the trial court was wrong.

Concerning children, the court has held in the case of *Akpan v State*[134] that there are four methods of establishing the age of a child:

(a) By the production of a birth certificate.

(b) By direct evidence as to the date of birth; which should come from a parent or any person in whose presence the child was born.

(c) By certificate of a medical doctor, giving his opinion as to the age of the child.

(d) The age presumed or declared by the court to be that of the person in question.

Correct determination of age is very crucial to proper execution of juvenile justice. Mistake in the age of a person can be attended by dire consequences in the administration of justice; in fact, it is a matter of life and death. For instance in the case of *ChieboreOnuoha*, a Nigerian youth who was sentenced to death in 1997 for a crime he was said to have committed when he was fifteen years old. Amnesty international indicted Nigeria for using capital punishment against a juvenile offender contrary to Section 12 of the CYPA. Nigeria contended that he was not below the age of eighteen at the time he committed the crime.[135]

2.8 Juvenile Delinquency

There is no universal definition of juvenile or delinquency. Although “Juvenile” as a word has often been interchanged with the word “child”, unlike “child” it has not always been defined with respect to age. Webster dictionary defines juvenile as “relating to, characteristic of or suitable for children or young people. The UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) defines a juvenile as a child or young person who, under the respective legal systems may be dealt with for an offence in a manner

[134] (1967) NMLR 185-186.
[135] Amnesty International, United States of America: *Indecent andinternationally illegal, the death penalty against childoffenders*. Available under http://web amnesty.org/librart/index/eng.AMR511432002/OpenDocument

which is different from an adult. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty defined a Juvenile as "every person under the age of 18."[136]

Juvenile delinquency refers to the violation of the criminal codes regulating the behaviour of young people in the society. Any act in violation of criminal law, committed by a person defined under the law as a juvenile or a child, which, if it had been committed by an adult would be treated as a crime or criminal conduct is delinquency. In addition to such conducts which constitute delinquency for the juvenile and crime for the adult, there are other behaviours which do not constitute crime for the adult but which are defined as delinquency. Such behaviours are prohibited among juveniles because of their status as young persons.[137] They include behaviours like truancy, running away from home, drinking alcohol in public, associating with criminals and prostitutes.[138] It appears however that the emerging trend is intent on abrogating status offences. Article 56 of the Riyadh Guidelines[139] provide thus –

> In order to prevent further stigmatization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person.

Article 40(20)(a) of the CRC provides that no child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national law at the time they were committed. According to the CYPA, a child offender can be detained in police custody for the single purpose of preventing such a child

[136] United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 11(a).
[137] Also known as status offences.
[138] E E Alamika and I C Chukwuma, *Juvenile Justice Administration in Nigeria*: *Philosophy and Practice* (Lagos, Center for law Enforcement Education, 2001) p.12
[139] UN Guidelines for the Prevention of Juvenile Delinquency.

from associating with known criminals or prostitutes.[140] It is doubtful however, whether the CRA subscribes to such purpose.

[140] CYPA, *op cit* S. 3(b)

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORK FOR PROTECTION OF CHILD RIGHTS

Owing to the perceived vulnerability of children and the increasingly recognized need to have them protected, various legislations have been passed, all geared towards the protection of children. Starting from the UDHR which was the first International Human Rights Instrument to be drawn, mention was made specifically of the need to protect children. Other treaties and conventions followed, all geared towards securing the rights of peoples and as a springboard for the achievement of a better life and better future for all of mankind. Some treaties were made to address specific issues; for instance the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. Others were made to protect specific groups, for instance the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) which was specifically made to address women's issues and endorse the human rights of women. For children the *primus inter pares* of rights instruments is the Convention on the Rights of the Child (CRC). Adopted by the UN in 1989, it was not the first instrument geared towards the protection of children; there were the Geneva Declaration on the Rights of the Child of 1924, the General Assembly Declaration on the Rights of the Child 1959, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (Beijing Rules), the UN guidelines for the Prevention of Juvenile Delinquency 1990 (Riyadh Guidelines) and other declarations. The CRC however, by virtue of incorporating all the principles contained in the declarations and other non-binding instruments made for the protection of children, became a landmark Convention.

In this chapter, we will try to wade through the sea of legislation already in place, protecting children's rights. Are they enough? Is there need for more laws? more rights for children?

3.1 LEGAL FRAMEWORK

3.1.1 International Legal Instruments

3.1.1.a The UDHR

The Universal Declaration of Human Rights[141] (UDHR) declares in its article 1 that "All human beings are born free and equal in dignity and rights" and by article 2:

> everyone is entitled to all rights and freedoms set forth in this declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinions, natural or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

It went on to provide that all are equal before the law and are entitled to the equal protection of the law without discrimination.[142] The Universal Declaration of Human Rights contains two articles that specifically refer to children. Article 25(2) states: "motherhood and childhood are entitled to special care and assistance. All children whether born in or out of wedlock shall enjoy the same social protection." Article 26 calls for the right to education for all, and deals both with access to and the aims of education. Thus, education is to be free, at least in the elementary and fundamental stages; elementary education is to be compulsory; and education should be "directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms." Nevertheless, parents have a prior right to choose the kind of education that shall be given to their children.

[141]The Universal Declaration of Human Rights, with a Preamble and 30 articles, was adopted by the U.N. General Assembly on December 10, 1948. G.A. Res. 217 A (III), U.N. Doc. A/810 at 71 (Dec. 10, 1948). For an online text, *see* the United Nations Web site, http://www.un.org/Overview/rights.htm

[142] UDHR *ibid,* article 7

There are also other Human Rights Instruments. Foremost among the international instruments are the International Covenant on Civil and Political Rights (ICCPR) of 1966 and the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966 both of which, together with the UDHR are known as the International Bill of Rights. The ICCPR had its focus on civil and political rights like right to freedom of speech, religion, freedom of association, etc. (most of which are now contained in the Fundamental Rights provisions of the 1999 Constitution) while the ICESCR had its focus on such rights as right - to work, to join trade unions, to adequate standard of living including food, shelter, clothing, compulsory and free primary education and accessible secondary education for all, continuous improvement on living conditions, to highest attainable standard of physical and mental health.

3.1.1.b International Covenant on Economic, Social and Cultural Rights 1966[143]

Specific references to children are found in articles 10 and 12. Under article 10, the widest possible protection and assistance is accorded the family, particularly for its establishment and while it is responsible for the care and education of dependent children. It further stipulates that "special measures of protection and assistance" should be taken on behalf of the young without any discrimination; that they should be protected from economic and social exploitation; that employing them in morally or medically harmful or dangerous work or in work likely to hamper their normal development should be punishable by law; and that age limits should be set below which the paid employment of child labour is prohibited and punishable by law. Article 12 addresses the right of all to "enjoyment of the highest attainable standard of physical and mental health," to be fully realized by, among other measures, States Parties' providing "for the reduction of the stillbirth-rate and of infant mortality and for the

[143]The International Covenant on Economic, Social and Cultural Rights, with a Preamble and 31 articles, was adopted by the U.N. General Assembly on December 16, 1996, and entered into force on January 3, 1976.

healthy development of the child”. The ICESCR also provides for the right of everyone to education and stipulates “primary education shall be compulsory and available free to all”.[144]

3.1.1.c International Covenant on Civil and Political Rights 1966[145]

The International Covenant on Civil and Political Rights (ICCPR) also contain certain specific provisions on safeguards for children in the administration of justice and as members of a family unit. Thus, article 2 obliges States Parties “to respect and to ensure to all individuals within its territory and subject to its jurisdiction” the rights recognized in the ICCPR, “without distinction of any kind;” to adopt laws to give effect to those rights; and to provide effective remedies where there are violations. Article 14(1) incorporates a more specific reference to rights of the young: “any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.” Furthermore, criminal proceedings “should take account of [juveniles’] age and the desirability of promoting their rehabilitation” and the penal system should segregate juvenile offenders from adults and accord them treatment “appropriate to their age and legal status”[146]. Like the ICESCR, the ICCPR recognizes the family as entitled to societal and state protection (article 23(1)), and so States Parties are to respect the liberty of parents to ensure their children’s religious and moral education in conformity with their own convictions.[147] If a marriage is dissolved, provision must be made for the protection of any children (article 23(4)). Article 24 of the ICCPR is specifically devoted to children. It stipulates that “every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.” It further prescribes that every child must be registered immediately after birth and have a name and that every child has the right to acquire a nationality.

[144]ICESCR, article 13.
[145]The International Covenant on Civil and Political Rights, with a Preamble and 53 articles, was adopted by the U.N. General Assembly on December 16, 1966, and entered into force on March 23, 1976.
[146]Article 10, ICCPR.
[147]Ibid, article 18.

3.1.1.d Convention on the Rights of Persons with Disabilities 2006

The Convention on the Rights of Persons with Disabilities has a Preamble and 50 articles. It was adopted by the U.N. General Assembly on December 13, 2006, and was opened for signature on March 30, 2007. It contains a number of specific provisions on children. Aside from recalling various key human rights conventions, including the CRC, the Preamble specifically recognizes that "women and girls with disabilities are often at greater risk, both within and outside the home, of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation". It further states, "children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children," recalling obligations of States Parties to the CRC. Among the general principles of the Convention is "respect for the evolving capacities of children with disabilities" and for the children's right to preserve their identities.[148]It is a general obligation of the States Parties to "closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations" in developing and implementing legislation and policies to execute the Convention as well as in other decision-making processes on issues concerning the disabled.[149]

Under article 6, paragraph 1, of the Convention, States Parties, recognizing that disabled women and girls are subject to multiple discriminations, are to take measures to ensure that they fully and equally enjoy all human rights and fundamental freedoms. Article 7, which is entirely devoted to children with disabilities, prescribes that States Parties are to take all necessary measures to ensure the children's full enjoyment "of all human rights and fundamental freedoms on an equal basis with other children," and the "best interests of the child" are to be "a primary consideration" "in all actions concerning children." In addition, States Parties must ensure that disabled children "have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right."

The Convention also stipulates that States Parties must "take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of … age-sensitive assistance and support for persons with disabilities and their families and caregivers" as well as

[148]Article 3, Convention on the Rights of Persons with Disabilities.
[149]*ibid*, article 4, para. 3

protection services that are age-sensitive.[150] Recovery from abuse and reintegration in society are also to take into account age-specific needs. In addition, States Parties should adopt effective legislation and policies focused on children to ensure identification, investigation, and, where appropriate, prosecution of acts of exploitation, violence, and abuse against disabled children. The Convention provides that children with disabilities are to be registered right after birth and "have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents"[151]

States Parties are obliged to take measures to ensure that disabled children retain their fertility on an equal basis with others; that their best interests are paramount in such matters as guardianship, wardship, trusteeship, and adoption; and that they have equal rights in family life. To realize the latter, "and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families" (article 23(2-3)). States Parties must further ensure that children are not separated from their parents against their will, except when it is determined to be in their best interest. However, "in no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents".[152]The Convention stipulates that, to realize the right of the disabled to an education, States Parties must ensure that "children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability" and that, in particular, they deliver education to children "who are blind, deaf or deafblind … in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development".[153] States Parties are to provide health services for the disabled that include early identification and intervention and those "designed to minimize and prevent further disabilities, including among children".[154] States Parties must also take appropriate measures to ensure that women and girls with disabilities, in particular, have access to social protection and poverty reduction programs.[155] Disabled children must also be ensured "equal

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[150]*Ibid*, Article16, para. 2
[151]*Ibid,*Article 18, para .2
[152]*Ibid*, article 23.
[153]*Ibid,* article 24.
[154]*Ibid*, article 25.
[155]*Ibid*, article 28.

access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system”.[156]

3.1.1.e Geneva Declaration of the Rights of the Child

Geneva Declaration of the Rights of the Child was adopted by the League of Nations on September 26th, 1924. In its preamble, it states “men and women of all nations, recognizing that mankind owes the child the best it has to give, declare and accept it as their duty that, beyond and above all considerations of race, nationality and creed:

1. The child must be given the means requisite for its normal development, both materially and spiritually;
2. The child that is hungry must be fed; the child that is sick must be nursed; the child that is backward must be reclaimed; and the orphan and waif must be sheltered and succored;
3. The child must be the first to receive relief in times of distress,
4. The child must be put in a position to earn a livelihood, and must be protected against exploitation.
5. The child must be brought up in the consciousness that its talents must be devoted to the service of fellow men.

The provisions in the above statute are obviously geared towards the protection of the child and training i.e. the inculcation of the right values into the child.

3.1.1.f United Nations Declaration of the Rights of the Child

The United Nations Declaration of the Rights of the Child (UNDRC) was adopted by the UN on November 20 1959.It has ten articles. It builds upon rights that had been set forth in a League of Nations Declaration of 1924. The Preamble notes that children need “special safeguards and care, including appropriate legal protection, before as well as after birth,” reiterates the 1924 Declaration’s pledge that “mankind owes to the child the best it has to give,” and specifically calls upon voluntary organizations, local authorities and national governments to strive for the observance of children’s rights. One of the key principles in the UNDRC is that a child is to enjoy “special protection” as well as “opportunities and facilities, by law and by other means,” for healthy and normal physical, mental, moral, spiritual, and social development “in conditions of freedom and dignity.” The “paramount consideration” in enacting laws for this purpose is “the best interests of the child,” a standard echoed

[156]*Ibid*, article 30.

throughout legal instruments on children's rights. Among other UNDRC principles, a child is entitled to a name and nationality; to adequate nutrition, housing, recreation, and medical services; to an education; and, for the handicapped, to "special treatment, education and care." Other principles are on protection against neglect, cruelty and exploitation, trafficking, child labour, and discrimination. Also, in times of distress, the child must be among the first to receive relief; this is in contrast to and more realistic than the 1924 Declaration's requirement that the child must be the first to receive relief.

3.1.1.g Minimum Age Convention

The aim of the Minimum Age Convention[157] (MAC) is to establish a general instrument on the subject of the minimum age of employment with a view to achieving the total abolition of child labour. Thus, each State Party is to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment to a level consistent with the fullest physical and mental development of young persons[158]. States Parties must specify a minimum age for admission to employment or work, subject to certain exceptions set forth in the MAC. That minimum may not be less than the age of completion of compulsory schooling and, in any case, less than fifteen years, but it may initially be set at fourteen years if a state's economy and educational facilities are insufficiently developed[159]. Exceptions to the age limits may also be permitted for light work or for such purposes as participation in artistic performances (articles 7 and 8). If the employment may be hazardous to a young person's health, safety, or morals, the minimum age is generally not to be less than eighteen years (article 3(1)).

3.1.1.h Convention on the Rights of the Child

In 1989 the United Nations adopted the Convention on the Rights of the Child. Articles 37 and 40 address the issue of children in conflict with the law, the juvenile offender is guaranteed the right to be protected against torture, inhuman or degrading treatment, capital punishment and life imprisonment.[160] The Convention bars unlawful arrest or arbitrary deprivation of liberty, and provides that imprisonment of young offenders should only be used as a matter of last resort and for the shortest period of time possible.[161] It also lays down conditions for the arrest, detention and

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[157]The Minimum Age Convention, comprising a Preamble and 18 articles, was adopted by the 58th Session of the General Conference of the International Labour Organisation on June 26, 1973 , and entered into force on June 19, 1976; I.L.O. No. 138. For an online text, *see* the Office of the U.N. High Commissioner of Human Rights (OHCHR) Web site, http://www.ohchr.org/english/law/ageconvention.htm.

[158]MAC, article 1.

[159]*ibid*, article 2.

[160] CRC *ibid,* article 37 (a).

[161] *Ibid*, article 37 (b).

imprisonment of young offenders such as respect for the child's inherent dignity, separation from adult offenders while in custody, maintaining contact with family,[162] access to legal assistance, access to court and a quick trial.[163]

Article 40 of the CRC incorporates most of the essential principles of the 1985 Beijing Rules, indirectly making the rules legally binding on all the CRC states parties. It also extends a number of legal guarantees mentioned in article 14 to 17 of the ICCPR. These include the non-applicability of retroactive laws; the presumption of innocence; the right to receive prompt information of charge;[164] the right to legal assistance and the right to determination of the case by a competent, independent and impartial authority or judicial body; the right not to be compelled to give evidence or confess; the right to examine and have examined adverse witnesses.[165]

The CRC was ratified by Nigeria in 1991; however the ratification did not give it the force of law in domestic affairs. This is because according to Section 12 of the 1999 Constitution of the Federal Republic of Nigeria, for an international treaty signed or ratified by Nigeria to be applicable as law, it has to be domesticated. For the CRC, this came in the form of the Child's Rights Act of 2003. All the member states of the United Nations have signed and ratified the CRC except the United States of America and Somalia. America's reluctance to accede to the Convention has since been seen as an affront to the body (the UN) and an embarrassment to the nation (USA).

The United States government played an active role in the drafting of the Convention. It commented on nearly all of the articles, and proposed the original text of seven of them. Three of these came directly from the United States Constitution and were proposed by the administration of President Ronald Reagan.[166] On 16 February 1995, Madeleine Albright, at the time the US Ambassador to the UN, signed the Convention. It has not so far been ratified.

The failure to ratify the treaty so far is in part due to potential conflicts with the US Constitution and because of the opposition by some political and religious conservatives to the treaty. The CRC has been described (by Senator Jesse Helms, the former chairman of the Senate Foreign Relations Committee) as "a bag of worms," an effort to "chip away at the US Constitution."[167] Legal concerns over ratification have mostly focused on issues of "Sovereignty" and "Federalism" American laws for the protection of children are at the state, rather than the federal level, and the Tenth Amendment to

[162] *Ibid,* article 37 (c).
[163] *Ibid*, article 37 (d).
[164] *Ibid*, article 40 (2) (b) (ii).
[165] *Ibid*, article 40 (2) (b) (iv).
[166] J, Gainborough and E. Lean, 'Convention on the Rights of the Child and Juvenile Justice' (2008) The Link, *Child Welfare League of America*, 7(1) p. 1-15
[167] T J Gunn, *The Religious Right and the Opposition to the U.S. Ratification of the Convention on the Rights of the Child'*(2006) 20(17) pp.111-126. quoted in Nancy E. Walker *et al Children's Rights in the United States; In Search of a National Policy* (SAGE 1999) p.40.

the US Constitution restricts the authority of the federal government to pass legislation in this area. The US Supreme Court has also held that to some significant degree, no government – federal, state or local – may interfere with the parent-child relationship[168] and conservatives claim that the treaty would "virtually undermine parents' rights as we know it in the United States."

The Heritage Foundation sees the conflict as an issue of international control over domestic policy: "Although not originally promoted as an entity that would become involved in actively seeking to shape member states' domestic affairs, the United Nations has become increasingly intrusive in these areas."[169] They express concern over Sovereign jurisdiction over domestic policymaking and preserving the freedom of the American civil society and argue that the actual practice of some UN Committees has been to review national policies that are unrelated, or are marginally related to the actual language of the Convention. Some supporters of home schooling have expressed concern that the Convention will subvert the authority of parents.

David Smolin argues that the objections from the religious and political conservatives stem from their view that the UN is an elitist institution, which they do not trust to properly handle sensitive decisions regarding family issues.[170] According to him, one of the most controversial tenets of the Convention are the participatory rights granted to children. The Convention champions youth voice in new ways. Article 12 of the CRC states "parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child… the child shall in particular be provided opportunity to be heard in any judicial and administrative proceedings affecting the child." It is also argued that article 5 which includes a provision stating that parents "provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention" is couched in language which seems to reduce the parental role to that of giving advice.[171]

Yet American courts are already using the provisions of the CRC as persuasive authority, under the doctrine of Customary International Law. In the case of *Nicholson v Williams,*[172] the court said that "some courts have found the Convention on the Rights of the Child to be evidence of customary international law binding on United States Courts." The US Supreme Court has used the Convention when determining whether a minor may get the death penalty. Thus in *Roper v Simmonds*,[173] the court

[168] *Pierce v Society of Sisters (*1925), US 268,510.
[169] Human Rights and Social Issues at the U.N.: A Guide for U.S. Policymakers. Available at http;//www.heritage.org/research/reports/2006/08/human-rights-and-social-issues. Accessed 2\7\14.
[170] D. M. Smolin, 'Overcoming Religious Objections to the Convention on the Rights of the Child' (2006), *Emory International Law Review*. Vol. 20, p.81.
[171] *Ibid* at 90.
[172] (2002) E.D.N.Y. 203 F.Supp.2d 153, 234.
[173] (2005) 543 U.S. 551, 576.

said that “article 37 of the United Nations Convention on the rights of the child, which every country in the world has ratified save for the United States and Somalia, contains an express prohibition on capital punishment for crimes committed by juveniles under eighteen.” It went on to say that the “overwhelming weight of international opinion against the juvenile death penalty is not controlling on the U.S., but does provide respected and significant confirmation for the court’s determination that death penalty is disproportionate punishment for offenders under eighteen.”

Bearing in mind that one of the functions of the Child Rights Implementation Committee, (a body set up under the CRA to ensure its enforcement) is to ensure the observance of the rights and welfare of the child as provided for in the United Nations Convention on the Rights of the Child, Nigeria should also worry about some of the provisions of that Convention.

3.1.1.i Optional Protocols to the CRC on Sex Trafficking and Armed Conflict

The United Nations adopted two protocols to the CRC on May 25, 2000, the Optional Protocol to the CRC on the Sale of Children, Child Prostitution, and Child Pornography (Sex Trafficking Protocol) and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (Child Soldiers Protocol) The Sex Trafficking Protocol1[174] (STP) addresses the problem of sex trafficking, one among many purposes for which children are bought and sold, including, in addition, forced labour, adoption, participation in armed conflicts, marriage, and organ trade. The Preamble refers to achieving “the purposes of the CRC” and to the need for States Parties to implement specific provisions, among them CRC articles 34 and 35 on broad protections against child trafficking, sexual exploitation, and abuse. The Preamble also reflects CRC language in regard to protecting children from economic exploitation and performance of hazardous or harmful work. In addition, it recognizes “that a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation” and are disproportionately represented among the sexually exploited, and expresses concern over “the growing availability of child pornography on the Internet and other evolving technologies.” The STP defines and prohibits the sale of children, child prostitution, and child pornography; obliges States Parties to make certain acts punishable under their criminal law; sets forth the bases for States Parties to assert jurisdiction over actionable practices, and strengthens their ability to pursue extradition of offenders. The STP also provides for protection of and assistance to the victimized children in the criminal justice process, the best interests of the child being the

[174]The Sex Trafficking Protocol comprises a preamble and 17 articles. G.A. Res. A/RES/54/263 of 25 May 2000. It entered into force on January 18, 2002. For an online text, *see* the OHCHR Web site, http://www.ohchr.org/english/law/crc-sale.htm.

guiding principle in the children's judicial treatment. For purposes of prevention and redress of offenses, the victims must have access to procedures to seek compensation for damages from those legally responsible.[175] The STP also has provisions on strengthening international cooperation in regard to sex trafficking involving children and on reporting requirements for States Parties.[176]

The Child Soldiers Protocol[177] reaffirms in its Preamble that "the rights of children require special protection," notes "the harmful and widespread impact of armed conflict on children," and condemns their being targeted in such situations. It also refers to inclusion as a war crime in the Rome Statute of the International Criminal Court "the conscripting or enlisting children under the age of 15 years or using them to participate actively in hostilities in both international and non-international armed conflicts." The Preamble takes note of the definition of a child in article 1 of the CRC and expresses the conviction that raising the age of possible recruitment will contribute effectively to implementing the principle of the best interests of the child as a primary consideration in all actions concerning children. The Child Soldiers Protocol extends the minimum age requirement for direct participation in armed conflict and conscription to eighteen[178] and forbids rebel or other non-governmental armed forces "under any circumstances," to recruit or to use in hostilities persons under that age.[179] It does not prescribe the age eighteen minimum for voluntary recruitment, but requires States Parties to raise the minimum age for it from fifteen (as set out in article 38(3) of the CRC) and to deposit a binding declaration setting forth the minimum age permitted for voluntary recruitment and describing safeguards adopted to ensure voluntariness.[180] The Child Soldiers Protocol requires States Parties to take "all feasible measures to ensure" the demobilization or release from service of children recruited into armed conflict or used in hostilities and, "when necessary," to accord "all appropriate assistance" for the children's rehabilitation and social reintegration.[181]

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[175]Article 9(4), Sex Trafficking Protocol.
[176]*Ibid*, article 12.
[177]The Child Soldiers Protocol, comprising a Preamble and 13 articles, entered into force on February 12, 2002. G.A. Res. A/RES/54/263 of 25 May 2000. For an online text*, see* the OHCHR Web site, http://www.ohchr.org/english/law/crc-conflict.htm.

[178]Child Soldier's Protocol, article 1 and 2.
[179]*Ibid*, article 4
[180]*Ibid*, article 3.
[181]*Ibid*, article 6.

The United States ratified the Protocols on December 23, 2002 and insisted that the ratification of the two CRC Protocols on sex trafficking and on child soldiers not be considered a legal assumption by the United States of CRC obligations.

3.1.1.j Worst Forms of Child Labour Convention 1999

The Worst Forms of Child Labour Convention (WFCLC) refers in the Preamble to the need to adopt new instruments for the prohibition and elimination of the worst forms of child labour, "to complement the Convention and the Recommendation Concerning Minimum Age for Admission to Employment, 1973, which remain fundamental instruments on child labour." For the purposes of the WFCLC, the term "child" applies to all persons under the age of eighteen (article 2). The "worst forms of child labour" comprise: (a) all forms of slavery or practices similar to it, such as the sale and trafficking of children and forced labour (including forced recruitment for armed conflict); (b) the use, procuring, or offering of a child for prostitution or for pornography or pornographic performances; (c) the use, procuring, or offering of a child for illicit activities such as drug trafficking; and (d) work that is likely to harm children's health, safety, or morals (article 3). Each State Party is to adopt measures to: prevent the engagement of children in the worst forms of child labour; to provide direct assistance for the removal of children from such labour and for their rehabilitation and social integration; to ensure access to free basic education and, wherever possible and appropriate, to vocational training for all children removed from the worst forms of child labour; to identify and reach out to children at special risk; and to take account of the special situation of girls (article 7(2)).

3.1.1.k International Standards for Juvenile Justice

International standards, ranging from prevention to disposal and social reintegration, provide a framework of agreed guidelines for the administration of juvenile justice. Apart from the CRC, they include:

-United Nations Standard minimum Rules for the Administration of Juvenile Justice 1985 (Beijing Rules)

- United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990 (JDLs)

- United Nations Guidelines for the Prevention of Juvenile Delinquency 1990 (Riyadh Guidelines)

- United Nations Rules for Non-Custodial Measures (Tokyo Guidelines)

- Vienna Guidelines for Action on Children in the Criminal Justice System 1997

- Convention against Torture 1984 (CAT)

The Beijing Rules

The "United Nations Standard Minimum Rules for the Administration of Juvenile Justice" otherwise called the Beijing Rules, was adopted by General Assembly resolution 40/33 of 29th November 1985. As part of its provisions,

Rule 5 stipulates that the aim of juvenile justice should be an emphasis on the well-being of the juvenile and to ensure that any reaction to juvenile offenders should be based on the consideration not only of the gravity of the offence but also of personal circumstances. The individual circumstances of the offender (for example social status, family situation, the harm caused by the offence or other factors affecting personal circumstances) should influence the proportionality of the reactions.

Rule 13.1 provides that detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

Rule 17.1 provides that the deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response.

Rule 7 of the Beijing Rules further stipulates that juvenile cases should be guided by basic procedural rights, such as presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to presence of parents or guardian, the right to confront and cross examine witnesses and the right to appeal to a higher authority.

The Beijing Rules provide for the diversion of cases involving juvenile offender away from the legal system. For instance, Rule 11.2 provides -

The police, prosecution or other agencies dealing with juvenile cases should be empowered to dispose of such cases at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal systems and also in accordance with the principles contained in these rules.

According to Rule 11.4, in order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programs, such as temporary supervision and guidance, restitution and compensation of victims.

The Riyadh Guidelines

United Nations Guidelines for the Prevention of Juvenile Delinquency, otherwise known as the Riyadh Guidelines was adopted and proclaimed by General Assembly resolution 45/112 of 14th December 1990. Its aim is to provide guidelines for the prevention or reduction of the incidence of juvenile delinquency. Article 1 proclaims that the prevention of juvenile delinquency is an essential part of crime prevention in society. It advocates policies and measures that avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others. Such policies and measures involve the creation of opportunities, especially educational opportunities for young people, specialized philosophies and approaches for delinquency prevention, promotion of community based services and programmes.

Article 5(e) provides that state policies should involve consideration of the fact that "youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood"

3.1.2 Regional Legal Framework

3.1.2.a African Charter on Human and Peoples' Rights

In order to extend the general frontiers of Universal Declaration of Human Rights, regional human rights instruments came into being. Thus on 4th November 1950, the Council of Europe perfected their plans for the protection of human rights in the form of the European Convention on Human Rights. This was followed by the Americans in their Inter-American Convention on Human Rights in 1969. Then following pressure and heat from within and outside the continent of Africa; an African Charter came into life in 1981. In 1986, Nigeria ratified this Charter and it became incorporated into Nigerian

laws as African Charter on Human and Peoples Right (Ratification and Enforcement) Act cap.10 of 1990, now Cap A9 LFN 2004.[182]

The African Charter on Human and Peoples' Rights was adopted on June 17, 1981 by the Eighteenth Assembly of the Heads of States and Governments of the O.A.U. (Organization of African Unity, now A.U. - African Union) convening in Nairobi, Kenya. The adoption of the Charter represented a milestone in the promotion and protection of human rights in Africa. In the area of protection of human rights, the Charter reflects a strong preference for mediation, conciliation, and consensus as opposed to confrontational or adversarial procedures.[183]

The Charter having been domesticated in Nigeria guarantees to all, both Civil and Political rights, Economic, Social and Cultural rights with corresponding duties. Prominent among these rights as guaranteed are the right to equality before the law, human dignity and its inviolability, thus debarring all kinds of degrading treatments, exploitation in the nature of torture and degradation of any kind. Also the principles of natural justice as evidenced in the right to fair hearing, right to appeal, the presumption of the innocence of the accused until the contrary is proved, right of counsel of one's choice and reasonable time within which a person is tried before an impartial court.[184]

The African Charter made only one mention of the "child" in its provisions. Article 18(3) of the African Charter provides that states parties should ensure the protection of the rights of the child as stipulated in international declarations and covenants. By this provision the African Charter effectively endorses internationally accepted principles on children's rights. The African Charter guarantees every individual the right to have his/her case heard by a competent national organ.

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[182] C Arinze-Umobi, *Domestic Violence Against Women in Nigeria: A Legal Anatomy*, (Onitsha: Folmech Printing and Publications Co. Ltd., 2008) P.216.

[183] M. Ramcharan, *Human Rights in Africa; Whither Now*? (1975), 12 University of Ghana Law Journal, p.8.

[184] Domestic Violence against Women *op cit* at page 218.

3.1.2.b The African Charter on the Rights and Welfare of the Child

The African Charter on the Rights and Welfare of the Child (ACRWA) 1991 and the Convention on the Rights of the Child (CRC) are the two international instruments which specifically make special provisions for the rights of the child. The ACRWC has been signed and ratified by Nigeria.

The highlight of its provisions may be summarized thus:-

- Every child has the inherent right to life, and States shall ensure to the maximum, child survival and development.[185]
- Children shall not be separated from their parents, except by competent authorities for their well-being.[186]
- Parents shall have the primary responsibility for a child's upbringing but states shall provide them with appropriate assistance and develop childcare institutions.[187]
- States shall protect children from physical or mental harm and neglect, including sexual abuse or exploitation.[188]
- States shall provide parentless children with suitable alternative care. The adoption process shall be carefully regulated and international agreements should be sought to provide safeguards and assure legal validity if and when adoptive parents intend to move a child from his or her country of birth.[189]
- Disabled children shall have the right to special treatment, education and care.[190]
- Children are entitled to the most attainable state of health. States shall ensure that health care is provided to all children, placing emphasis on preventive measures, health education

[185] ACRWA, article 5.
[186] *Ibid*, article 25.
[187] *Ibid*, article 18.
[188] *Ibid*, article 27.
[189] *Ibid*, article 24.
[190] *Ibid*, article 13.

and reduction of infant mortality.[191]

- Primary education shall be free and compulsory. Discipline in schools shall respect the child's dignity. Education should prepare the child for life in a spirit of understanding, peace and tolerance.[192]

- Children shall have time for rest and play and equal opportunities for cultural and artistic activities.[193]

- States shall protect children from economic exploitation and from work that may interfere with their education or be harmful to their health or well-being.[194]

- States shall protect children from the illegal use of drugs and involvement in drug production and trafficking.[195]

- All efforts shall be made to eliminate the abduction and trafficking of children.[196]

- Capital punishment or life imprisonment shall not be imposed for crime committed before the age of eighteen.[197]

- Children in detention shall be separated from adults; they must not be tortured or suffer cruel or degrading treatment. Children involved in infringements of the penal law shall be treated in a way that promotes their sense of dignity and worth and aims at reintegrating them into the society.[198]

- States shall make the rights set out in the instrument widely known to both adults and

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[191] *Ibid*, article 14.
[192] *Ibid*, article 11.
[193] *Ibid*, article 12.
[194] *Ibid*, article 15.
[195] *Ibid*, article 28.
[196] *Ibid*, article 29.
[197] *Ibid*, article 53
[198] *Ibid*, article 17

children.

3.1.3 National Legal Instruments

3.1.3.a Children and Young Persons' Act

The Children and Young Persons' Act (CYPA) is an important legislation in Nigeria dealing with the treatment of young offenders. The CYPA was initially enacted as an ordinance in 1943. It was subsequently amended through several legislations. Intended as a national law, provision was made for its adoption as regional law and subsequently, state law. As a result, the law was extended to the Eastern and Western Regions of Nigeria in 1946 by order in Council, No 22 of 1946. The law was enacted for the then Northern Region in 1958 and constituted the Children and Young Persons' Law (CYPL) Cap 21 of the Laws of Northern Nigeria 1963.

The Act was promulgated to make provision for the welfare of the young and the treatment of young offenders and for the establishment of juvenile courts. Under the CYPA, a child is a person under the age of 14 years while a young person is a person under the age of 18 years. Just like in criminal justice administration, the juvenile justice administration is undertaken by three core criminal justice institutions – the police, courts and remand institutions. The police have a Juvenile Welfare Branch for the prevention of youthful offences and treatment of juvenile delinquents. The branch is made up of female police officers. The CYPA provides that a juvenile delinquent apprehended with or without warrant shall not be detained by the police except -

(a) where the charge against him is one of homicide or other grave offence; or

(b) where it is necessary for the interest of the delinquent to remove him or her from

association with any reputed criminal or prostitute; or

(c) where the police officer has reasons to believe that the release of such a delinquent

would defeat the ends of justice.[199]

Two phrases in this section are obviously ambiguous

1. "or other grave offence" as contained in S.3(a). Who determines the gravity of the

crime? It will be better to clearly set out all the offences envisaged by the law in this regard.

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[199] *ibid*, S.3.

2. “the police officer has reason to believe” to leave such a decision to the whim of one man who’s reasonableness has not been proved is counter-progressive to say the least. As it is, any flimsy excuse can be used to detain a young offender who should not be detained.

A young offender is released on self-recognition or to his parents or guardian with or without surety. Where a young offender is not released on bail, he shall be detained in a place of detention provided under the Act until he can be brought before a court except where:

a, it is impractical to do so, or

b, he is so unruly or depraved of character that he cannot be safely so detained; or

c, by reason of his state of health or his mental or bodily condition it is inadvisable to so detain him.[200]

The Inspector-General of Police shall make arrangements to prevent so far as practicable, a child or young person while in custody from associating with an adult charged with an offence. [201] The aim of this provision is to prevent the criminal contamination of young offenders by adult criminals. This provision is seldom enforced especially in police cells.

Young offenders are not to be tried in regular courts but in juvenile courts. While hearing charges against a child or young person, a juvenile court shall sit either in a different building or room from that in which the ordinary sittings of the court are held, or on different days or at different times from those at which the ordinary sittings of the court are held except in cases where the young offender is being charged jointly with an adult.[202] A juvenile court is presided over by a magistrate with such other persons as the chief Justice of the state shall appoint. Except for the press which cannot be excluded except by special order of the court, juvenile court sessions are not open to the public.[203] This is in a bid to ensure that the identity of a young offender before the court is not revealed. Under the Child’s Rights Act, even the press is excluded from attending a family court session. Only the parents or guardian of the young offender are mandated to attend, except where they are excluded from attending by order of the court.[204]

The CYPA made provisions for the right of juvenile offenders to due process of the law at all stages of proceedings. This is in conformity with S.36 of the 1999 Constitution of the Federal Republic of

[200] *ibid,* S.4.
[201] *ibid,* S. 5.
[202] *Ibid,* S. 6.
[203] *ibid* S. 6(5).
[204] *op cit*, S. 216.

Nigeria, United Nations Convention on the Rights of the Child and OAU Charter on the Rights and Welfare of the Child.

Under the CYPA, three categories of children may be brought before the juvenile court and they are:

(1) children alleged to have committed offences;

(2) children in need of care and protection; and

(3) children beyond parental control.

When the delinquency of a child is proved, the court shall, before deciding how to deal with him obtain such information as to his general conduct, home surroundings, school record and medical history as may enable it to deal with the case in the best interest of the child or young person, and may put to him any question arising out of such information. Where the court is satisfied of the guilt of a child or young person, the court shall make an order

a. dismissing the charge; or

b. discharging the offender on his entering into a recognizance; or

c. discharging the offender and placing him under the supervision of a probation officer;

or

d. committing the offender by means of a corrective order to the care of a relative,

or other fit person; or

e. sending the offender by means of a corrective order to an approved institution; or

f. ordering the offender to be whipped;[205] or

g. ordering the offender to pay fine, damages, costs; or

h. ordering the parents or guardian of the offender to pay fine, damages or costs; or

i. by ordering the parents or guardian of the offender to give security for his good

behavior; or

[205] Section 221 of the CRA prohibits whipping as a sentence for juvenile offences.

j. committing the offender to custody in a place of detention under the law; or

k. where the offender is a young person, ordering him to be imprisoned;[206] or

l. by dealing with the case in any other manner in which it may be legally dealt with

S. 29 of the CYPA provides that where a person is brought before any court otherwise than for the purpose of giving evidence and it appears to the court that he is a child or a young person, the court shall make inquiry as to the age of that person. This provision is presumably geared towards ensuring that only juvenile courts deal with children and young persons. That presumption is however negated by another provision of the Act which states that "… where in the course of any proceedings in any court other than a juvenile court, it appears that the person charged or to whom the proceeding relates is under the age of seventeen years, nothing in this section shall be construed as preventing the court if it thinks it undesirable to adjourn the case, from proceeding with the hearing and determination of the case."[207]

The places of detention referred to in the CYPA are remand homes and approved institutions including Borstal Institutions and prisons. A native or local authority or a local government council with prior approval of competent authority may establish remand homes and may make rules for the management, upkeep and inspection of such homes. Where no remand home is conveniently situated, a child or young person ordered to be detained in a custody may in the discretion of the officer or the court, as the case may be, be detained in an approved institution or in a prison provided that if a child or young person is detained in a prison he shall not be allowed to associate with adult prisoners. The provision that no child shall be sent to prison has again been shot through with a contradiction under the guise of discretion. Although the relevance of the CYPA has waned, yet it continues to be applicable especially in states that have not adopted the CRA.

3.1.3 b The Child's Rights Act

The Convention on the Rights of the Child enjoins that:

> States Parties shall undertake to disseminate the Convention's
>
> Principles and take all appropriate legislative, administrative and

other measures for the implementation of the Rights recognized in

[206] S.221 of the CRA prohibits imprisonment for every person who is below the age of 18 years.
[207] *Ibid*, S. 6(3),

the present Convention[208]

Against this background, the Child Rights Act was passed in 2003. The structure of the Act was informed by the mandate to provide a legislation which incorporates all the rights and responsibilities of children, and which consolidates all laws relating to children into one single legislation, as well as specifying the duties and obligations of governments, parents and other authorities, organizations and bodies.

The Act defines a child as one under the age of eighteen years. It categorically provides that the best interest of such a child shall remain paramount in all considerations. A child shall be given such protection and care as is necessary for his well-being, retaining the right to survival and development and to a name and registration at birth.

Basic Provisions of the CRA

- The CRA provides for freedom from discrimination on the grounds of belonging to a particular community or ethnic group, place of origin, sex, religious background, circumstances of birth, disability, deprivation or political opinion; the dignity of the child is also to be respected at all times.[209]

- A Nigerian child shall not be subjected to physical, mental or emotional injury, abuse or neglect, maltreatment, torture, inhuman or degrading punishment, attacks on his honour or reputation.[210]

- Every child is entitled to rest, leisure[211] and enjoyment of the best attainable state of physical, mental and spiritual health.[212]

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[208] CRC *op cit*, article 4
[209] CRA, *op cit*, S.10.
[210] *Ibid*, S.11.
[211] *Ibid*, S.12.
[212] *Ibid*, S.13.

- Every government in Nigeria shall strive to reduce infant mortality rate, provide medical and health care, adequate nutrition and safe drinking water, hygienic and sanitized environment, combat diseases and malnutrition, support and mobilize through local and community resources, the development of primary health care for children.

- Provisions for children in need of special protection measures (mentally challenged, physically challenged or street children). The goal is to enable them achieve their fullest possible social integration and moral development.[213]

-Expectant and nursing mothers shall be catered for and every parent or guardian having legal custody of a child under the age of two years shall ensure its immunization against diseases.

- Causing tattoos or marks on children[214] and female genital mutilation are made punishable offences under the Act; and so also is the exposure of children to pornographic materials, trafficking in children, inducing children to use narcotic drugs[215] or the use of children in criminal activities.[216]

- Abduction and unlawful removal or transfer of children from lawful custody,[217] and employment of children as domestic helps outside their own home or family environment, or labour in an industrial undertaking are prohibited. In the family environment, a child can only do light work of an agricultural or horticultural nature.

He is not to lift or carry anything that is heavy or likely to adversely affect his

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[213]*Ibid*, S.16.
[214] *Ibid*, S.24.
[215]*Ibid*, S.25.
[216]*Ibid*, S.26.
[217]*Ibid*, S.27.

development. Forced or exploitative labour is also not allowed.[218]

- Buying, selling, hiring or otherwise dealing in children for purposes of begging, hawking, prostitution or for unlawful immoral purposes are punishable by ten years of imprisonment.[219]

- Sexual abuse, general exploitation which is prejudicial to the welfare of the child,

recruitment into the armed forces[220] and the importation or exposition of children to

harmful publication are also considered grave by the Act.[221]

- It prohibits the use of capital punishment, imprisonment and corporal punishment for

children under eighteen years of age, and further provides for the use of scientific tests in deciding paternity cases.[222]

The Act provides for the preservation of all criminal law provisions securing the protection of the child whether born or unborn. The Act makes provisions for the establishment of family courts to hear all cases in which the existence of a legal right, power, duty, liability, privilege interest, obligation or claim in respect of a child is in issue, and any criminal proceeding relating thereto. It prohibits the subjection of any child to the criminal justice process, and guarantees that due process be given any child subjected to the child justice system at all the stages of investigation, adjudication and disposal of any case against such a child. The Act frowns at institutionalization for pregnant and expectant mother/children. Where institutionalization is desirable or unavoidable, it mandates the establishment of Special Mothers Centres for pregnant children. Children Residential Centres and Children Correctional Centres are to be established to replace the Approved Schools created under the CYPA. Where the court decides against institutionalization, it should utilize such dispositional measures as dismissing the charge, placing the child under care, guidance and supervision, which is now a replacement for probation and probation officers.

The Responsibilities of Children

Under the Act, children are also given responsibilities which include – working towards the cohesion of their families, respecting their parents and elders, placing their physical and intellectual capabilities at the service of the State, contributing to the moral well-being of the society, strengthening social and national solidarity, preserving the independence and integrity of the country, respecting the ideals of

[218]*Ibid*, S.28.
[219]*Ibid*, S.30.
[220]*Ibid*, S.34.
[221]*Ibid*, S.35.
[222]*Ibid*, S.22.

freedom, equality, humaneness and justice for all persons; relating with others in the spirit of tolerance, dialogue and consultation and contributing to the best of their abilities to solidarity with and unity within Africa, and the world at large. To this end, the Act mandates parents, guardians, institutions and authorities in whose care children are placed, to provide the necessary guidance, education and training to enable the children to live up to these responsibilities.

Children Living under Difficult Circumstances

In line with the principle of creation of institutions for servicing the needs and welfare of children living under difficult circumstances like orphans, street children and those physically challenged, the Act made provisions for the establishment, registration, regulation and monitoring of Community/Children's Homes. It provided for the supervisory functions and responsibilities of the Minister having responsibility for children in relation to the various Children's homes, which includes monitoring, provision of financial support, research and returns of information on activities of these homes. The Act also provides for the establishment of the Child Rights Implementation Committees at the National, State and Local Government levels.

3.2 INSTITUTIONAL FRAMEWORK FOR CHILD PROTECTION

3.2.1 International Institutional Framework

3.2.1.a Committee on the Rights of the Child

The CRC provides for the establishment of a Committee on the Rights of the Child, for the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the Convention.[223] The Committee should consist of eighteen experts of high moral standing and recognized competence in the field covered by the convention. The members of the Committee are to be elected by States Parties from among their nationals to serve in their personal capacity consideration being given to equitable geographical distribution, as well as principal legal systems.

The members of the Committee are elected by secret ballot from a list of persons nominated by States Parties. The members of the Committee are elected for a term of four years and are eligible for re-election if re-nominated. The Committee establishes its own rules of procedure. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the Convention.

[223] CRC, Article 43.

The functions of the Committee are to monitor State Parties' implementation of the CRC; to ensure that global international standards on juvenile justice systems are complied with, to interpret the provisions of the CRC and to obtain country reports on implementation of the Convention. The Committee began to examine reports from States Parties in 1993 and almost all States Parties who have reported to this Committee have been encouraged to review their juvenile justice system. One of the major concerns of the Committee is that deprivation of liberty is not being used as a measure of last resort or used for the shortest time possible, as required by the CRC. Another cause which has become prominent in the agenda of the Committee is the fight to ban all corporal punishment of children in all nations of the world. This particular issue is very interesting because the Convention on the Rights of the Child, the application of which the Committee is set up to monitor; has no provision which advocates a ban on corporal punishment. In fact, there is no mention of the word "corporal punishment" in the entire document of the CRC.

3.2.2 Regional Institutional Framework

3.2.2.a The African Commission on Human and Peoples' Rights

This Commission created under Article 45 of the ACHPR with the main focus to promote human and peoples' rights, and ensure their protection in Africa, has been mandated to promote human and peoples' rights in particular; to collect documents, undertake studies and researches of African problems in the field of human and peoples' rights, organize seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights, and should the case arise, give its view or make recommendations to governments; to formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African governments may base their legislation; co-operate with other African and international institutions concerned with the promotion and protection of human and peoples' rights; ensure the protection of human and peoples' rights under conditions laid down by the present Charter; interpret all the provisions of the present Charter at the request of a state party; an institution of the OAU, an African Organization recognized by the OAU, perform any other tasks which may be entrusted to it by the assembly of Head of States and Governments. The commission can use any method in achievement of the goals which may include any appropriate method of investigation, hearing from the Sectary General of OAU or any other person capable of enlightening it.

3.2.2.b The Committee on the Rights and Welfare of the Child

Nigeria as a member of the African Union ratified the African Union Charter on the Welfare of the Child (ACRWC) on 23rd July 2001. By implication, Nigeria is under obligation to submit periodic

reports on progress made in the implementation of the Charter as stipulated in its article 43, to the AU Committee on the Rights and Welfare of the Child. Article 43 of the ACRWC provides that each country's periodic report should be submitted within two years of ratification, and every three years thereafter.

The African Committee of Experts on the Rights and Welfare of the Child stipulated in the guidelines for the report writing process that: a state party that has already submitted to the UN Committee on the Rights of the Child may use elements of that report for the AU Charter report, … the report shall, in particular highlight two areas of rights that are specific on the children's charter, and must specify the action taken by the state party in response to any recommendations made to it by the Committee and or the UN Committee on the Rights of the Child.

3.2.3 National Institutional Framework

3.2.3.a The National Human Rights Commission

Nigeria's signature of the United Nations Declaration of Human Rights puts an obligation on her to disseminate, display, and incorporate human rights in institutions of learning. Nigeria has an obligation to educate children on human rights as expressed in particular articles of the declaration.[224] To meet up with this obligation, as recommended at the Vienna Conference on Human Rights, the National Human Rights Commission was established. This Commission was established in 1996 by the Federal Military Government. The functions of this body are to:

-Deal with all matters relating to protection of human rights as guaranteed by the

Constitution of the Federal Republic of Nigeria, by the African Charter on Human and

Peoples' Rights, the United Nations' Charter, the Universal Declaration on Human

Rights and other international treaties on human rights to which Nigeria is signatory;

- Monitor and investigate all alleged cases of human rights violation in Nigeria and

make appropriate recommendations to the Federal Government for the prosecution and

such other action that may be deemed expedient in each circumstance;

- Assist victims of human rights violation and seek appropriate redress and remedies on

[224] J Symonides, *The Human Rights: New Dimensions and Challenges*, (Sidney: UNESCO Publishing, 1989) p.33

their behalf;

- Undertake studies on all matters pertaining to human rights and assist the Federal

Government in the formulation of appropriate policies on the guarantee of human

rights;

- Organize local and international workshops and conferences on human rights issues for

public enlightenment;

- Liaise and co-operate with local and international organizations on human rights with

purpose of advancing the promotion and protection of human right;

- Participate in all international activities relating to the promotion and protection of

human rights;

- Maintain a library, collect data and disseminate information and materials on human

rights generally; and

- Carry out all such other functions as are necessary or expedient for the performance of

its functions under the Declaration.

3.2.3.b Child Rights Implementation Committee

The Child Rights Act provides for the establishment of the Child Rights Implementation Committees at the National, State and Local Government levels to oversee the implementation of the provisions of the Act. Issues of child rights protection are on the residual legislative list of the Nigerian Constitution. To that extent, the Child's Rights Act has no force of law in the states which have not adopted it. For this reason and for the fact that the differences in both the constitution and functions of the committee on all three levels are minute, we will consider the committee only at the state level.

Section 264(1) of the Act provides for the establishment of a committee to be known as the State Child Rights Implementation Committee (in the Act referred to as the "State Committee")

The State Committee shall comprise -

(a) the permanent secretary of the Federal Ministry of Women Affairs and Youth Development, as chairman;

(b) one person to represent each of the following State Ministries and Governmental bodies that is-

(i) Women Affairs;

(ii) Education;

(iii) Information;

(iv) Health;

(v) Justice;

(vi) Youth and Sports;

(vii) Labour and Productivity;

(viii) State Commissioner for Women;

(ix) Nigerian Immigration Service;

(x) Nigeria Police Force;

(xi) Nigeria Prisons Service;

(xii) State Agency for Mass Literacy;

(xiii) Family Court Judges Level;

(xiv) Family Court Magistrate;

(c) one children expert;

(d) one person to represent the State approved children institutions;

(e) one person to represent the State Community homes;

(f) one person to represent the State Branch of the Nigerian Union of Journalists;

(g) one person to represent the State Branch of the National Council of Women Societies;

(h) one person to represent the State Council of Chiefs

(i) one person to represent the State Branch of Christian Women Organization;

(j) one person to represent the State Branch of the Federation of Muslim Women Association of Nigeria;

(k) one person to represent Market Men Associations;

(l) one person to represent Market Women Associations;

(m) one person to represent the Parent/Teacher Association in the State;

(n) two persons to represent organizations involved in the protection of the rights of the child in the State; and

(o) one person to represent the State Branch of the National Union of Teachers.

Functions of the State Committee

The State Committee has the functions to[225] -

(a) initiate actions that will ensure the observance and popularization of the rights and welfare of a child as provided for in -

(i) this Act (the CRA);

(ii) the United Nations Convention on the Rights of the Child;

(iii) the Organization of African Unity Charter on the Rights and Welfare of the Child;

(iv) the Declaration of the World Summit for Children;

(h) co-ordinate the activities of and collaborate with local Government Committees;

(i) prepare and submit periodic reports on the state of implementation of the rights of the child for submission to the National Committee; and

(j) perform such other functions relating to the rights of the child as may, from time to time, be assigned to it.

[225]*ibid*, S. 265 (1)

3.2.3.c The Family Court

Section 149 of the CRA establishes for each of the states of the Federation and the Federal Capital Territory, Abuja, a court to be known as the Family Court(in the Act referred to as 'the court') for the purposes of hearing and determining matters relating to children. Section 150 provides that the Family Court shall be at two levels-

(a) the court as a Division of the High Court at the High Court levels; and

(b) the court as a Magistrate Court at the Magistrate level

S. 152(5) provides also that appeals shall lie to the Court of Appeal on any matter decided at the High Court level in the same manner as appeals lie in respect of matters decided by the High Court.

The Court at the High Court level shall consist of such number of judges of the High Court of the State or the Federal Capital Territory, as shall enable the court to effectively perform its functions under the Act and such number of assessors too as are necessary.[226] The court shall however be duly consisted if it consists of a judge and two assessors. The assessors shall be officers not below the rank of Chief Child Development Officers, one of whom should have the attribute of dealing with children and matters relating to children preferably in the area of child psychology education. The court at the magisterial level shall consist of such number of Chief Magistrates and assessors as are necessary. The court shall however be duly consisted if it consists of a Chief Magistrate and two assessors one of whom must be a woman, while the other must be a person who has the attributes of dealing with children and matters relating to children, preferably in the area of child psychology education.[227] The Act provided for the personnel of the family court to be afforded professional education, in-service training, refresher courses and other modes of instruction to promote and enhance the necessary professional competence they require.[228]

Jurisdiction of the Court

Section 151(1) of the Act provides:

"Subject to the provisions of this Act and in addition to such other jurisdiction as may be conferred on it by any other law, the court shall have unlimited jurisdiction to hear and determine-

(a) Any civil proceedings in which the existence or extent of a legal right, power, duty,

[226]*op cit*, S. 152(1)
[227]*Ibid*, S. 153
[228]*Ibid*, S. 154(1)

liability, privilege, interests, obligation or claim in respect of a child is in issue; and

(b) Any criminal proceedings involving or relating to any penalty, forfeiture, punishment

or other liability in respect of an offence committed by a child, against a child or

against the interest of a child."

The juvenile court established by the Children and Young Persons Act had jurisdiction mainly to try young offenders. The civil jurisdiction it had was over young persons in need of care and attention and their parents or guardian, that court was also only at the magistrate court level. The jurisdiction of the Family Court both in civil and criminal matters on the contrary is unlimited. The fact that the court is also at the high court level enhances its jurisdiction and underscores the importance attached to the enforcement of the rights of the child.

Civil Jurisdiction of the Family Court

Section 152(4) of the Act provides that the court at the High Court level shall have power to-

"deal with all matters relating to the enforcement of the rights of the child as set out in the Act on the application for redress by a child who alleges that a right has been, is being, or is likely to be infringed in respect of him"

The rights of a child as set out in the Act include firstly, all the fundamental rights guaranteed by Chapter IV of the Constitution of The Federal Republic of Nigeria, 1999 are available to all children and are enforceable by them. This is guaranteed by Section 3(1) of the Act which provides that those rights "or any successive constitutional provisions relating to fundamental rights shall apply as if those provisions are expressly stated in this Act." Thus the family court has the jurisdiction to enforce the fundamental rights of a child such as the right to life, dignity of human person, personal liberty, fair hearing, private and family life, freedom of thought, conscience and religion, freedom of expression, peaceful assembly and association, freedom of movement and freedom from discrimination in respect of the child. The right of the child to life described as the right to survival and development in the Act is absolute. Whereas the life of an adult may be lawfully taken in the execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria,[229] no child shall be subjected to the death penalty or have the death penalty recorded against him.[230]

[229] 1999 Constitution S. 33(1).
[230] CRA *op cit,*S. 221(1)(c)

In addition to the fundamental rights applicable to every person, children have special rights under the Act. Some of these are the right to rest and leisure and to engage in play, sports and recreational activities appropriate to their age,[231] the right to enjoy the best attainable state of physical, mental and spiritual health.[232] These are of course very laudable objectives but it is very doubtful if they can be enforced

S. 14(2) of the Act stipulates that every child has the right to parental care, protection and maintenance to the extent of the means of his parents or guardian. Where such maintenance is not provided, the child has the right to enforce this right in the family court. It must be said that it beats the imagination; what the draftsman intended to achieve by this particular provision. The immaturity of the child has since been established; how can such an immature mind have the capacity to understand adult finances, more so locate his place in it. To have children dragging their parents or guardians to court to declare their (parents' or guardians'') assets will only cause bad blood in the family. This provision should be expunged.

S. 15(1) provides that every child has the right to free, compulsory and universal basic education and it is the duty of the government to provide such education while it is the duty of the parent or guardian to ensure that his child or ward attends and completes the primary school education and the junior secondary education. While the law does not provide any penalty for the government which fails to provide the free, compulsory and basic education, the parent or guardian who fails to ensure the attendance of their child or ward where such free education is provided commits an offence and is liable on conviction to be reprimanded and ordered to undertake community service as a first offender. On a second conviction, such a parent or guardian is liable to a fine of two thousand naira or imprisonment for a term not exceeding one month or both such fine and imprisonment. On a subsequent conviction, the fine increases to not more than five thousand naira or two months imprisonment. How the children or wards of such parents or guardians would be taken care of while their parents or guardians are being incarcerated is a question the Act did not bother to address. Free, compulsory and universal basic education has become a national policy in Nigeria, encapsulated in the term 'Universal Basic Education'. It is very doubtful however, whether free, compulsory and basic education is indeed provided for the children in the implementation of that policy. Is only free tuition enough? What about children from the very poor homes (and they are on the increase now because of the increasing level of job losses, unemployment and poverty) who cannot afford uniforms and books and consequently may not be able to take advantage of the free tuition. Instead of punishing such parents, the government should endeavor to give them a better life by creating jobs so they can take better care of their children.

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[231] *Ibid,* S. 12
[232] Section 13 *ibid*

A child may bring an action for damages against a person for harm or injury caused to the child willfully, recklessly, negligently or through neglect before, during or after the birth of that child.[233] Again where the father and/or mother of an unborn child dies intestate before the child is delivered, the unborn child is entitled; in the case of his father, if he was conceived during his father's lifetime and in the case of his mother, if he survives his mother, to be considered in the distribution of the estate of the deceased mother and/or father. Consequently where such a child is not considered in the distribution of such estate, he can bring an action to the family court for redress.

Criminal Jurisdiction of the Family Court

The CRA criminalizes the infringement of some specific rights of children or specific provisions designed for the protection of the child. In this connection, section 21 of the Act provides that no person under the age of eighteen years is capable of contracting a valid marriage. By Section 23 of the Act, it is a criminal offence for anyone to marry, betroth or promote the marriage of a child; or to have a child betrothed to him. Anyone convicted of such offence is liable to five hundred thousand naira fine or five years imprisonment or both such fine and imprisonment. Anyone who exposes a child to the use of narcotic drugs and psychotropic substance or to the production or trafficking in such substances is criminally culpable and liable on conviction to imprisonment for life.[234] The use of children in other criminal activities not specifically mentioned in the Act is also prohibited. Breach of this provision attracts a penalty of 14 years imprisonment.[235]

Section 39 of the Act removes any jurisdictional limitation on the powers of a magistrate court and any other court in relation to the imposition of fines or terms of imprisonment prescribed in the Act for the offences created in part III which deals with the protection of the rights of the child. This means that the family court at the magistrate level can impose the maximum penalty prescribed.

The family court, as has been stated earlier has jurisdiction to hear and determine criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by a child, against a child or against the interest of a child. We have so far looked at some of the offences against a child or against the interest of a child. We shall now look at the jurisdiction of the family court in respect of the child who commits an offence. S. 152(4) provides that the court at the high court level shall have power to-

(b) deal with all offences punishable with-

(i) death, or

[233] *Ibid,*S. 17(1)
[234] *Ibid,* S. 25.
[235] *Ibid*, S. 26.

(ii) terms of imprisonment for a term of ten years and above;

(c) deal with other matters relating to a child where the claim involves an amount of fifty

thousand naira and above;

3.2.3.d The Nigerian Child Justice System

The child (or juvenile) justice system may be regarded as a track within the criminal justice system of a society; it is guided by a philosophy of concern, care and reformation. Young offenders are deemed to be immature and should not be treated as adult offenders; on the contrary, juvenile delinquents should be considered 'misguided' and therefore rescued or subjected to treatment or reformation and rehabilitation programmes within correctional institutions.[236] The Child Rights' Act provides that no child shall be subjected to the criminal justice system or to criminal sanctions but a child alleged to have committed an act which could constitute a criminal offence if he were an adult shall be subjected to the child justice system and processes set out in the Act.[237] This provision entails the abrogation of any form of punishment for any person below the age of eighteen years regardless of the enormity of the offence committed by such a person. Instead he/she shall be subjected where the offence is of a non-serious nature to pre-trial alternatives like -

a) supervision,

b) guidance,

c) restitution, and

d) compensation of victims.[238]

Police investigation and adjudication in the court are to be used as measures of last resort where the offence is of a serious nature. Even where a child is prosecuted and found guilty of an offence, restriction of liberty is still a measure of last resort. The best interest of the child shall be the guiding principle in the matter.

When a child is apprehended, the court or police, as the case may be, shall, without delay, consider the issue of release.[239] Detention pending trial shall be used only as a measure of last resort and for the

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[236] E.O Alamika& I.C Chukwuma, *Juvenile Justice Administration: Philosophy and Practice,* (2001) Centre for Law Enforcement Education, Lagos, Nigeria. p.13.
[237] CRA,S. 204.
[238]*Ibid*, S. 209(1) (a).
[239]*Ibid*, S. 211(1)(1)(b).

shortest possible period of time. Wherever possible, detention pending trial shall be replaced by alternative measures like-

a) close supervision,
b) care by and placement with a family, or
c) placement in an educational setting, or
d) placement in a home.

Where a child is detained pending trial, the court shall secure that such child be moved to a State Government Accommodation and shall not authorize the child to be kept in police custody, except where-

-by reason of the circumstances specified in the certificate, it is impracticable to move the child to a State Government Accommodation; or

- the child has attained the age of fifteen years and no secure accommodation is available and any other accommodation is not sufficient to protect the public from serious harm from the child.[240]

While in detention, a child shall be given care, protection and all necessary individual assistance, including social, educational, vocational, psychological, medical and physical assistance, that he may require having regard to his age, sex and personality.[241]

Due Process

On the apprehension of a child, the parents or guardian of the child must be notified immediately or as soon as possible.[242] . Contact between the police and the child shall be managed in such a way as to-

(a) respect the legal status of the child;

(b) promote the best interest and well-being of the child; and

(c) avoid harm to the child, having due regard to the situation of the child and the circumstances of the case.[243]

In the administration of the child justice system, the legal status and fundamental rights of the child must be respected, in particular-

[240]*Ibid,* S. 212.
[241]*Ibid*, S. 212(2).
[242]*Ibid*, S. 211(1).
[243]*Ibid,* S. 211(2). "Harm" includes the use of harsh language, physical violence, exposure to the environment and any consequential physical, psychological or emotional injury or hurt.

(a) the presumption of innocence;

(b) the right to be notified of the charges;

(c) the right to remain silent;

(d) the right to the presence of a parent or guardian;

(e) the right to legal representation and free legal aid.[244]

Where a child is brought before the court, the court shall, as soon as possible, explain to him and his parents or guardian in a language the child's parent or guardian understands the substance of the alleged offence.[245] If the child does not admit the facts of an alleged offence, the Court shall proceed to hear the evidence of the witnesses in support of the facts.[246]

Section 214 of the CRA provides that in the trial of a child under the Act, respect for his right of fair hearing and compliance with due process shall be observed

Where a child offender is brought before the court, the court shall ensure that -

(a) the proceedings is conducive to the best interest of the child and is conducted in an

atmosphere of understanding which allows the child to participate therein and express

himself freely,

(b) the reaction taken is always in proportion not only to the circumstances and gravity of

the offence but also to the circumstances and needs of the child and the needs of the

society;

(c) the personal liberty of the child is restricted only after careful consideration of the

case including the use of alternative methods of dealing with the child and the

restriction is limited to the possible minimum;

(d) the child is not deprived of his personal liberty unless he is found guilty of-

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[244] *Ibid*,S. 210.
[245]*Ibid,* S. 117(1).
[246]*Ibid*, S. 217(3).

(i) a serious offence involving violence against another person; or

(ii) persistence in committing other serious offences and there is no other appropriate

response that will protect the public safety;

(e) the well-being of the child is the guiding factor in the consideration of his case.

Agitating against a provision similar to that in section 215(5) (ii), Mclaren had this to say in his book: Tough is not Enough

while a child who knows how to read is more likely to do his homework

when given a sharp reminder to do so, not even the worst punishment can

make a child read when he doesn't know how. You could shut him in his

room for years on end and he still would not learn. Instead he needs to be

given an opportunity to learn the skills that make reading possible. He also

needs to be exposed to the values and standards that tell him reading is

important and why. In the same way, persistent young offenders need not

only be held accountable for their behaviour, but to be exposed to

opportunities to learn new behaviour, and the values that will help them

to value that behaviour.[247]

The conclusion here does not seem to flow from the premise; the premise gives the impression of one who never got a chance, while in the conclusion, he had several chances but never utilized them. If he cannot get another chance without compromising public safety, (which comprises the safety of other children) then in my way of thinking, his liberty should be restricted; even if he is only just a child. Mclaren said tough is not enough, I quite agree, but tough is definitely part of it, a very crucial part too.

Where a child has admitted committing one or more offences and the court does not release him on bail he may be remanded to state government accommodation. The court remanding may impose a security requirement if the child has attained the age of fifteen years and he has been found to have

[247] K. L Mclaren, "Tough is not Enough: Getting Smart about Youth Crime", A review of research about what work to reduce offending by young people, p.13. available at http://www.myd.govt.nz/about-myd/publications/tough-is-not-july2015.html.

committed a violent or sexual offence punishable in the case of an adult with imprisonment for a term of fourteen years; or he has a recent history of absconding while remanded in a state government accommodation, and has been found to have committed an offence punishable with imprisonment while he was so remanded; and the court is of the opinion that only such a requirement would be adequate to protect the public from serious harm from the child.[248]

Disposition of juvenile offences

Section 219 of the Act provides that whenever a child is charged with a criminal offence other than a minor offence, the appropriate officers shall properly investigate the background of the child, the circumstances in which the child is living and the circumstances under which the offence was committed and report to the court before the case is finally disposed of. Report should also be made of the social and family background of the child, his school career and educational experience. This is the social inquiry report which would enable the court make disposal orders which would be in the best interest of the child.

The court shall consider the well-being of the child to be the guiding factor in the consideration of his case.[249] The courts must ensure that the reaction taken is always in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and ends of the child and the needs of the society.[250]

Where a court is satisfied that a child charged with an offence actually committed the offence, the court may do any of the following:

(a) dismiss the charge; or

(b) discharge the child offender on his entering into a recognizance; or

(c) place the child under a care order, guidance order or supervision order; by

(i) discharging the child offender and placing him under the supervision of a

supervision officer, or

(ii) committing the child by means of a corrective order to the care of a guardian and

supervision of a relative or any other fit person, or

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[248] S. 218(5).
[249] S. 215(1)(e).
[250] S. 215(1)(b).

(iii) sending the child by means of a corrective order to an approved accommodation or approved institution, or

(d) ordering the child offender to

(i) participate in group counseling and similar activities,

(ii) pay a fine, damages, compensation or costs; or

(iii) undertake community service under supervision; or

(e) order the parent or guardian of the child offender to

(i) pay a fine, damages, compensation or costs, or

(ii) give security for his good behaviour, or

(iii) enter into a recognizance to take proper care of him and exercise proper control

over him; or

(f) commit the child offender to custody in a place of detention provided under the Act; or

(g) make a hospital order or an order prescribing some other form of intermediate

treatment; or

(h) make an order concerning foster care, guardianship, living in a community or

educational setting; or

(i) deal with the case in any other manner in which it may be legally dealt with under the

Act.[251]

The placement of a child in an approved accommodation or government institution shall-

(a) be a disposition of last resort; and

[251]*Ibid*, S. 223(1).

(b) not be ordered unless there is no other way of dealing with the child, and the court shall state, in writing, the reason or reasons for making the order.[252]

The provision of S.223 (1) (a) which says where the court is satisfied that a child charged with an offence actually committed the offence, the court may dismiss the charge is a bit absurd. Taking into account all the provisions of the Act geared towards ensuring that only serious cases are brought before the court. The CYPA contains such a provision, but it does not contain all the safeguards for avoiding the prosecution of children over non serious offences.

3.3 Problems Associated with Legal and Institutional Framework for the Protection of the Rights of the Child

3.3.1 Restriction on punishment

Section 221 (1) of the Act provides that “no child shall be ordered to be -

(a) imprisoned; or

(b) subjected to corporal punishment; or

(c) subjected to the death penalty or have the death penalty recorded against him

It is commonly accepted understanding and practice that children are not to be sentenced to death regardless of their offence. However, S. 221(b) has completely nullified the only punishment that has proven effective in child training.

According to the learned judge in the South African case of *S v Skenjana*[253] “it is the experience of prison administrators that unduly prolonged imprisonment, far from contributing towards reform, brings about the complete mental and physical deterioration of the prisoner.” With children, this effect could easily be expected to be much worse. Yet, in certain cases, it would seem to me that avoiding imprisonment would be tantamount to compromising public safety. In cases of extreme violence like murder and rape, especially where it is proved that the child has no mental problem; it is not so clear what institutionalization aims to achieve. While a child may steal because he is hungry, a child who can kill or rape another in cold blood has no need for vocational training. The safety of the public which comprises the safety of other children should be the primary concern.

[252] S. 223(2).
[253] (1985) (SA) 51 (A) at 331F.

In Sweden, a 16 year old boy was killed by three other 16 year old boys on October 6th 2007. The district court found the boys guilty of serious assault and manslaughter and sentenced them to three years' youth detention. They appealed to a higher court and were released pending the determination of the appeal. On 12th January 2008, (three months after the killing of the 16 year old boy) two of the three boys were taken into custody again on fresh charges of assault and illegal threat. Yet on determination of the appeal on the original case, the appeal court had reduced their sentence to one year youth detention. The researcher opines that such boys constitute a menace to the society and should be locked away for quite a while.

Diversion

Diversion has been defined as "strategies developed in the youth justice system to prevent young people from committing crime or to ensure that they avoid formal court action and custody if they are arrested and prosecuted."[254] S.40(3)(b) of the CRC and Rule 11 of the Beijing Rules provide that states should give consideration, wherever appropriate to dealing with a juvenile offender without resorting to a formal trial, provided that human rights and legal safeguards are fully respected. Diversion is usually premised on an acknowledgement of responsibility for the offence, and an agreement to make amends for the crime, usually by performing community service or compensating the victim. Sometimes the offender is sent to a course or programme to deal with a specific problem (e.g. drug addiction, sexual offences, anger management, self-esteem). One of the reasons for diversion is the belief that juvenile offenders are mostly first time offenders and are equally non serious offenders. According to a report on the international characteristics of juvenile offending,

-Majority of children in conflict with the law are first time offenders (93-97%),

-80% of children in conflict with the law will commit only one offence in their life time,

- Adolescence is the most common age period for law-breaking throughout the life span,

- The majority of offending involves boys and consists of minor property offending,

- Serious offences are infrequent – across many countries, around 7% of young offenders

are charged with violent offences,

- small number of offenders (6-7% of young males) are responsible for 50-70% of all

[254] J Muncie, *Youth and Crime: A Critical Introduction*,(London, Sage, 1999), p.305.

crimes and 60-85% of violent crimes[255]

In some systems the referral for diversion is to a mediation process, where the victim and the offender (and in some models, other members of the community) meet face to face and a plan is made about how the offender will put the wrong right. This kind of interaction between victims and offenders is the basis of restorative justice, an approach that has gained popularity in many systems throughout the world in the past few decades.[256] Diversion may occur at different stages in different systems. In its classic form, it occurs prior to the trial and avoids the trial process altogether. In some systems a matter that is diverted does not come to court at all, in others the performance of the diversion conditions is overseen by the court.

There are many advantages inherent in the process of diversion. For the offender, he or she may avoid a criminal record (and avoid the negative effects of coming into close contact with the criminal justice system), he or she will learn things from the programmes that are specifically relevant, he or she may make direct amends to the victim and through this may learn empathy and a sense of social responsibility. In restorative justice processes, victims often express high levels of victim satisfaction. Diversion may allow for involvement of communities and a role for traditional conflict resolution processes. For the prosecutor and the court there is a benefit, too, in that the court's time is freed up to deal with more serious or complex matters.[257]

Strategies to divert children out of the formal justice system can encompass a variety of programmes, from school based crime prevention programmes through to community – based programmes used as an alternative to custody. Diversion does not necessarily require a child to be placed in a formal programme. In some countries, diversion could include: receiving a police caution, writing an apology letter, participating in an alternative dispute resolution forum or being placed under supervision. The practice of diversion is believed to promote more humanitarian responses to child offenders than punitive sentences.

Diversion programmes must be able to address the particular situation of the child offender. Therefore, a variety of interventions focused on rehabilitation, deterrence and restoration, need to be offered. These programmes may include a wide range of life skills education covering topics like personal awareness and growth, self-esteem, communication skills, conflict resolution, sexuality, crime awareness and prevention, gender sensitivity and leadership development. Many life skill

[255] Source: International Centre for the Prevention of Crime, based on studies in high and low income countries. Quoted in Juvenile Detention Study *op cit.*

[256] UNICEF, Profiles of Existing Diversion Programmes in Nigeria, September 2006. available at http://www.unicef.org/nigeria/ng-publications-diversion.pdf.

[257] *Ibid* at p. 17.

programmes are packaged in a 'course' which can last a few hours to a number of days, weeks or months.

In some countries, diversion options are categorized into three levels, depending on the seriousness of the offence.

Level one option is the least onerous and includes oral apologies, formal cautions and a variety of orders which the Act does not specify the time limit.

Level two orders include all the level one orders, but they may be applied for a longer duration. They also include a few additional restorative justice diversion options such as family group conferences, victim offender mediation and other restorative justice processes.

Level three orders are for matters involving serious or repeat offending and include possible residential element[258]

These levels are intended to provide for the adoption of an individualized response while simultaneously balancing proportionality in the selection of diversion options.[259]

South Africa for instance, has experienced a significant growth in the number, scope and intensity of diversion programmes for children. Children have expressed their support for these developments and see the diversion interventions as more beneficial than punitive sentences. This was encouraged by South Africa's ratification of the CRC in 1995.[260] From 1996 onwards, a substantial growth in the number of children referred to diversion programmes has been noted. The practice has occurred in the absence of a regulating legislative framework and consequently has been implemented in a selective and disjointed manner, until the drafting of the Child Justice Bill. The Bill opened with a set of objectives and principles that includes the promotion of the procedural rights of children who are subjects to provisions of the Act. The Child Justice System promotes the fostering of children's sense of dignity and the fundamental freedoms of others by holding children accountable for their actions and safeguarding victims' interest. It supports reconciliation by means of a restorative justice response involving parents, families, victims and communities in child justice processes in order to encourage the reintegration of children. Section 48 of the bill addresses the purpose of diversion to include:

(a) encouraging the child to be accountable for the harm caused by him or her,

(b) providing opportunities for victims to express their views,

[258] Existing Diversion Programmes in Nigeria, September 2006, by UNICEF; p.17
[259] *ibid*
[260] Diversion in South Africa- A review of policy and practice, 1990-2003, Wood C., Institute for Security Studies publication.

(c) encouraging restitution,

(d) promoting reconciliation,

(e) reintegrating the child into his or her own family and community,

(f) protecting the child from stigmatization and

(g) protecting the child from acquiring a criminal record.

Diversion for a child suspected of an offence can only be considered if: the child voluntarily acknowledges responsibility for the alleged offence; the child understands his or her rights; there is sufficient evidence to prosecute the child and his or her parents or an appropriate adult consent to diversion and the diversion option.[261] The new Bill also makes provisions for the Child Justice courts that operate at the district level. It has jurisdiction to adjudicate in respect of all offences except treason, murder and rape.

However, in event of any other court that is not a child justice court, hearing the case of a child, such a court is required to apply the provisions of the Child Justice Bill. This obtains in the case of regional courts that are empowered to hear children's cases involving rape or murder. Also a district court has jurisdiction in matters where a child is co-accused with an adult.[262] In the sentencing of a child, the bill provides that the following purposes should form the basis of such sentencing: encourage the child to be accountable for the harm caused by him or her; promote an individualized response which is appropriate to the child's circumstances and proportionate to the circumstances surrounding the harm caused; promote the reintegration of the child into the family and community; and ensure that any necessary supervision, guidance, treatment or services which forms part of the sentence can assist the child in the process of reintegration.[263]

In Namibia, the establishment of the juvenile justice system is anchored on the activities of the Juvenile Justice Project of the Legal Assistance Center which was established in 1995. It is anchored on what is regarded as pre-trial diversion programme and has wide objectives including mobilizing, advocating and lobbying for the establishment and implementation of a comprehensive and sustainable juvenile justice system in Namibia. It is to develop and promote non-custodial measures or programmes for children in conflict with the law which includes diversion at different stages of the criminal justice proceedings; to advocate for the protection of the best interest of the child in conflict with the law at all times; and to promote the application of restorative justice in cases involving

[261] *Ibid* at p.52.
[262]*Ibid* at p.53.
[263] *Ibid* at p.54.

children.[264] The project has three components comprising crime prevention, service delivery and monitoring and treatment of children in conflict with the law. In its pre-trial diversion programmes, the most used are life skills programme, pre-trial community service, counseling, attending a substance abuse group and prosecutors warning.[265]

Basic requirements for the pre-trial diversion include: the child must be under 18 years of age; must admit freely to having committed the offence and is prepared to make amends and willing to comply with the conditions for pre-trial diversion; the pre-trial diversion programme must be proportional to the offence; and the complainant or victim must agree with the decision to divert the child and be informed fully of what pre-trial diversion entails[266]

In Nigeria, the provisional withdrawal of charges against a child offender, on the condition that the child performs a community service or makes reparation to the complainant, is a novel practice. Although there were some provisions in the Children and Young Persons' Act that could be used as diversion, custodial sentences were the norm.[267] With the CRA's specific provision for creating a separate child justice administration, the practice of diversion in Nigeria is expected to expand and develop. The option for diverting children out of the child justice administration is clearly entrenched in CRA in several different provisions, for example: persons who make determinations on child offenders are required to use discretion by viewing special needs of children and the variety of measures available. They are to use this discretion at all stages of the proceedings.[268] They, like others who make determinations on child issues, are to be specially qualified or trained to exercise the discretion judiciously and in accordance with their functions and powers.[269] In exercising their discretion, the police, prosecutor and any person dealing with a case involving a child offender are empowered to dispose of the case without resorting to formal trial by using other means of settlement, including supervision, guidance, restitution and compensation of victims. They are also to encourage parties to settle the dispute. They can use this power if the offence is of a non-serious nature and if there is a need for reconciliation; or if the family, school or others involved have reacted in an appropriate or constructive manner; or if they think it appropriate in the interest of the child and offender and parties involved.[270]

The prosecutor can withdraw the charges against a child offender; the magistrate or the judge sitting in the 'family courts' can impose a range of non-custodial orders or to convert the trial into a child in

[264]*Ibid* at p.46.
[265] *Ibid* at p.47.
[266] *ibid.*
[267] *ibid.*
[268]*opcit* S. 208(1).
[269]*Ibid*, S. 208(2).
[270]*Ibid*, S. 209.

need of care and protection proceedings. Apart from the provisions which provide for alternative means of disposing of cases involving juveniles, there is no coherent legal framework for the practice.

Section 235 of the CRA provides that "voluntary and other organizations and agencies, individuals and communities shall be encouraged by the Government Departments and agencies responsible for child welfare to contribute effectively to the rehabilitation and development programmes for child offenders." In September 2006, UNICEF sponsored a research on the existing diversion programmes in Nigeria. The research was conducted in six states representing the six geopolitical zones of Nigeria and FCT. The states chosen were states which had adopted the CRA at the time of the research. They were – Lagos, Anambra, Rivers, Plateau, Bauchi, Kaduna and the FCT. A list of non-governmental organizations engaged in diversion programme was sought for each sample state. Subsequently, identified organizations, including urban and community based organizations providing diversion programmes in the selected state were visited. Two sets of standard questionnaires were administered. Focus group discussions were held where permitted. The first was for the inventory of diversion programs and who facilitates them, and the other was applied to determine the profile of children who have participated in the diversion programmes.

The questionnaire for the inventory of programmes/institutions consisted of sixteen areas of information including name of institution; address; year established; background information; aims and scope of existing diversionary work, facilities available; diversionary levels employed, programme content, follow up mechanisms and collaborative initiatives. The questionnaire for the child participant consisted of eleven areas, including: their name, address, age, sex, state of origin, educational background, offence committed, status of parents, diversion option preferred and benefit of the programme for the child. Interviews were conducted with the following group of children: those in prison and awaiting trial; those committed to the remand homes and approved institutions; and those who have been placed in diversion programmes by the Non-Governmental Organizations (NGOs) and Community Based Organizations (CBOs). The interviews were to determine the effects of the diversion programme on the child and to document his opinion and preferences on diversion programmes.

Information was further obtained specifically from government officials of the Ministry of Justice, Child Development Directors in the Ministry of Women Affairs, Police officers/Commissioners, Law enforcement officials, social Welfare officers, members of the Nigerian Bar Association, National and State Human Rights Commission officers, child psychologists, staff of non-governmental organizations and faith base organizations running various institutions involved in diversion programmes.

It was discovered that in some States of the Federation, there are no specific buildings designated as juvenile courts and as such, child offenders are sometimes tried in regular court buildings. The magistrates play dual role of being a judge for the adult offender and at the same time for the child offenders. Other role players, such as the police, probation officers, legal counsel and other assessors are often not trained in the particular differences of a child/juvenile administration or in dealing with children. There is also insufficient training in human rights based approach to handling juvenile cases for all the role players in juvenile justice administration. The problem is further compounded by inadequate number of social welfare officers and/or probation officers. Another pertinent issue being that, even in states that have adopted the CRA, the provisions of the CYPA are still widely applicable.

In most of the institutions visited, the programme content is loose and unstructured; with very few employing the use of training manuals, aids or any structured course content. The programme applications are flexible and simply adapted to the needs of the child or the initiative of the facilitator or counselor. Few of the NGOs employ training manuals in teaching life skill programmes.

CHAPTER FOUR

CRITICAL ANALYSIS OF THE CONCEPT OF EQUALITY AND CHILDREN'S FUNDAMENTAL RIGHTS

> I propose that the rights, privileges, duties, responsibilities of adult citizens be made available to any young person, of whatever age, who wants to make use of them
>
> John Holt, Escape from Childhood

Should Children have equal rights?

Uju is fourteen, she wants to quit school; her parents think she should stay. Their disagreement illustrates two complex and difficult questions: how much control should children have over their lives? Are they capable of making decisions about their own best interest? Uju thinks she is. She considers dancing her talent and her progress within the next two years will determine whether she is qualified to dance professionally, something her heart is set on. She considers school irrelevant to her future and would rather concentrate on her dancing. Her parents realise that staying in school does reduce her chances as a dancer. But they also know that most young women – even those as dedicated as Uju – drop out of professional dancing before they are thirty; they also know that most dance carriers are short and, so that continued schooling is in any case necessary. Uju is convinced, however, that she will persevere and have such a long and successful career that when she does finally quit, she will be in demand as a dance teacher.She does not now have a right to leave school, should she have it?

A friend of mine, Udi, who is a medical Doctor once told me a story about one of his friends (I don't know the name of his friend so I'm going to call him Chima). Udi and Chima were childhood friends, this is most probably because they were both very intelligent boys. They were in the same class both in primary and secondary schools. With all Udi's intelligence and hardwork, he was only ever able to take the second position in class, Chima always took first. After secondary education, Chima decided to learn a craft and became a welder. His parents who made a lot of money from business and didn't really have much value for education supported him. Udi continued with school and became a doctor.

Today, Udi is rich and so is Chima; but Chima has continued to express regret over dropping out of school. He values and continues to cultivate Udi's friendship, at the same time he feels jealous and inadequate. If Chima's parents were enlightened, they would have resisted his decision to drop out of school in respect of his special brain ability which as a child he had no respect for. Now with Chima's experience, do you think a child of his with such brain power will be allowed to make such a mistake?

In recent times, it has become an issue vigorously canvassed and continuously stressed, that the Fundamental Human Rights should be regarded as extending to children as individuals. In that regard, S. 3 of the CRA[271] states that the provisions of Chapter IV of the Constitution of the Federal Republic of Nigeria 1999, or any successive constitutional provisions relating to Fundamental Rights, shall apply to the child as if those provisions are expressly stated in the Act. Should the fundamental rights be applied to the child on the same level and to the same extent as it applies to adults?

4.1 What is meant by Equal Rights?

There is one set of rights for adults and another for children. Adult rights mostly provide them with opportunities to exercise their powers; children's rights mostly provide them with protection and keep them under adult control.[272]As minors by law, children do not have autonomy or the right to make decisions on their own by themselves in any known jurisdiction of the world. Instead their adult caregivers like parents, teachers, and others depending on the circumstances are vested with that authority. Some believe that this state of affairs gives children insufficient control over their own lives and causes them to be vulnerable.[273] Agitators for equal rights of children are saying in essence that children should be free to leave their parents' home if they want, leave school if they want.Children's rights are divided into 'protective' rights and 'liberating' rights.[274]

4.1.1 Protective Rights

[271] Child's Rights Act 2003.
[272]H Cohen, *Equal Rights for Children* (Totowa, N.J.: Littlefield, Adams, 1980), p. 43.
[273] https://en.m.wikipedia.org/wiki/children%27s_rights.
[274] M S Wald, "Children's Rights: A Framework for Analysis," University of California at Davies Law Review, 12 (Summer 1979): 255.

Protective rights are divided into rights against the world and rights of protection from inadequate care, Children's rights against the world assert the general importance of providing them with conditions they need to flourish, although no specific persons are entrusted with this duty. Rights against inadequate care, on the other hand, do assign duties to particular individuals, basically parents or guardians. These rights are unique to children, they hold parents responsible for making sure children's needs are met. Thus parents are required to feed, clothe, shelter, and educate their offspring.

Both kinds of rights assume that children's incapacities warrant special protection. They protect by providing for goods and services normal adults must procure for themselves. They also protect by frustrating children's desires when they conflict with what is seen as their long-term good.[275] Thus, for instance, children are compelled to attend school, regardless of their distaste for it, to prepare to become autonomous adults. Among the main characteristics of such autonomy are the capacities to estimate probable consequences and to resist the lure of immediate gratification in favour of their own welfare and that of others.[276]

Protective rights are geared towards protection and ensuring that harm doesn't come to the owner of such rights, it also involves the duty to provide for the needs of such right holder. This is the right presently held by children. At present children have a right to a proper home, subsistence, education, medical care and an 'appropriate' moral environment; they also generally have a right to rehabilitation rather than punishment if they are convicted of a crime. These benefits come at a price, however. The guardians who provide for children have a corresponding right to choose their names, religion, and type of education, as well as to determine where they live, what they eat, and how they dress. A guardian can censor books and movies, and even has a right to a child's wages. As schools are in loco parentis, they too can adopt a variety of regulations intended to ensure a good learning situations, for instance, the institution of dress codes and the prohibition of secret societies. More generally, children are also subject to curfews, as well as limits on their work, on visits to dance and pool halls, on

[275] J Elshtain, ,The Family, Democratic Politics , and the Question of Authority' in G Scarre , (ed), *Children, Parents and Politics*, (Cambridge: Cambridge University Press, 1989) pp. 261-262.
[276] L M. Purdy, In their Best Interest? A Case against Equal Rights for Children. Cornell University Press, Ithaca, London. Pp. 26.

driving, drinking, and access to pornography. Some acts, "juvenile status offences," are crimes only when they are committed by minors. They include running away from home, being ungovernable,

being truant, having sexual intercourse, and becoming pregnant. Children cannot marry, vote, make a will, or make a valid contract.[277]

4.1.2 Liberating Rights

Liberating right are divided into rights conferring adult legal status and rights against parents. Liberating rights ensure the freedom of such right holder, to live and act as he wishes without interference, as long as his actions do not infringe on the rights of others. This is the right held by adults and the right equal rights propagators are agitating for, to apply to children as well. Liberating rights will open the way for children to act upon their desires. Such rights presuppose that their holders know what they are doing when they choose to exercise them, even if doing so is risky to themselves and others. Many adult rights are of this kind, adults can legally vote, drink, engage in sex, choose medical treatment, and commit themselves to binding contracts concerning work, marital living and financial arrangements. Lack of liberating rights precludes (or renders illegal) such acts for children.[278]

Are children wrongly stripped of their right to self-determination by ignorant or overbearing adults who ought to know better? Proponents of equal rights for children believe that they deserve the same control over their lives as adults and that they are unjustly treated when such control is withheld from them. As Howard Cohen puts it: If children had equal rights, it would be wrong to do to them anything that would violate an adult's rights. Hence force is ruled out and the only remaining method of control is promise of rewards, the subject of the control must think it is 'worth it' to seek the rewards of the system. Since children are free to seek a different home, children who are unmoved by

[277] L Houlgate, 'Children, Paternalism, and Rights to Liberty' in O O'Neill and W Ruddick (eds), *Having Children: Philosophical and legal Reflections on Parenthood*, (Oxford: Oxford University Press, 1979), p. 18.
[278] Purdy, op cit, pp. 26.

the reward system can, in theory, avoid even these trade-offs.[279] In essence, liberationists are saying that a six-year-old can decide that she doesn't want vegetables in her food or that she can survive on ice cream and tea; a ten-year-old can decide that he doesn't need treatment for his sickness and a twelve-year-old can decide that school is not for him. Parents are expected to let them have their way after all it is their life and their right, otherwise, parents will be seen as taking away the child's equal right.

Cohen claims that "in the course of protecting children, we have stunted the fullness of our relationship with them and slighted them as people."[280]

4.2 Arguments for Equal Rights for Children

Proponents of equal rights for children find it strange and totally unacceptable that though it is common to describe equal rights, liberties, and protection under the law as principles necessary for social justice, democracy and human dignity; it's equally common to take for granted that equal civil and political rights are necessary and desirable only for mature adults and need not be extended to children. The law they say, denies children the rights of citizens, such as the right to vote, to full due process, and even to effective constitutional protections against cruel and unusual punishment, and further denies children the basic rights of persons to be free to live their own lives. Instead, children are subject to their parents' will with regard to their living conditions, personal conduct, domicile, education, and religion. The legal status of minority under the dominion of a child's parents is one of custody not liberty, but this almost property like status is said to be for children's benefit.[281]They seek therefore to challenge the justifications for children's legal subordination and to make at least plausible, the possibility that society could be organized differently. The argument for equal rights of children is divided into two parts. First, it is argued that justice requires us to grant children equal rights. Then it is argued that the consequences of doing so will not be harmful. The arguments overlap, but I will try to separate them as much as possible.

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[279] H. Cohen, Equal Rights for Children,(Totowa, N.J.: Littlefield, Adams, 1980) p. 94.
[280]*ibid*, pp.7-9.
[281]*ibid.*

4.3 Appeal to Justice

The justice-based liberation argument is couched in terms of rights and goes like this: children have the right to be as free as adults. Rights are the strongest moral claims we have, protective rights unjustly limit children's rights and violating a right is unjust. Because there is no good reason for this state of affairs, simple justice requires us to eliminate such discrimination. Proponents of equal rights contend that if no morally relevant difference could be found between children and adults, it would be unjust to recognize different rights in respect to them. The form of this appeal to justice is uncontroversial. Treating like cases alike and requiring a morally relevant difference if we are to treat them differently is the essence of formal justice or universalizability.

Universalizability is the thesis that if two cases are to be treated differently, it is necessary to show some morally relevant difference between them; it is generally taken as the bedrock of talk about justice. Once people agree about the criteria for morally relevant differences, it would be a gross violation of justice to deny like cases equal treatment. In this context, the central question about justice is what characteristics should be considered a necessary condition for enjoying adult freedoms. In other words, the main argument arises about the criterion of the difference between classes that do and do not have adult rights. Liberationists believe that the right criterion is rationality, which several of them define as some minimal capacity for getting what one wants. So if individuals are able to plan projects, they have a right to do so without interference. Liberationists contend that society's treatment of children is based on delusions about how different they are from adults. That we are much more alike in the morally relevant ways than most of us would care to admit. In particular, that children are in general no less rational or competent than adults. The decisions they make are not, even if different, necessarily worse than the ones we would have made in their stead. Since children are burdened by the special rules that apply to them alone, their desires are frustrated in ways that adults' are not. They in essence contend that protective rights unjustly limit children's freedom, that there are no morally relevant differences between children and adults that can bear the weight of depriving children of the good represented by full adult right.

4.3.1 Freedom as Paramount:

Liberationists argue that freedom is primary, that no other value should take precedence over freedom. They argue that justifiable authority must derive from consent. The authority of parents over children does not derive from consent and is therefore unjustifiable. Contemporary liberal theories aim at leaving individuals to pursue purely personal notions of the good.

I would answer that the authority of parents derive from taking responsibility for children's welfare. This responsibility created a duty not only to care of children but also ensuring that they develop into reasonable human beings possessing self-control and care for others. Self-control, which embodies a kind of thoughtfulness about choices, is acquired only by learning, effort and practice. Self-control helps us to manage freedom in beneficial ways, without it, freedom can easily lead to self-destructive and immoral ways. For when freedom is offered early and with no strings attached, why should children make the effort to learn self-discipline and thoughtfulness?

An interesting study comparing Danish and American families supports the hypothesis that learning self-control early is beneficial. Danish families are strict with young children but permissive with adolescents. Yet the adolescents are more self-disciplined and autonomous than the more consistently permissively reared American youths. It appears that early strictness causes the children to internalize controls and hence be able to use their later freedom wisely.[282] In addition, recent intriguing studies on brain development suggest a basis for thinking that some traits, such as the ability to pay attention, plan, organize, and persist at projects, develop best at specific "sensitive" phases of brain maturation"[283]

It is therefore evident that children have lots of learning to do before they can handle adult freedoms, there is a good reason to suppose that children need systematic teaching if they are to acquire desirable traits.

4.3.2 Rationality as the Criterion for Equal Rights

[282] D Kandel and G S Lesser, 'Parent-Adolescent Relationships and Adolescent Independence in the U.S. and Denmark', in Urie Bronfenbrenner (ed), *Influence on Human Development* (Hinsdale, ILL.: Dryden Press, 1972) p.631.
[283] Jane M. Healy, Endangered Minds (New York: Simon & Schuster, 1990).

Talk of rationality tend to figure largely in discussions of equal rights for children. Proponents of equal rights tend to base their arguments on the claim that rationality is the morally relevant difference on which access to adult rights should be based. However they often seem unsure of its nature or worth in an attempt to undermine appeal to anything but the most minimal notion of rationality.[284]

There is a great deal of disagreement about the precise definition of rationality.[285] Some have thought that rationality entails a given IQ level, or the ability to infer consequences of choices. Others emphasize thoughts and actions based on empirical knowledge and logic. Given these difference, Bob Franklin asks: how do we justify the choice of any given definition as a bases for granting rights?[286] Despite much argument on the part of philosophers and others, it seems to me that most of us have a rough working definition of what we mean by the concept. At its core is the notion that we need good reasons for believing and acting. Furthermore, rational action involves some awareness of alternative courses of action together with a judgment about which are better and which are worse.

Liberationists favour weak definitions of reason. In fact, Howard Cohen, because he denies the necessity for any distinction between the rights of children and those of adults, cannot, strictly speaking, require of children any reasoning ability at all.[287] John Harris, suggests that a sufficient criterion for equal rights would be having "a life to lead." having such a life means "to have decisions and plans to make and things to do, it is to be aware of doing it all, to understand roughly what doing it all involves and to value the whole enterprise." He said it would be important to be able to "see the connection between action and inaction and consequence, and to have some rudimentary understanding of the nature of consequences." A requirement of this sort turns out, in his view, to entail only awareness of elementary survival facts, such as that "fire burns, knives and broken glass cut, roads are dangerous, not everything can be safely eaten and that these things hold for others

[284] Purdy, *op cit* p. 30.
[285] M Black, *Ambiguities of Rationality* N Garver and P H. Hare (eds) (Buffalo, N. Y.: Prometheus, 1986).
[286] B Franklin, *The Rights of Children* (Oxford: Basil Blackwell, 1986), p. 28
[287]H Cohen,*op cit*. p.viii.

too"[288]So the position to be evaluated seems to be that once children are capable of avoiding the obvious physical dangers, they should be left free to plan their lives, just as adults are.

This position is obviously more demanding than Cohen's minimalist approach, yet it is still weak enough to constitute an attractive escape from the real difficulties inherent in making certain kinds of decisions. Emphasis must be laid on the importance of being aware of a wide range of possibilities before one makes a choice. There is also need for background knowledge as to how things work. Decisions require awareness of alternative routes between one's starting position and a given end. Knowledge about the world is accumulated only gradually, so that young children are less likely to be well equipped than people with more experience.[289] And general background knowledge is critical to intelligent behaviour, as even those parents blessed with unusually bright children can observe. A course of action that looks perfectly reasonable given an inaccurate set of premises becomes comically inept given more accurate ones.[290]For an instance, let's look at the case of Vero and her boyfriend, both sixteen years old. She used contraception only sporadically until recently, but after two months on the pill, her boyfriend asked her to stop using it. She says: "He wants a child. And I don't know, in a way I want one, and in a way it's just too early for one." But she did quit, despite the fact that they have sex at least twice a week.[291] She is obviously oblivious of what she is getting herself into, but most adults probably know where she will most likely find herself. Except she has a problem with conception, she will get pregnant. Then she will drop out of school, and most probably never return because once the child is born, she has lost her freedom for a considerable length of time. The boyfriend will probably leave her, and she will be saddled with the care of the child alone. In fact she is at serious risk of a worse life than she could otherwise have expected. Her parents will end up supporting her for most of her life. Her parents may decide of course to take the child off her hands in an attempt to salvage her future. In any case, the parents are left with a duty they never expected or planned for. I'm sure a better knowledge of the world or listening to her parents' advice would have

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[288] J Harris, 'The Political Status of Children' in Keith Graham' (ed) *Contemporary Political Philosophy: Radical Studies* (Cambridge: Cambridge University Press, 1982) p. 48

[289] D Hume, *An Enquiry Concerning Human Understanding* (Oxford: Clarendon, 1748), sec. IV, pt. 1. (as quoted in Purdy, In Their Best Interest?, p.33)

[290] Purdy p. 33.

[291] Newsweek, February 16, 1987, pp. 56, 61. Quoted in Purdy ibid, 147.

kept Vero from making the decision she made. Parents of teenage children all over the world encounter a semblance of this particular problem. In Nigeria for instance, brilliant teenagers have been known to sacrifice their careers at the altar of unwanted pregnancies. Some, trying to guard against this outcome have engaged in multiple abortions, endangering not only their life but also their ability to have children later in life.

It does appear therefore that adults would have the ability to make more informed and therefore better judgement than children. This is not to say that children are not also faced with decisions in the course of each day, but the nature and scope of the decisions facing adults are rather different than those of children. A much larger percentage of the decisions children make are trivial in their consequences. Adults however face difficult and important decisions quite often; but they are operating from a base of relatively settled questions like who they are and what they can do. They have seen and experienced some of the temptations and pitfalls of life and are thus well placed to advice and guide children for whom these pitfalls remain a serious threat.

According to Jean Piaget, children's thinking go through three major stages before adolescence, when they are able to reason, judge, and make decisions like adults. These stages are the 'sensorimotor', the 'preoperational', and the 'concrete operational'. The final stage during which adult mental operations are achieved, is the 'formal operational'. Infants are in the 'sensorimotor' phase, wherein the major intellectual, social, and emotional developments are constructing a world of constant objects, attaching themselves to others, and establishing trust. During the next 'preoperational' period (from about two to six), children learn to use symbols and can use them to reason in a simple way and express their wants. They make characteristic mistakes in using them, confusing questions about one and many, and taking symbols for what they represent. 'Magical thinking' is common. From this stage to early adolescence (at eleven or twelve), children pass through the 'concrete operational' stage. They develop facility at manipulating symbols; particularly important is the ability to classify objects and create hierarchies. Concrete operations helps a child to act according to rules. They also cause the child to begin to think critically about parents, the beginning of separating from them. At the 'formal operational' stage, adolescents attain essentially adult intellectual powers, with the advent of

second-order manipulation of symbols. Emotional, intellectual and social independence is greatly increased, with all that implies.[292] Thus this theory suggests that both the content and the form of children's thinking have to do with age. In other words, children need knowledge, time, as well as sufficient development of their thinking faculties in order to gather enough experience needed for serious decision making and consequently, a successful navigation of their life. Enabling virtues like hard work, self-control and the pursuit of excellence as well as knowledge and accumulation of acceptable societal behaviour and values like courtesy, respect for elders, respect for others, care for ones neighbour, are important, and they don't just happen. Depriving them of this time of learning is to my way of thinking, total cruelty.

4.3.3 Capacity

Liberationists contend that it is dangerous to assume that children's capacities necessarily exclude them from possessing rights, when their effective capabilities are constrained by the way they are treated in society. If a child were capable of exercising equal rights competently, how would we be able to recognize it in a society that deprives them of any opportunity to do so? If we cannot tell whether or not children are capable of exercising rights in a society that enables them to do so, how can we conclude that equal rights would be detrimental to children's interests? Because we are only familiar with children in the context of a society which prevents them from exercising equal rights, then the assumption that children are naturally incapable of having rights is unjustified. They contend that responsible behaviour would emerge if children had the same responsibility as adults to choose their living arrangements, support themselves and meet all the other demands of the free life.

I would say that the assumption of individual self-sufficiency is impossible. Human infants resemble the young of many species in being born helpless, but they differ from all other species in requiring a uniquely long period of dependence on adult care.[293] Of course, bold, quick, ingenious, forward and capable young people do exist, but they fall into the category of 'the exception'. Policies are not and have never been based on exceptions.

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[292] B Inhelder and J Piaget, *The Growth of Logical Thinking from Childhood to Adolescence: An Essay on the Construction of Formal Operational Procedures*, (trans) Ann Parsons and Stanley Milgram (New York: Basic Books, 1985) P.8.
[293] Alison Jaggar, *Feminist Politics and Human Nature* (Totowa, N.J.: Rowman & Allanheld, 1983), p. 40.

Liberationists stress capacities much more than actions: they talk about the capacity for instrumental reasoning the capacity for planning systematic utility-enhancing projects. Conspicuously lacking in emphasis is the carrying out of plans. They suggest a capacity to make solid judgements concerning not just what one wants in the short term but what is good for one in the long run. Moreover, they suggest character traits that enable one not only to know the good but to do it.[294]Tests of rational behaviour rather than rational plans, liberationists assert, would fail to differentiate adequately between children and adults: members of both classes would fail to pass any action based test. Cohen suggests that we excuse adults who do not behave sensibly, without being tempted to withdraw their rights, by attributing their failures to circumstances beyond their control or to a conscious choice not to do so, whereas children are held to lack the ability to behave sensibly even when they want to.[295]

In answer to this allegation I would say that first of all there are always times when circumstances are beyond a person's control whether child or adult in their own little or big way. Having said that, Cohen has obviously forgotten the institution of training, study, education; a period of learning. One is allowed to make mistakes during the period of training because they are taken as not being expert in the relevant field. One is coddled and advised and helped as much as possible. People laugh at the learner's incompetence and patiently explain the rules again. After the period of learning however, people begin to lose patience with his incompetence and if it persists, they tend to lump him together with failure and uselessness. If he trained as a professional, his licence may not be officially taken away, but fewer and fewer people will require his services. For the same mistake, learners face correction and experts face consequences. This is the reason learner drivers attach signs to their vehicles (telling you not to expect much expertise from them), the reason child offenders are taken through correction processes and not punishment regardless of the enormity of their offence. Children are learners and adults are experts.

There are adults who are as incompetent as children as Cohen suggests, these adults were supposedly also taught, but failed to learn. These few adults are an example of what all children will become

[294] Purdy, op cit, p.27.
[295] Cohen, Equal Rights for Children, p. 47.

without any training. Again these fall into the category of ‘the exception’, the failure rate and again policies cannot be based on them. Proponents of equal rights for children are saying in essence that children should be expected to display the same level of expertise as adults without having gone through the period of learning. The issue they have conspicuously failed to address is whether child offenders should receive the same punishment as adults for the same offence.

Howard Cohen recognises that children lack certain capacities necessary for running their own lives. With the aid of child agents to supply some of those capacities however, he believes we can bring children up to the level of competence at which we accord adults the freedom to make their own choices. Since he believes that justice requires equal rights for children, he argues that creating the institution of child agents is a moral duty. He points out that grownups often borrow or buy expertise they need, we do not always need to have a given capacity in order to exercise the corresponding right. Few he argues, have the time to learn medicine, law, or dry cleaning; even if we did, we will not have time to do all our own work. Yet we are not therefore denied medical care, legal services or clean clothes. But instead of responding to children’s incapacity by supplying special help for them, we instead conclude that they ought not to be engaging in the relevant activity.[296]

Before concluding that child agents can simply fill the gap between children’s incapacity and the demands of adult life we need to take a careful look at what engaging a competent expert requires. As levels of competence vary in medicine, law and even dry cleaning, so would they also vary in the proposed child agency. A child would still need considerable knowledge and judgement to be able to pick a good one. Do children have such necessary skill? The fact of their needing a child agent at all suggests that they don’t.

In as much as the proposed child agents would still get the right to advice the child, help him to make a better choice, help in making decisions and having better judgement, I don’t see how that role is different from the one held by parents or guardians and teachers. Consequently, I fail to see that the proposed child agents will advance the case for children’s equal rights and freedom.

[296]H Cohen, *op cit*. pp. 89-90.

4.3.4 The Analogy of Earlier Liberation Movements

Proponents of equal rights attempt to draw parallels between the contemporary assumptions against favouring equal rights and liberty for children, and the way those in previous generations have argued against equal rights and liberty for women and black people. The legal, political, scientific and media discourse prevalent in previous generations promoted the idea that race and gender are biologically determinate categories with biologically determined attributes, characteristics, and social roles. Historically, many anthropologists and psychologists believed they had found physical evidence that non-white people had an inferior capacity for reason and rationality. These supposed differences fit into an imperialist ideology of a 'white man's burden' that justified the systematic oppression of indigenous peoples throughout the world. Black people were said to be intellectually and morally inferior to white people and as a result, unable to take care of themselves without the supervision of their white slave owners. The myth of a biological basis for male domination over women has persisted for even longer. Both those who defended the historical relegation of women to second class citizen status under the law and the contemporary anti-feminist backlash have relied on a belief (often backed by superficially scientific-looking evidence of the inferior female mental capacities) that men are more capable, at least on average, of fulfilling a variety of important social rules than are women. These supposed mental differences were said to causally explain why women were excluded from politics. This reasoning was also used to normatively justify female exclusion from politics as a necessary consequence of protecting women in general and from the burdens of public responsibility in particular. In addition to the paternalistic justifications for white dominance over black people and male dominance over women the white chauvinist and male chauvinist ideologies also employed a somewhat different normative justification: an appeal to the good of society, where the subordination of black people and women was said to be necessary for society to function. Defenders of slavery for instance claimed that the institution of slavery was necessary for a functioning society and economy. Similarly, the subordination of women to their husbands was widely held to be necessary for the stability and wellbeing of the family, and hence, society at large.

Today, the subordination of children to adults in general and their parents in particular is similarly seen as being both caused and justified by children's inferior mental faculties. Both the paternalism argument (children must be subordinate for their own good) and the social necessity argument (children must be subordinate for the good of society) are advanced to support the legal disabilities of children. The parallels with "scientific racism" and sexist neurological theories should be obvious: we are frequently told that children and adolescents are mentally inferior due to their underdeveloped brains, and this inferiority renders them incapable of behaving rationally or responsibly; in the past, precisely the same claims were advanced against women and black people. Age, similar to skin colour and other genetic clines used to attribute 'race' to people, is a feature that requires a social context to take on significance for making legal, moral, and political distinctions. The concept of childhood is then, like the concept of race, a social invention that refers to biological traits but is not itself a fact inherent in biology.

Harris contended that: a host of similar disasters were predicted upon the recognition of equal status for women within the marriage, the family and the home. But there is little evidence that more radical equality for women has made marriage, and family life impossible. … We should perhaps be encouraged by the fact that the same list of disasters and warning about dire consequences for life as we know it was raised as an objection to the emancipation of women and to all subsequent extensions of equal rights to them as is now produced to defend the continued control of children.[297]

In essence, an analogy was drawn, comparing the occurrences of past ages with the present situation with children, the erstwhile oppression both of women and blacks was cited. They contend that: If it was later discovered that there was nothing scientific or biological to approve the subjugation of these groups, what is to prove that the same yardstick being applied to children isn't also a mistake?

In answer to this argument, first of all, the analogy of blacks and women with children cannot hold. Both women and blacks are fully grown humans with their wits about them while children are born weak, helpless and fragile and totally dependent on others. Children are expected to grow out of this state and achieve independence and strength with time and experience. The law as it is only assume

[297] J Harris, *op cit*. p. 53.

that this transformation cannot fully take place before the age of eighteen. I have tried and failed, to envisage and visualize a form of social situation which can change the reality of childhood and cause children to have the ability to talk and walk before they are six months old, to feed themselves before they are over a year old, to handle their toiletries efficiently before they are four years old, to watch themselves effectively in a busy street before they are six years old, to cook for themselves before they are twelve years old and take care of their financial needs before they are eighteen years old. The Nigerian situation has ensured that even the age of eighteen is too soon for a person to acquire the resources to financially cater for his needs. So we find that a young person in his early twenties still depends on his parents for feeding, clothing and school fees. Even after schooling, with little or no chance of getting a decent job, it still falls on parents to start some kind of business for the child.

Contrary to the protestation above, it is quite true that improvements in the status of women have disrupted the structures of the family and society. Such disruption coming from such factors as easier divorce, reproductive choice and more equal participation in the work force, even the loss of values for the traditional African family, is the price of justice for women. It should be pointed out, on the other hand that comparing the goings on in first world countries, we are yet to feel the full effects of women's liberation in this part of the world. Women are still far from participating in all areas of life on an equal basis with men. If they ever do, the boat of family life is likely to be rocked even more vigorously. Easy as it is for visions to blur and for goals to change, women in first world countries are quite past the pursuit of liberation and are on rampage for domination, and I fear the trend is heading our way.

Having said that, a comparison of women with children is in my estimation more absurd a notion than not. Women are mature individuals who are not in need of the kind of teaching that is appropriate for children. Women are fully grown and developed persons, both physically and mentally, they have always had responsibilities towards their families and the society, though the nature and magnitude of those responsibilities keep changing. Even if women do not bring cash into the household by working outside the home, they contribute essential labour to it. Most children do not; indeed children are exceedingly expensive. Is this economic factor morally relevant?

Normally, it would seem crass for a parent to say that taking care of his or her child's needs is very expensive, in fact such an assertion would appear to undermine the love which demands such responsibility. But in view of the present debate, I feel this fact is very relevant. It is estimated that the cost of raising a child in developing countries is roughly US$900 per year and $16,200 for eighteen years (if $1 equalled N300.00 then, this amount would be in the vicinity of N5 million). This estimation is based on essentials like food, clothing and housing.[298] This estimate was taken by UNICEF in 2005. If the cost of education, the effect of inflation, the things the child will spoil for the parents, the things the child will spoil for others and parents must pay for and the cost of medical treatments are added, this amount will be in the vicinity of fifteen million naira. Of course we cannot forget the stress of taking care of a helpless child, of watching a sick child, the sleepless nights and the sacrifice of thinking of their well-being before thinking of one's self. Add these and the cost of raising a child becomes unquantifiable and immeasurable. If a parent will sacrifice this, and spend it on his child instead of himself, is it so hard to believe that that parent has no interest in subjugating and oppressing the child?, that the parent has the best interest of his child at heart?

The relationship between men and women was more in the nature of division of labour, men were to work outside the family and provide the needs of the family while women were to stay at home and nurture the children. The issue of and need for liberation for women arose out of the failure of men to hold up their end of the bargain. Like power corrupts, men were deceived into believing that the proceeds of their labour outside the home was theirs personally, to be used as they wished. Unfortunately, they mostly wished to use it outside the family and began to see their women as helpless and unproductive. Women suffered and the need arose to change the rules. Now in this issue of children's equal rights, I'm yet to see the need, the oppression and hardship that is requiring agitation for this paradigm shift.

The relationship between children and adults is more complicated, most parent-child interaction involves simple authority. A parent tells a child what to do without recourse to either threat of punishment or promise of reward and the child does it. The success of this method is most telling

[298] State of the World's Children, 2005, UNICEF.

against the case for equal rights. We routinely direct children, especially very young children, in fact it would be hard to get them through the day otherwise. As they grow older, they start asking for reasons, reasons which should be forthcoming.[299] I don't think there is need for any hard and fast rule as it is bound to do little but hamper this natural development. The most radical proponents of equal rights for children assert that no age-based distinction is at all justifiable, though a somewhat less extreme view contends that age should always be considered a "suspect" classification[300]

One of the central objections to children's equal rights is that children are incapable of possessing or exercising them, that if children were allowed equal rights, they would harm themselves and they would be incapable of acting responsibly. To this objection, liberationists respond that with the exception of very, very young children who cannot communicate their desires specifically and effectively, children are in a literal sense able to consent and make choices: they express refusal or assent. The claim then is not really that children are incapable of making choices, but that their parents or the state ought to be able to prevent them from making bad choices – bad choices that would likewise be bad choices for adults, but which would be permissible for adults to make. In other words, our paternalist impulse to protect someone from themselves for what we take to be their true best interests trumps our desire to respect that person's ability to make choices for themselves for children in circumstances where it would not for other adults.[301]

4.4 Appeal to Consequence

Proponents of equal rights for children argue that if children were to be granted equal rights with adults, the consequence would not be bad. Through time, experiments have been carried out by individuals and groups with similar beliefs. We shall consult some of the documented results of such experiments in order to buttress the argument.

4.4.1 Human Development is Internally Driven

[299] Purdy, *op cit*, p. 137.
[300] Wald, *op cit.* p. 267.
[301] ibid.

There have been experiments in child rearing founded on two closely related conceptions of human development: the ideas of Rousseau and Freud. Their notion is that human development is internally driven and that our job is to encourage natural development with a minimum of interference. This is known as the 'growth metaphor' in educational thought.

According to Rousseau, a child is to grow up alone with his own tutor, who affords him great freedom. His tutor's job is to supervise him, allowing natural consequences, not punishment, to teach him how to act.[302]All his actions had to flow from necessity rather than obedience, the child's freedom was of paramount importance. In her book on the history of childrearing advice, Christina Hardyment described the consequence of a late eighteenth-century British fling with Rousseau. Unfortunately, parents and educators rapidly became disillusioned by their experiments with nobly savage children. Some of the boys became so unmanageable that they had to be sent away to boarding school.[303]

Again in the early years of the 20thcentury, Vienna was gripped by excitement at the possibility of a new kind of education, a so called psychoanalytical pedagogy. The promise of a new generation of creative and mentally stable individuals shimmered before the eyes of its proponents. Freud's ideas were central to this promising new approach to education. The main thrust of Freudian principle was that repression is the major cause of neurosis; so the solution to neurosis seemed obvious: "a freer, more lenient, indulgent and permissive upbringing." More specifically, its advocates, warning against repression, believed that so far as possible, one should leave the child alone, with as complete withholding of direct injurious influences as possible, and inhibit him as little as possible in his natural development.[304] The picture was completed by recommendations about early and complete sex education. At first, educators concentrated on imparting information about sex to the children in their care; later they moved on to providing an environment in which children could satisfy their instincts. These precepts are sufficiently like those that would guide the lives of children with adult rights to warrant a careful look at the attempt to carry them out.

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302 J Rousseau, *Emile, or On Education*, trans. Allan Bloom (New York: Basic Books, 1979). p. 39.
303 C Hardyment, *Dream Babies; Three Centuries of Good Advice on Child Care* (New York: Harper & Row, 1983), p.19.
304 S Cohen,*In The Name of Prevention of Neurosis: The Search for Psychoanalytical Pedagogy In Europe, 1905-1938* in Barbara Finkelstein (ed) *Regulated Children, Liberated Children: Education in Psychoanalytical perspective,*(New York: Psychohistory Press, 1979), pp. 187-188.

By the 1920s a group of psychoanalysts, mostly women led by Anna Freud, had started in earnest to develop the new pedagogy. Anna Freud argued that education starts the first day of a baby's life, not when it begins school. From that time, parents attempt to "civilize" babies at the expense of their budding originality so "civilizing" both crushes creativity and creates neurosis. The answer was to let children behave in ways hitherto defined as 'naughty.' The program was summed up as "progressive education" an education that was the liberation of the instincts, a struggle against trauma, with a minimum of intervention on the part of educators and parents.[305]

The movement culminated in a series of experiments. Among them were Anna Freud and Dorothy Burlingham's school and Vera Schmidt's Moscow Children's Home and Psychological Laboratory. Most were short-lived, and appear to have been regarded even by their supporters as unsuccessful. The major problem was the "growing weight of evidence that between principle and practice there was a huge lacuna, through which many a theory, and many a child, could fall."[306]

The sexual liberation as well did not have the expected good results. The psychoanalytical educators found that the assumption that inner forces would direct the children through Freud's psychosexual stages was false. Children reared according to these principles did not develop into the unrepressed, creative, but otherwise normal individuals that had been foreseen. Although they were less inhibited, latency failed to moderate their distressingly infantile behaviour. They showed relatively little interest in the world about them, preferring to daydream, were not toilet trained, and displayed volatile emotional activity. The expected school behaviour did not materialize: the children showed no special creativity and could not concentrate. They seemed egocentric; group demands affected them little. They were extremely intolerant of the demands of adults: timetables, mealtimes, table manners, routine hygienic measures, even if leniently handled, became sources of conflict. Their mental health could by no means be described in glowing terms. The children showed an unexpected degree of

[305] *ibid*, 191-196.
[306] *ibid*, pp. 197-201.

irritability, a tendency to obsessions and depression, and certain peculiarities which during subsequent analytic treatment usually proved to be concealed anxiety.[307]

Those who tried the free style of child rearing also came up with the same result as the account of this parent suggests: By the time the children were old enough to understand words, we began spelling out their freedom to them, the fact that they didn't have to do what we say just because we are bigger and stronger, that they were entitled to their own opinions and desires. … We realised pretty soon that giving them absolute freedom was not enough, that you had to make them understand that people's right can infringe on each other. And we soon realised that such an understanding was much too complicated for them. They just weren't old enough to be able to restrain themselves on their own.[308] The father elaborates further the tension between his belief in children's rights and the daily realities of parenthood: "I'd say to them 'I want you to go outside now,' because I had work to do and I wanted them to go and play, but they'd say, 'we don't have to, you said you are not going to tell us what to do.'"

Liberationists believe that a child's desire should never be overridden except when that of an adult would also be overridden. Finally, it is my view that children's moral development needs more attention than it has received, and that the demands of such development should be taken into account as we ponder when adult rights should be recognised for children.

Consider the following sort of situation. Seven-year-old Jimmy has kidney problem. He is confronted with an extremely unpleasant and somewhat risky kidney transplant, with a 50 percent chance of cure; the alternative is no transplant and an eighty percent chance of death in a year. Given young children's fear of pain, their tenuous grasp on the concept of death, and their sense of time, which makes a year unimaginably long, how many would choose treatment?[309] A simple visit to any children's hospital will clarify this. Parents have to beg, make promises or force children to take medication. Allowing injection is another matter altogether, in fact it is a standard threat for

[307] W Hoffer, "Psychoanalytic Education," pp. 302-302. S Cohen also reports that Dorothy Burlingham noted similar developments in her "Problems Confronting the Psychoanalytic Educator," in her *Psycho analytic Studies of the Sighted and the Blind (*New York: International Universities Press, 1972).
[308]M Winn, *Children without Childhood* (New York: Pantheon, 1983), p. 195.
[309] Purdy, *op cit*, p. 187.

frightening children into doing what one wants them to do. Explaining to them that they need medication to get healthy again or to stay alive just doesn't help, they are simply not old enough to understand the meaning of death or the importance of or desire to stay alive.

A large body of research has examined the effects of various kinds of treatment on children. Particularly revealing is the literature on permissiveness. Permissive parents are reluctant to override children's wishes except perhaps when they risk serious harm to themselves or others. This is the kind of home environment recommended by proponents for equal rights for children. Wesley Becker reports that studies generally support what he calls the common-sense idea that more uninhibited behaviour is the result of permissiveness. He describes a study that found that children of permissive parents were more disobedient, irresponsible and disorderly in the classroom, lacking in sustained attention, lacking in regular work habits, and more forward and expressive.[310] Many studies show a significant relation between permissiveness and delinquent behaviour.[311] Eleanor Maccoby underscores this kind of findings. In her discussion of impulsive adolescents, histories of permissive treatment are frequent: these youngsters were less able to wait for things they wanted and demanded immediate gratification and gave little attention to consequences. Their expression of emotions were often explosive and unregulated. They had poor ability to maintain attention and commitment to tasks they undertook. Their behaviour had a superficial, unorganized, flitting quality, and they changed their minds and their enthusiasms frequently. Their backgrounds were often troubled by parents who did not take the time or trouble to transmit age appropriate skills to the children, rarely expected chores or other responsible behaviour, and did not demand high achievements from them.[312]

Baumrind points out that by loving unconditionally, the parent allows the child to behave egoistically at his own expense. I believe that what is hoped for is that the child will learn to emulate a parent's

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[310] W C Becker, *Consequences of Different Kinds of Parental Discipline* inM I Hoffman and L Wladis (eds) *Hoffman Review of Child Development Research* (New York: Russell and Sage Foundation, 1964), p. 191.
[311] *ibid*, p. 193.
[312] ibid, 197.

own selflessness. Studies show that when a child misbehaves in the presence of an adult, non-interference on the part of the adult is take as approval of the conduct, and increases its incidence.[313]

Even without a legal demand, a good many parents have, for whatever reason, abdicated their authority. The children of such ‘new breed’ parents are noticeably different from those of ‘traditional’ ones. New breed children get much less pressure – ‘less pressure from their parents to excel in school, to be popular or to be outstanding in other ways among their peers.’[314] They tend to become peer – rather than adult oriented. Peer oriented children present negative images of themselves vis-à-vis the adult world of values, both in behaviours in which they engage and the values and attitudes they express. They do worse in school, they hurt others more and feel less guilty about having done so. They are more prone to engage in such illegal behaviour as drug use, delinquency and violence.[315] These findings are consistent with Welsh’s experience of children’s vulnerability to what he call ‘a seductive youth culture’, equipped with its own music, drugs, precocious sexual mores and values. Its values are opposed to those required by the adult world: consumption is preferred to work, hedonism to routine and responsibility.[316] Technological toys and new adolescent freedom render it especially attractive now.

4.4.2 **Anticipated Effects of Equal Rights for Children in the Family**

Recognizing adult rights for children implies a liberal view of human relations. Applied to the family, this means that the family is increasingly seen as not a unit, but as a collection of individuals. Hence one now sees the two traditions of individualism and family life on a collision course.[317] The underlying premise of a liberated family is that the individuals it comprises will stay together only as long as they are getting something out of the arrangement. Thus each family is a voluntary association that is constantly reassessed. Family members are equal in all important respects, and it follows that

[313] D Baumrind, *Authoritatrian vs .Authritative Parental Control,* in Conger (ed), *Contemporary Issues in Adolescent Development* (New York: Harper & Row, 1975) p. 137.
[314] Packard, *Our Endangered Children* (Boston: Little, Brown, 1983) p.27.
[315] U Bronfenbrenner, *The Roots of Alienation* in Bronfenbrenner, *Influences on Human Development* (Hinsdale ILL: Dryden Press,1972), p. 662.
[316] P Welsh, *Tales Out of School* (New York: Viking, 1986) p.6.
[317] B CHafen, Puberty, Privacy, and Protection: The Risks of Children’s Equal Rights, American Bar Association Journal 63 (October 1977): 1383.

children's wishes ought to count as much as those of the adults. Children would be legally free to leave the family, but so, as liberationists omit to mention, would parents. Dissatisfied children could take off on their own; dissatisfied parents could equally easily abandon their children.[318]

I wondered if parents would still have the duty to provide children with a home, even if children have no duty to live in it. Cohen trumps this doubt by suggesting that the law extend to children the right to common ownership of the family home as one way to manage 'competing and incompatible rights to free choice of lifestyle.' This arrangement he believes, would give every family member a stake in the home and he sees no reason to fear that this would mark the end of family life or lead to a state of perpetual family litigation. Again like all liberationists, Cohen concentrates on rights and refuses to consider responsibilities, for instance would children be expected to contribute to upkeep or repairs or rent?

It is important to note that doubt about the theoretical basis of parent-child relations undermine that relationship on a day-to-day basis, and also fails to meet children's needs. Jeffery Blustein voices this concern when he points out that:

> Many parents today are uneasy about their right to exercise authority over their own children. We believe that as parents, we are entitled to command our children's obedience, but we worry that our use of authority may actually be inhibiting our children's growth and autonomy. As a result of this insecurity, parents are frequently inconsistent in their use of authority, alternately failing to set limits for their children when they need to have demands imposed on them and then reacting to their

[318] J Sommerville,*The Rise and Fall of Childhood*(Beverly Hills, Calif.: Sage, 1982)p. 218.

> children's perceived rebelliousness with excessive discipline and other authoritarian measures.[319]

Equal rights for children is bound to disrupt the normal working of the traditional family. It will leave parents unsure as to how to handle their children. It will give children freedom which is not commensurate with their level of development and given what we know and have seen of children's needs, it seems to me that this state of affairs needs to be avoided at almost any cost.

Article 1 of the UDHR states, 'All human beings are born free and equal in dignity and rights'. It also states that all humans are equal before the law and are entitled to equal protection of the law. In recent times, these provisions have been regularly quoted by documents providing for child rights, both local and international. Was it the intention of these provisions that the child should exercise rights in the same level and extent as the adult? I think not. This position is evidenced by the fact that prior to this era of equality, every law and right contain an exception for children, a different yardstick for measurement. Child right laws however, have gradually and consistently gravitated towards ensuring more rights for the child, at the same time reducing the child's responsibility. This irregularity has bred more confusion through the years, a confusion that has defied resolution in the hands of law makers, jurists and judges alike, in some areas more than others.

4.5 The CRC and the Fundamental Rights

Child rights laws have always aimed at achieving child protection and welfare, thus the Declaration on the Rights of the Child, adopted by the League of Nations in 1924 focused on child protection, provision, development and training. In the same vein the Declaration on the Rights of the Child, adopted by the UN in 1959 came out with ten nuggets, all still hammering on child protection, education and development. The Convention on the Rights of the Child however came out different, with specific rights for the child, specifically ascribing to the child, the fundamental rights and

[319] J Blustein, *Parents and Children: The Ethics of the Family* (Oxford: Oxford University Press, 1982).

conveying the impression that the equal exercise of these rights were covertly accorded the child by preceding documents like the UN Charter and the UDHR.

Is that impression correct?

The preamble to the CRC states:

-Whereas the people of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedoms,

-Whereas the United Nations has, in the Universal Declaration of Human Rights, proclaimed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

-Whereas the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth,

-Whereas mankind owes the child the best it has to give,

"The States Parties to the present Convention, Considering that in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, … have agreed as follows:"

The phrase 'human family' in this text does not depict a nuclear family of father, mother and children; but rather a family consisting of and comprising the whole of humanity, of races and colours, cultures and opinions. In other words, the phrase has to do with a much larger group where the white is not superior to the black in dignity, where the developed is not superior to the developing in worth, where the stronger is not free to enslave the weaker.

Article 1 of the UDHR states 'All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of

brotherhood.' This text in the UDHR is the most quoted in the fight for equal rights for children. If I should interpret that article, it would read 'all human beings are born free and equal in dignity and rights because they are endowed with reason and conscience …' children don't come out having reason and conscience, they develop and grow and mature with time and experience. The correct interpretation is that the level of freedom and equality should increase in tandem with the degree of development of reason and conscience. The word 'born' here has nothing to do with time, it only means inherent, i.e. there is nothing else one needs to do to have the ability (except grow up of course), no requirement of turning white or black, or changing their sex or conforming to a particular ideology or opinion. None of the above texts considered children specifically with regard to rights. In fact the UDHR acknowledges the immaturity of children and advocates care and protection which again is a different yardstick.

One of the aims of the UN is to promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.[320] Again, article 2 of UDHR states, 'Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.' It is interesting to me but not surprising that these provisions conspicuously failed to include 'age' as a possible basis for discrimination. This is simply because the drafters of that document did not have children in mind while they were considering 'rights and freedoms'. One may argue that the final phrase in that definition "or other status" more than compensates for that seeming oversight. However, the meaning of that phrase can only flow from the preceding specifically mentioned categories and not contrary to them. Initially child rights laws were made with the intention of protecting the child and ensuring his future. With the evolving trend however, emphasis is on giving children more rights and consequently, greater freedoms.

The UN Charter cited by the CRC states in its preamble as one of the purposes of the organisation, a determination 'to reaffirm faith in fundamental human rights, in the dignity and worth of the human

[320] Charter of the UN Article 55 (c).

person, in the equal rights of men and women and of nations large and small.' No mention was made of children because it did not occur to the drafters that the rights of children as a stiff, formal and legal obligation would soon become a very serious issue.

Borrowing from previous human rights documents with the aim of preserving and bringing the idea down to the child's level and retaining the spirit of freedom as well as obeying the plan and joining in the determination to "promote … better standards of life in larger freedoms", the CRC provided in its Article 2 (1): "States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status," succeeding only as far as regulating discrimination among children is concerned.

In chapter four of this work, I tried to look at the ideas on which the agitation for equal rights for children are based because I realise that the rational for these ideas becomes relatively unimportant once they get translated into policy, the policy of letting children choose their own values and principles as far as possible. I am particularly concerned that the views of the Committee on the Rights of the Child are beginning to tilt towards these suggestions. As we saw in chapter three, the Committee is the body vested with the duty both of interpreting and ensuring compliance with the provisions of the CRC. I bet we all suppose we know what it means for children to have fundamental rights. I for one was surprised at the interpretation given these rights by the Committee.

4.6 THE FUNDAMENTAL RIGHTS OF THE CHILD

Section 3 of the CRA provides thus

(1) The provisions in Chapter IV of the Constitution of the Federal Republic of Nigeria 1999, or any successive constitutional provisions relating to Fundamental Rights, shall apply as if those provisions are expressly stated in the Act.

(2) In addition to the rights guaranteed under Chapter IV of the Constitution of the Federal Republic of Nigeria 1999, or under any successive constitutional provisions, every child has the rights set out in this Part of this Act.

It is my contention that the provisions of chapter IV of the 1999 Constitution are largely unsuited to children and the attempt to indiscriminately apply those provisions to the child will result in untoward, unforeseen and negative issues cropping up. The provisions of the CRC and by extension our own CRA, are couched in such ambiguous terms that a turn in the laws will require, not so much a change in legislation as a change in interpretation. This is a very dangerous position to find ourselves in, especially when the bone of contention is equal rights for children, a move that will surely change the future and I fear, not for the better.

The UDHR, proclaimed that "childhood is entitled to special care and assistance"[321] UNICEF seems to disagree with this view in its praise for the accomplishments of the CRC. The convention is vaunted as having accomplished a change in the way children are viewed and treated – ie, 'as human beings with a distinct set of rights instead of as passive objects of care and charity.'[322]This language seems to be in vogue now with regards to children's issues. For instance Child Right Information Network (CRIN)[323] has as its purpose "to press for rights, not charity, for children."[324] The organisation is said to be guided by a passion for putting children's rights at the top of the global agenda by addressing root causes and promoting systematic change. Its guiding framework is the UN Convention on the Rights of the Child (CRC). CRIN holds the view that "children's rights are violated or left unfulfilled in ways in which those of adults are not. This, it sees as a result of systemic discrimination - direct or indirect - against children. It holds that children face discrimination in most societies in comparison to adults because they have less power, and takes this as a result of children's dependence on adults and

[321] UDHR, Article 25(2).
[322] http://www.unicef.org/crc/26/1/16.
[323] CRIN is a charity registered in England and Wales, it is a global network coordinating information and promoting action on child rights. More than 2,000 member organisations and tens of thousands more activists from across the world rely on CRIN for information. It works in tandem with the UN on children's issues. in other words, they supply NGO's the world over, with materials needed to carry out the wishes of the Committee.
[324] CRIN, Guide to Non-discrimination and the CRC. CRIN 2009, P. 1. Available at http://www.crin.org.docs.CRC-Guide. 15/05/16.

adults' reluctance to give them more decision-making power as they develop the ability to exercise it themselves."[325]

4.6.1 Child's Right to Life.

Section 33(1) of the Constitution of the Federal Republic of Nigeria provides that "every person has a right to life, and no one shall intentionally be deprived of his life, save in execution of a sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.

International human rights law while advocating the abolition of the death penalty falls short of out rightly declaring it to be a violation of human rights. Amnesty International however continues to kick against the death penalty. Amnesty holds that, "the death penalty is the ultimate denial of human rights. That it is the premeditated and cold-blooded killing of a human being by the State. That this cruel inhuman and degrading punishment is done in the name of Justice and that it violates the right to life as proclaimed in the Universal Declaration on Human Rights."[326]It also holds that "every human being has the inherent right to life, which shall be protected by law. In countries which have not abolished the death penalty, it shall be imposed only for the most serious crimes and after a final judgment rendered by a competent court.[327]The death penalty shall not be imposed for crimes committed by persons below the age of eighteen and shall not be carried out on pregnant women, new mothers or persons who have become insane.[328] Where capital punishment occurs, it is to be carried out so as to inflict the minimum possible suffering.[329]

For the child, it is right to life, survival and development.[330]The child's right to life is absolute and inalienable, thus a child cannot be sentenced to death for committing any offence. This is provided by Section 221(c) of the CRA which says that no child shall be subjected to the death penalty or have the death penalty recorded against him.

[325] ibid, p.2.

[327] Safeguards Guaranteeing protection of the rights of those facing the death penalty, Rule 5. Approved by Economic and Social Council Resolution 1984/50 of May 1984.
[328] ibid, rule 3.
[329] ibid, rule 9.
[330] Article 6 (1) & (2), CRC and Sections 3 & 4, CRA.

According to the Committee on the Rights of the Child, survival and development encompasses States parties taking all possible measures to improve perinatal care for mothers and babies, reduce infant and child mortality, and create conditions that promote the well-being of all young children during the critical phase of their lives. Ensuring survival and physical health are priorities, but States parties are reminded that all aspects of development are involved, and that a young child's health and psychosocial well-being are in many respects interdependent. Both may be put at risk by adverse living conditions, neglect, insensitive or abusive treatment and restricted opportunities for realizing human potential. Young children growing up in especially difficult circumstances require particular attention. The Committee reminds States parties that the right to survival and development can only be implemented in a holistic manner, through the enforcement of all the other provisions of the Convention, including rights to health, adequate nutrition, social security, an adequate standard of living, a healthy and safe environment, education and play.[331]

4.6.2 Child's Right to Dignity

Section 34(1) of the 1999 Constitution provides that "every individual is entitled to respect for the dignity of his person, and accordingly -

(a) no person shall be subjected to torture or to inhuman or degrading treatment;

(b) no person shall be held in slavery or servitude; and

(c) no person shall be required to perform forced or compulsory labour.

Section 34(2) went on to exclude from the ambit of "forced or compulsory labour," among other exceptions, any labour required which is reasonably necessary in the event of an emergency or calamity threatening the life or well-being of the community, anylabour or service that forms part of a normal communal or other civic obligations for the well-being of the community, any labour required in consequence of a sentence

[331] Committee on the Rights of the Child, General Comment No. 7 (2005) para. 10.

or order of a court.

If this provision is applied to the child and applied *strictu senso*, then a teacher loses the right to compel any student to do any labour as punishment for lateness or disobedience or as a form of discipline for the child.

In the CRA, the provision appears thus:

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

be—

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

(*b*) subjected to torture, inhuman or degrading treatment or punishment; or

(*c*) subjected to attacks upon his honour or reputation; or

(*d*) held in slavery or servitude, while in the care of a parent, legal guardian or school authority or any other person or authority having the care of the child.

In the case of Uzoukwu v. Ezeonu,[332] the court of Appeal per Niki Toby JCA (as he then was) construed the word dignity thus: "dignity does not mean an elevated rank or place of work, nor grandeur of mien, but rather conveys the sense of being degraded, at least, in one's exalted estimation of his social status or standing". 'Torture' was defined by him as

> "some form of pain which could be extreme, it also means to put
>
> a person to some form of anguish or excessive pain, it could
>
> be a physical brutalization of the human person, it could also be
>
> mental, in the sense of mental agony or mental worry. It covers
>
> a situation where the person's mental orientation is so much

[332] (1991), 6 NWLR, pt. 200, pg. 708.

disturbed that he cannot think or do things rationally."[333]

Inhuman treatment he defined as "barbarous, uncouth and cruel treatment which has no human feeling on the part of the person inflicting the barbarity and cruelty" He defined slavery as "the state of being reduced to the status of a slave, and opined that servitude entails reducing a person to work as a slave."

The UN Centre for Human Rights posits:

> "Slavery today covers a variety of human rights violations.
> In addition to traditional slavery and the slave trade, these
> abuses include the sale of children, child prostitution, child
> pornography, the exploitation of child labour, the sexual
> mutilation of female children and the use of children in
> armed conflict, debt bondage, and the exploitation of prostitution…"[334]

In 2006, the Committee on the Rights of the Child[335] adopted a general comment on the right of the child to respect for the child's human dignity and physical integrity and equal protection under the law, also children's right to protection from corporal punishment which aims "to highlight the obligation of all States parties to move quickly to prohibit and eliminate all forms of physical and mental violence and to outline the legislative and other awareness-raising and educational measures that states must take"[336] In another paragraph the Committee stated "…there is no ambiguity, 'all forms of physical or mental violence' does not leave room for any level of legalized violence against children. Corporal punishment and other cruel or degrading forms of punishment are forms of

[333] Ibid at 777.
[334] Contemporary slavery fact sheet, No. 14. http://www.phdre.org/conventions.
[335] The body which has the duty of ensuring observance of and monitoring compliance with the provisions of the CRC by States Parties.
[336] General Comment No.8 (2006) on "The right to protection from corporal punishment and other cruel and degrading forms of punishment (para.2) available at http://www.ohchr.org/english/bodies/crc/docs/co/CRC.C.GC.8.pdf. 15/7/14.

violence and the State must take all appropriate legislative, administrative, social and educational measures to eliminate them."[337]

The Committee recognizes that parenting and caring for children, especially babies andyoung children, demand frequent physical actions and interventions to protect them. This is

quite distinct from the deliberate and punitive use of force to cause some degree of pain,

discomfort or humiliation. As adults, we know for ourselves the difference between a protectivephysical action and a punitive assault; it is no more difficult to make a distinction in relation toactions involving children. The law in all States, explicitly or implicitly, allows for the use ofnon-punitive and necessary force to protect people.[338]

In other words, as far as the Committee is concerned, corporal punishment is tantamount to 'torture' and therefore derogates the child's right to respect for his human dignity and physical integrity. Glorying in the seeming widening acceptance of the notion, the Committee's General Comment 8 reported that in 2002 the Fiji Court of Appeal declared corporal punishment in schools and the penal system unconstitutional. The judgement declared: "Children have rights no wit inferior to the rights of adults. Fiji has ratified the Convention on the Rights of the Child. Our Constitution also guarantees fundamental rights to every person. Government is required to adhere to principles respecting the rights of all individuals, communities and groups. By their status as children, children need special protection. Our educational institutions should be sanctuaries of peace and creative enrichment, not places for fear, ill-treatment and tampering with the human dignity of students"[339] In 1996, Italy's highest Court, the Supreme Court of Cassation in Rome, issued a decision that effectively prohibited all parental use of corporal punishment. The judgement states: "… The use of violence for educational purposes can no longer be considered lawful. There are two reasons for this: the first is the overriding importance which the [Italian] legal system attributes to protecting the dignity of the individual. This includes 'minors' who now hold rights and are no longer simply objects to be protected by their

[337]*ibid*, paragraph 18.
[338] Ibid 14.
[339]Naushad Ali v State (2002) Fiji Court of Appeal.

parents or, worse still, objects at the disposal of their parents. The second reason is that, as an educational aim, the harmonious development of a child's personality, which ensures that he/she embraces the values of peace, tolerance and co-existence, cannot be achieved by using violent means which contradict these goals"[340]

This particular persuasion has also found its way into our law in a form. Section 221 (b) of the CRA provides that no child shall be ordered to be subjected to corporal punishment as a judicial sentence. From what I can glean from all the provisions, court decisions and also general comment, the dignity of the child's person is bound in the use or otherwise of corporal punishment, I will therefore venture to spend some time on that subject.

4.6.2.a Corporal Punishment

Corporal Punishment is "a discipline method in which a supervising adult deliberately inflicts pain upon a child in response to a child's unacceptable behavior and/or inappropriate language."[341] Professor Muray Straus defined Corporal Punishment as "the use of physical force with the intention of causing a child to experience pain but not injury, for the purpose of correction or control of the child's behavior."[342]

It is the deliberate infliction of pain, intended as correction or punishment. It also refers to any physical act that causes discomfort to the child, like slapping, grabbing, pulling to the ground or requiring the child to stay in a physical difficult posture, are all forms of corporal punishment. Corporal Punishment may also include the continuance of any strenuous physical activity, for example, running laps on a field.[343] Corporal Punishment can be inflicted as punishment following a judicial sentence, as punishment for school children for misbehavior or in the home by parents as a means of controlling children's behaviour. Historically speaking, most punishments, whether in judicial, domestic or educational settings were corporal in nature. The practice is generally held to

[340] Supreme Court of Cassation, 6th Penal Section, 18 March 1996, Foro It II 1996, 407 (Italy).
[341] JD Dayton, 'Corporal Punishment in Public Schools: The Legal and Political Battle Continues' (1994) 3(3) *Education Law Quarterly,* pp. 448-459.
[342] M Strauss, 'Corporal Punishment in America and its Effect on Children',(1996) *Journal of Child Centred Practice*, p. 57.
[343] Financial and Educational Law Training Program. 2002 Student Issues.

differ from torture in that it is applied for disciplinary reasons and is therefore intended to be limited, rather than intended to totally destroy the will of the victim.

The Committee defines "corporal" or "physical" punishment as any punishment in which

physical force is used and intended to cause some degree of pain or discomfort, **however light**.

Most involve hitting ("smacking", "slapping", "spanking") children, with the hand or with an implement - a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, **forcing children to stay in uncomfortable positions**,[344] burning, scalding or forced ingestion (for example, washing children's mouths out with soap or forcing them to swallow hot spices). In the view of the Committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.[345]

In other words, a child cannot legally be disciplined by flogging or smacking, he cannot be compelled to run laps round the school field as a form of punishment or be required to do some work in the school compound like cutting grass and so on. He cannot also be scolded, especially not in public since that would amount to belittling and humiliating treatment. Yet he can be disciplined. How? This impossible situation has left schools in developed nations with no option but to depend heavily on suspension as a form of punishment to disobedient and foolhardy students. The Committee on the rights of the Child is yet to come up with protestations against this form of punishment. Is it in the best interest of the child to stay out of school while others are learning? Is it okay to sacrifice his future as long as his so called dignity is protected?

Corporal punishment used to be prevalent in schools in many parts of the world, but in recent decades it has been outlawed in most of Europe and in Canada, Japan, South Africa, south East Asia and the Middle East. In the United States, it continues to be used to a significant extent in a number of

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[344] Emphasis mine.
[345] Financial and Edu. *opcit*p.11.

Southern States. Though some African countries have banned corporal punishment in schools, it is still prevalent in Africa. It is also prevalent in Nigerian schools except for Lagos state which passed a bill in 2011 prohibiting the use of corporal punishment for students and apprentices. Advocates of corporal punishment argue that it provides an immediate response to indiscipline and that the student is quickly back in the classroom learning, rather than being suspended.

4.6.2.b Corporal Punishment in Nigeria's law.

Before the advent of the Child's Rights Act[346] the position of the law in Nigeria as it concerns corporal punishment as a sentence for juvenile offences was quite different. According to the Criminal Code, canning can be inflicted as a judicial punishment.[347] Article 11(2) of the CYPA[348] states that "no young person shall be ordered to be imprisoned if he can be suitably dealt with in any other way; whether by prohibition, fine, **corporal punishment**,[349] committal to a place of detention or to an approved institution, or otherwise."

Article 14(f) provides that where a child or young person charged with any offence is tried by a court, and the court is satisfied of his guilt, the court shall take into consideration the manner in which under the provisions of this or any other Ordinance the case should be dealt with, whether by ordering the offender to be whipped. Also, whenever a male person who in the opinion of the court has not attained seventeen years of age has been found guilty of any offence, the court may, in its discretion, order him to be whipped in addition to or in substitution for any other punishment to which he is liable.[350]

In addition to a sentence of imprisonment, the following sexual or violent offences can also attract whipping:

a. Unlawful carnal knowledge of a girl under the age of thirteen years.[351]
b. A householder who permits the defilement of young girls on his premises[352]

[346] Child's Rights Act 2003.
[347] Criminal Code Act, Cap C38 Laws of the Federation of Nigeria, 2004.
[348] Children and Young Persons Act LFN 1958.
[349] Emphasis mine.
[350] Criminal Code *op cit,* S. 18.
[351] *Ibid,* S. 218.

c. defilement of girls under sixteen but above thirteen[353]

d. Male persons trading in prostitution (on second or subsequent conviction)[354]

e. Indecent treatment of girls under sixteen[355]

f. In S.330, any person who, by means calculated to choke, suffocate or strangle and with intent to commit or to facilitate the commission of a felony or misdemeanor, renders or attempts to render any person incapable of resistance.

g. Intentionally endangering the safety of those traveling by railway[356]

h. Rape[357]

i. Attempt to commit rape[358]

j. Attempted robbery[359]

k. Escape from lawful custody[360]

Those provisions did not make any demarcation between child offenders and adults. The CRA however, provided in Section 221(1) (b) that no child shall be ordered to be subjected to corporal punishment. The writer wondered at the reason for such prohibition in a society like ours and saw none but pressure from the international community.

Agitations are ongoing to have corporal punishment totally banned as a means of discipline or correction in penal institutions, schools, homes and alternative care centres all over the world.[361] It has been proved that Nigeria is far from immune to these pressures and agitations from the International Community. Nigeria's 2005 periodic report to the UN Committee on the Rights of the Child contained some protestations to the import that the minister for education had sent a notice to all Nigerian schools intimating them of the fact that corporal punishment in Nigerian schools is no longer

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[352]*Ibid,* S. 219.
[353]*ibid,* S. 221.
[354]*Ibid*, S. 225A.
[355]*ibid,* S. 222.
[356]*Ibid,* S. 234.
[357]*Ibid*, S. 358.
[358]*Ibid*, S. 359.
[359]*Ibid*, S. 403.
[360]*Ibid*, S. 135.
[361] See, Global Initiative to End All Corporal Punishment of Children, Global Progress. Available at http://www.endcorporal punishment.org/pages/frame.html(follow "Global Progress" hyperlink; then follow the online global tables) (showing that , internationally, bans on corporal punishment tend to occur first in schools and institutions, and lastly in the home).

acceptable. Again in 2011, Lagos State successfully passed a law, prohibiting corporal punishment of students and apprentices in Lagos State. Now what do Nigerian laws have to say about corporal punishment of children specifically?

Section 295 of the Criminal Code endorses corporal punishment by providing that "A blow or other force, not in any case extending to a wound or grievous harm, may be justified for the purpose of correction as follows:-

(1) a father or mother may correct his or her legitimate or illegitimate child, being under sixteen years of age, or any guardian or person acting as a guardian, his ward, being under sixteen years of age, for misconduct or disobedience to any lawful command;

(2) a master may correct his servant or apprentice, being under sixteen years of age, for misconduct or default in his duty as such servant or apprentice;

(4) a father or mother or guardian, or a person acting as a guardian, may delegate to any person whom he or she entrusts permanently or temporarily with the governance or custody of his or her child or ward all his or her own authority for correction, including the power to determine in what cases correction ought to be inflicted; and such a delegation shall be presumed, except in as far as it may be expressly withheld, in the case of a school master or a person acting as a school master, in respect of a child or ward;

(5) a person who is authorized to inflict correction as in this section may, in any particular case, delegate to any fit person the infliction of such correction.

Article 55 of the Penal Code states "(1)(a) nothing is an offence which does not amount to the infliction of grievous hurt upon any person and which is done: by a parent or guardian for the purpose of correcting his child or ward, such child or ward being under eighteen years of age."

Section 295(6) of the Criminal Code provides thus "no correction can be justified which is unreasonable in kind or degree, regard being had to the age and physical and mental condition of the person on whom it is inflicted; and no correction can be justified in the case of a person who, by reason of tender years or otherwise, is incapable of understanding the purpose for which it is inflicted." This limitation on the use of corporal punishment is clearly geared towards the avoidance of abuse or the infliction of corporal punishment on a child for any reason other than correction.

It must be noted that the provisions of the CRC protecting the child's dignity which the Committee on the Rights of the child is relying on to propose total ban of corporal punishment are also enshrined in the Constitution of the Federal Republic of Nigeria, 1999. If corporal punishment were obviously tantamount to abuse or violence or degradation of the dignity of a child or torture or inhuman treatment, those provisions should be enough prohibition of such infringement. However, the Committee on the Rights of the Child is agitating for an explicit legislation banning corporal punishment by member States. That the child is entitled to respect for the dignity of his person is unquestionable, but that corporal punishment as a disciplinary method infringes this right? I beg to disagree.

Sweden was the first nation in 1979, to extend the ban of corporal punishment to the home, making it an offence for parents or guardians to physically correct their children. The ban was meant to curb child abuse, the opposite became the case. Since parents could no longer correct their children openly. They resorted to pushing and pulling on occasion, mostly children were left on their own. It was also observed that children began to beat their parents more. Things came to a head in the 1990s when children who were born and raised under the ban became teenagers. There was an unprecedented wave of violence, children killing children. Youth violence rates continued to soar even though the Swedish Government had carried out numerous campaigns to stop it. By 2000, however, the Swedish government said there has been "no tendency to a decrease in bullying at school or in leisure time during the last twenty years." In the European Crime and Safety Report commissioned by the United Nations and the European Commission released on February 14, 2007, Sweden had one of the worst assault and sexual violence rates in the EU. Without physical discipline, many youths seem to act violently because they don't understand when to stop dangerous behaviour – they don't understand how to deal with limits.[362]The EU report released September 10, 2009 shows that the number of reported rapes in Sweden is twice as many as UK which reports 23 cases per 100,000 and 20 times higher than certain countries in southern and Eastern Europe. The study, financed by the EU-funded

[362] P. Sandstrom, Children and Youngsters Have Lost the Feeling for Limits. Innocent Games can Turn into Severe Violence. (Swed.), available at http://web.abo.fi/meddelanden/forskning/1998_13_barnvald.sht

Daphne11 organization, compared how the respective judicial systems managed rape cases across eleven EU countries. According to the report, the Swedish rape rate "cannot be explained purely by an increased tendency to report rapes and other more minor sexual offences." Over 5,000 rapes are reported in Sweden per annum while reports in other countries of a comparable size amounted to only a few hundred. The number of rape charges in Sweden has quadrupled in just above 20 years. Rape cases involving children under the age of 15 are six times as common today as they were a generation ago. Most other kinds of violent crimes have rapidly increased as well, Malmo, has nine times as many reported robberies per capita as does Copenhagen in Denmark.[363]

Since the ban, most Swedish children no longer think they should be punished at all for their misbehaviour, not even by grounding. About half of them even think their parents don't have the right to withhold their allowance. The ban has effectively left so many children completely unrestrained.

Other nations that have tried the experiment of banning physical punishment for children have also been met with the experience of youth violence akin to Sweden's. In New Zealand, law against physical punishment of children by parents came into being in 2007 and was said to be one of the worst worded of such bans. According to the law, caning or smacking a child became a criminal offence. Many New Zealanders refused to accept it and in 2009, a citizen-initiated referendum produced an 87% majority for repealing the legislation. The government failed to do so however, and in November 2009, a 4,000 strong demonstration in Auckland, the "March for Democracy" protested against the failure of the regime to follow the overwhelming public view. Just like every other nation that has ventured to experiment with a ban on corporal punishment at any level, they seem to be stuck with the ban; whether they like it or not.

In Japan, the story is much the same. Japan banned school corporal punishment in 1947. Since then, anything from punishing children by making them stand out in the hall to physically striking them is banned. Japan has apparently been experiencing a rise in bullying by school children against each other. As BBC News reports, "many feel that the way to cut down on such bullying incidents is to

[363] The Local, 9th September 2009.

reinstate corporal punishment. Japanese schools should rethink their decades-old ban on corporal punishment, a government appointed panel urged. Bullying was found to be involved in 14 of 40 youth suicides from 1999 to 2005 in a country where pupils are also under great pressure to perform well… alarmed by the trend of bullying deaths, the panel urged schools to punish classroom bullies and crack down on teachers who ignored the problem"[364]

In America, Temple city, a city in Texas re-introduced corporal punishment at the demand of parents after a long period of ban. Temple city school board president Steve Wright says "since paddling was brought back to the city's 14 schools by a unanimous board vote, behaviour at Temple's single high school has changed dramatically, even though only one student in the school system has been paddled. The discipline problem is much better than it's been in years." It is believed that corporal punishment within the school systems will be on the rise again, more and more schools are re-adopting the policies as they deal with more troubles within the schools. Suspensions and detentions just simply are not working and a method that started to be banned largely in the 1980s could very likely be coming back into play. As more and more schools deal with behaviour issues disrupting school hours, physical discipline is starting to look a good idea.[365]

On March 5, 1995, the Washington Post carried a headline: New Interest in Corporal Punishment; Several States Weigh Get Tough Measures. The news article said "Nearly a year after American teenager Michael Fay was caned in Singapore for vandalism,[366] a movement for similar forms of punishment is surging in this country (America). At least nine states are considering corporal punishment laws, which would allow use of a paddle or cane to punish street criminals." "Call Michael Fay and ask him if he will go over there again and do the same thing, I bet he'd say no" said Tennessee State Rep. Doug Gunnels (R), sponsor of a bill being considered by the state legislature. "The Singapore incident got my attention" said Mississippi State Rep. Tom Cameron, sponsor of a caning bill that passed the House but was stopped by the Senate Subcommittee.[367]

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[364] Japan reconsiders corporal punishment. Available at http://www.asian-nation.org/headlines/2007/02/japan-reconsiders-corporal-punishment/accessed 15/6/2014.
[365] ibid.
[366] **Fay v Public Prosecution**(1994) 2 SLR 154. Michael Fay was sentenced to three strokes of the rattan for vandalism, his appeal against the punishment was dismissed.
[367] http://www.highbeam.com/doc/1p2-823765.html. accessed 17/8/2014.

On the other side of the divide is Singapore, an island city-state in south-east Asia. Since independence from Britain in 1959, it has developed into a high-tech, first world country. Its five million residents enjoy a standard of living on a par with that of Western Europe or North America. They regularly vote in free elections for a paternalistic and rather authoritarian government with strict laws. It is one of the world's least corrupt regimes. Singapore is easily the cleanest and most efficient country in Asia. Crime rates are low. With thousands of court-ordered canings administered each year, Singapore can reasonably claim to be the judicial corporal punishment capital of the world, especially *pro rata* to its population. In a speech by Singapore's Education Minister in May 2004, the minister noted that school discipline in Singapore was not getting worse and indeed that fewer serious school offences were being recorded than fifteen years earlier. He was confident that discipline was far better in Singapore than in most other countries. He also made it clear that the government was committed to maintaining high standards of discipline and that it had no intention whatever of changing the present rules that allow school principal's discretion to use the cane.[368]

For child offenders, treatment is acceptable because immaturity is a handicap, diversion and other tactics meant to ensure that such children are not visited by the full wrath of the law are commendable; however, there must be a consequence for crime or misbehaviour (a sanction, without which the law is nothing but a huge joke), and for children, nothing serves that purpose better than the adequate number of strokes, depending on the seriousness of the offence and the age of the child. Jack Donelly said "it is impossible to have rights respected without a special force, which can justify the claims to such rights"[369] the same can easily be said of laws and rules; it is impossible to have laws obeyed without sanctions.

Children don't have to be whipped all the time, but they need to know that there is a possibility of the cane being used if they persist in their disobedience. To that extent, a blanket injunction against the use of corporal punishment, both by parents and teachers will be a grave mistake. It is simple logic

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[368] Speech by Mr Tharman Shanmugaratnam, acting Minister for Education, at the opening ceremony of the redeveloped campus of Presbyterian high school on Friday, 14th may 2004. Development of Character and Discipline. Available at http://www.moe.gov.sg/media/speech|. Accessed 18/7/2014.

[369] J Donelly, *Universal Human Rights in Theory and in Practice*(Ithaca and London: Cornel University Press,1989) p.9.

that a child that never learned respect for and obedience to his parents, respect for his teacher and the rights of others, will also find it very difficult to obey the law.[370]

Personally, I'm particularly moved by this coincidence (or is it a coincidence?) –provisions in Nigerian laws seen above prescribe corporal punishment for violent and sexual offences and by some twist of fate, ban on corporal punishment tends to unleash violent and sexual offences. I think this coincidence deserves a thorough looking into before we decide to follow suit with this wild obsession.

4.6.3 Right to Personal Liberty.

Section 35 provides that "every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law -

(a) in execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty;

(b) by reason of his failure to comply with the order of a court or in order to secure the fulfilment of any obligation imposed upon him by law;

(c) for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence;

(d) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;

(e) in the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community ; or

[370]R Enemchukwu, 'Restriction on Corporal punishment and the Best Interest of the Child' (2014) 6, *Unizik JPPL*, pp. 236-249.

(f) for the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto.

Proessor Akande defined "personal liberty" as: 'the right not to be subjected to imprisonment, arrest and any other physical coercion in any manner that does not admit of legal justification'[371]

In the words of Hon. Justice Oputa, personal liberty entails 'freedom from external coercion in the use of one's goods or facilities. It is the status of not being the property or chattel of another[372]

Neither the CRC nor the CRA made mention of personal liberty as regards the child's right. This may be because deprivation of personal liberty has always been taken to be synonymous to imprisonment, and both documents already provide for none-imprisonable status of the child. On the other hand, Section 35(d) of the Constitution would appear to entail that where it is necessary, for the purpose of a child's welfare or education, he can be deprived of his personal liberty. However if the fight to abolish status offences succeeds, it will totally nullify this provision in the Constitution. The issue of status offences is discussed further down in this chapter.

4.6.4 Right to Fair Hearing.

Section 36(1) provides that "in the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality. Subsection (4) provides for public trial within a reasonable time and by a court or tribunal in criminal cases. Yet where the interest of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of eighteenyears, the protection of the private lives of the parties and in some circumstances which the court may consider it necessary, the requirement of publicity may be dispensed with.

For the child, this right has two aspects as contained in article 12 of the CRC:

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[371] JO Akande, *Introduction to the Constitution of the Federal Republic of Nigeria*, (1999), Lagos: M.I.J. Professional Publishers Ltd. (2000) pg. 78.

[372] C.A. Oputa, Human Rights in the Political and Legal Culture of Nigeria; Second Idigbe Memorial Lecture, Lagos: Nigerian Law Publishers Ltd. (1988) p.95. cited in Nwazuoke Anthony's PhD Dissertation "The Impact of Contemporary International Instruments and Nigerian Legislations on Child Abuse and Exploitation" (2008) P. 285.

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."

Subsection 1 refers to the right of the child to be heard in every other circumstance other than in a judicial process. Interpreting this provision in General Comment No. 12 of 2009, the Committee had this to say: "The right of all children to be heard and taken seriously constitutes one of the fundamental values of the Convention. The Committee on the Rights of the Child has identified article 12 as one of the four general principles of the Convention, the others being the right to non-discrimination, the right to life and development, and the primary consideration of the child's best interests, which highlights the fact that this article establishes not only a right in itself, but should also be considered in the interpretation and implementation of all other rights."[373] The slogan of the general comment was THE RIGHT TO BE HEARD: A RIGHT OF THE INDIVIDUAL CHILD AND A RIGHT OF GROUPS OF CHILDREN, examples of groups of children being school children in a classroom, children in a neighbourhood.

The Convention recognizes the child as a subject of rights and article 12 manifests that the child holds rights which have an influence on her or his life, and not only rights derived from her or his vulnerability (protection) or dependency on adults (provision).[374] The Committee noted that children are largely discriminated against as individuals and as a group because they are not listened to and because less weight is attached to the views that they are able to express. In most societies, decisions are taken which have an impact on children's lives in courts, family, school, and other spheres, in

[373] CRC/C/GC/12, 20 JULY 2009, para 2. Available at www2. ohchr.org.docs.CCRC—GC-12. 16/03/16.
[374] ibid, para. 18.

which they are not consulted where adults would be. Children's rights are violated in justice systems around the world as a result.[375]

The Committee interpreted the clause “shall assure” as a legal term of special strength, which leaves no leeway for State parties’ discretion. Accordingly, States parties are under strict obligation to undertake appropriate measures to fully implement this right for all children. This obligation contains two elements in order to ensure that mechanisms are in place to solicit the views of the child in all matters affecting her or him and to give due weight to those views.[376]

The phrase “capable of forming his or her own views” should not be seen as a limitation, but rather as an obligation for States parties to assess the capacity of the child to form an autonomous opinion to the greatest extent possible. This means that States parties cannot begin with the assumption that a child is incapable of expressing her or his own views. On the contrary, States parties should presume that a child has the capacity to form her or his own views and recognize that she or he has the right to express them; it is not up to the child to first prove her or his capacity.[377]
The Committee emphasizes that article 12 imposes no age limit on the right of the child to express her or his views, and discourages States parties from introducing age limits either in law or in practice which would restrict the child’s right to be heard in all matters affecting her or him.[378] In this respect, the Committee underlines that the concept of the child as rights holder is “... anchored in the child’s daily life from the earliest stage”. Consequently, full implementation of article 12 requires recognition of, and respect for, non-verbal forms of communication including play, body language, facial expressions, and drawing and painting, through which very young children demonstrate understanding, choices and preferences. It is also not necessary that the child has comprehensive knowledge of all aspects of the matter affecting her or him, but that she or he has sufficient understanding to be capable of appropriately forming her or his own views on the matter.

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[375] CRIN, op cit, p. 10.
[376]*opcit*, para. 19.
[377] ibid, para. 20.
[378] ibid, para.21.

The child's right "to express those views freely" was interpreted to mean that the child can choose whether or not she or he wants to exercise her or his right to be heard. "Freely" also means that the child must not be manipulated or subjected to undue influence or pressure. "Freely" is further intrinsically related to the child's "own" perspective: the child has the right to express her or his own views and not the views of others. Provision is to be made for an environment where the child feels respected and secure enough to freely express his or her views.

By requiring that due weight be given in accordance with age and maturity, article 12 makes it clear that age alone cannot determine the significance of a child's views. Children's levels of understanding are not uniformly linked to their biological age. For this reason, the views of the child have to be assessed on a case-by-case examination.[379]

The highlights of the General Comment are:

The child should be encouraged to form a free view;[380]The views expressed by children should be considered in decision-making, policymaking and preparation of laws;[381]Laws should be made, or adopted, or revised by States in order to guarantee this right; The child should receive all necessary information and advice to make a decision in favour of her or his best interest.[382]

Paragraph 2 of article 12 provides for right of the child "to be heard in any judicial and administrative proceedings affecting the child."The Committee emphasizes that this provision applies to all relevant judicial proceedings affecting the child, without limitation, including, for example, separation of parents, custody, care and adoption, children in conflict with the law, child victims of physical or psychological violence, sexual abuse or other crimes, health care, social security, unaccompanied children, asylum-seeking and refugee children, and victims of armed conflict and other emergencies. Typical administrative proceedings include, for example, decisions about children's education, health, environment, living conditions, or

[379] ibid, para. 29.
[380] ibid, para. 11.
[381]ibid, para. 12.
[382] ibid, para. 16.

protection. Both kinds of proceedings may involve alternative dispute mechanisms such as mediation and arbitration.

The child can decide to be heard directly or through a representative who can be a parent, a lawyer or other person. The Committee is concerned about representation by parents because, according to them, there is often a conflict of interests between the child and the parent. Negative attitudes, which impede the full realization of the child's right to be heard should be combatted through public campaigns, including opinion leaders and the media, to change widespread customary conceptions of the child. The views of the Committee regarding the realisation of this right in different areas are as follows:

4.6.4.a In the family

The Committee portrays a family where children can freely express views and be taken seriously from the earliest ages as an important model, and a preparation for the child to exercise the right to be heard in the wider society. In order to support the development of parenting styles respecting the child's right to be heard, the Committee recommends that States parties promote parent education programmes, which build on existing positive behaviours and attitudes and disseminate information on the rights of children and parents enshrined in the Convention.[383] Such programmes need to address: The relationship of mutual respect between parents and children; the involvement of children in decision-making; the implication of giving due weight to the views of every family member; the understanding, promotion and respect for children's evolving capacities; ways of dealing with conflicting views within the family. The media should play a strong role in communicating to parents that their children's participation is of high value for the children themselves, their families and society.[384]

4.6.4.b In health care

[383] ibid, para. 92.
[384] ibid, para. 96.

The realization of the provisions of the Convention requires respect for the child's right to express his or her views and to participate in promoting the healthy development and well-being of children. This applies to individual health-care decisions, as well as to children's involvement in the development of health policy and services.[385]The Committee advocated the need for legislation or regulations to ensure that children have access to confidential medical counselling and advice without parental consent, irrespective of the child's age, where this is needed for the child's safety or well-being. Children may need such access, for example, where they are experiencing violence or abuse at home, or in need of reproductive health education or services, or in case of conflicts between parents and the child over access to health services. The right to counselling and advice is distinct from the right to give medical consent and should not be subject to any age limit.[386]Children's views should be sought on the planning and programming of services for their health and development and on all aspects of health provision.

4.6.4.c In Education and School

Respect for right of the child to be heard within education is fundamental to the realization of the right to education. The Committee notes with concern continuing authoritarianism, discrimination, disrespect and violence which characterize the reality of many schools and classrooms. Such environments are not conducive to the expression of children's views and the due weight to be given these views.[387]Children's participation is indispensable for the creation of a social climate in the classroom, which stimulates cooperation and mutual support needed for child-centred interactive learning. Giving children's views weight is particularly important in the elimination of discrimination, prevention of bullying and disciplinary measures. The Committee welcomes the expansion of peer education and peer counselling.

Steady participation of children in decision-making processes should be achieved through, inter alia, class councils, student councils and student representation on school boards and committees, where they can freely express their views on the development and implementation of school policies and

[385] ibid, para. 98.
[386] ibid, para. 101.
[387] ibid, para. 105.

codes of behaviour. These rights need to be enshrined in legislation, rather than relying on the goodwill of authorities, schools and head teachers to implement them. Beyond the school, States parties should consult children at the local and national levels on all aspects of education policy, including, inter alia, the strengthening of the child-friendly character of the educational system, informal and non-formal facilities of learning, which give children a "second chance", school curricula, teaching methods, school structures, standards, budgeting and child-protection systems. The Committee encourages States parties to support the development of independent student organizations, which can assist children in competently performing their participatory roles in the education system. In decisions about the transition to the next level of schools or choice of tracks or streams, the right of the child to be heard has to be assured as these decisions deeply affect the child's best interests. Such decisions must be subject to administrative or judicial review. Additionally, in disciplinary matters, the right of the child to be heard has to be fully respected. In particular, in the case of exclusion of a child from instruction or school, this decision must be subject to judicial review as it contradicts the child's right to education.[388]

What are those views of children that should be gravely considered and given due weight every minute of the day? I can guess. The six months old baby wants only to be carried, and only by his mother; the one year old doesn't want to stop sucking, and wants to continue relieving himself in his pampers; the two year old doesn't want to start school or be separated from his mother in any way; the four year old doesn't want vegetables in his food, he prefers ice cream and doughnut or only bread and tea. Should all this be considered with gravity and given due weight? The six year old wants to go home with a visitor he just met; the eight year old would rather not learn to wash his clothes and keep himself clean, why bother when mummy could just continue doing it?; The ten year old knows he is sick, but he just doesn't like medicine; the twelve year old would rather watch TV than do his homework or house chores, he prefers it even to a good night's sleep; The fourteen year old doesn't want to wake up in the morning, why can't he just sleep till seven or even eight? The sixteen year old doesn't like going to church anymore, he'd rather stay back and play video game or just 'chill out'

[388] ibid, paras. 110 – 113.

with his friends; why can't the seventeen year old keep late nights, party as the fancy takes him, sleep out when he feels like it? After all he is grown up. Children need to be taught to differentiate between what is proper and what is not. Most of the time, they have to be persuaded or forced to do the right thing, some need the cane sometimes in order to learn this. This is what we call training. The CRC would call it lack of respect for children's rights and violence against children. If children are not trained, how would they grow into reasonable adults? Would they wake up one day, realise they are now adults and automatically not only know what is right but also do it? I think not, in fact as a popular saying goes, 'bad habits die hard.' These children will most likely just carry their irresponsibility and immature behaviour into adulthood and I pity the future society which will be made up of a preponderance of these immature adults.

The Committee advocates encouragement of peer counselling; and I ask where one child gets enough wisdom to counsel another with, or is that meant to give children a formal forum for encouraging themselves in their stubbornness and disobedience to parents? Well I won't waste much breath on this one, I will only say what the Bible said: can the blind lead the blind, shall they not both fall into the ditch?[389]

It should be noted that the expressions "due weight", "evolving capacity", "parental guidance and direction" are only screen savers and will soon give way to the screen *simpliciter.* As we have seen, as far as the Committee is concerned, 'parental guidance and direction' is nothing more than counselling and advice which the child can accept or reject.

4.6.5 Right to Privacy

Section 37 of the 1999 Constitution provides that "the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications are guaranteed protection.

Article 16 of the CRC provides: "No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour or reputation. The child has the right to the protection of the law against such interference or attacks."

[389] The Christian Bible, King James Version, LUKE 6: 39.

Section 8 of the Child Rights Act took it further by providing

(1) Every child is entitled to his privacy, family life, home, correspondence, telephone conversation and telegraphic communications, except as provided in Subsection (3) of this section.

(2) No child shall be subjected to any interference with his right in Subsection (1) of this section, except as provided in Subsection (3) of this section.

(3) Nothing in the provision of Subsections (1) & (2) of this section shall affect the rights of parents and, where applicable, legal guardians, to exercise reasonable supervision and control over the conduct of their children and wards.

This provision has technically taken away the right of teachers to control children's use of phones in the classroom or in fact the school premises as a whole. Was that what the draftsman intended? With regard to parents' right, the term 'reasonable control' is so ambiguous it merits no mention. To UNICEF, the child's right to privacy means that the law should protect him from attacks against his way of life.[390]This means childhood is no longer a formation stage, if children already have a way of life then there is no need for correction or discipline.

The CRC as well as the Committee on the Rights of the Child appear to be so concerned about child pornography. Children indulge in this during their private time. Should parents be allowed to control the way children use their phones and internet?

4.6.5.a Child pornography

Child pornography has been defined as any visual depiction of sexually explicit conduct involving a minor. The vast majority of children who appear in child pornography have not been abducted or physically forced to participate. Most children get involved through the internet.

The UN Secretary General's Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography reported in December 2013 that the internet has been significantly misused as a tool for the dissemination of child pornography. She records that estimates indicate that the number of child

[390] Participation rights – Unicef. Available at www.unicef.org>crc>files>Participation. 30/06/16.

abuse images online runs into the millions and the number of individual children depicted is most likely in the tens of thousands.[391]

The widespread distribution of child pornography and its easy accessibility through the internet have been among the main issues of concern for the Committee on the Rights of the Child. The Committee considers that States parties and the international community should urgently address these issues, which are reaching very alarming levels. For this reason, in the reporting period, it has consistently expressed its concern over these issues and recommended to States parties to adopt adequate legislation to tackle child pornography, including by criminalizing its possession and by adopting specific legislation on the obligations of Internet service providers in relation to child pornography on the Internet.[392] Child pornography is a direct consequence of greater freedom for children.

Parents' role in monitoring and sensitising their children on the issue of online protection was brought to the fore recently by Cyber Guardian chief executive officer Max Thomas, who also provided insight on the technical solutions which the company has for child online protection. He shared that the company acknowledges that parents need to be in control and smarter than their children for online protection to be a success. How do parents control these equal and dignified children who are to be shown respect from the earliest stage?

4.6.6 Child's Right to Freedom of Thought, Conscience and Religion

By Section 38(1) of the 1999 constitution,

> "every person shall be entitled to freedom of thought,
>
> conscience and religion, including freedom to change
>
> his religion or belief, and freedom (either alone or in
>
> community with others, and in public or in private)

[391] Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography to the Human Rights Council of 23 December 2013 (A/HRC/25/45).

[392] See for instance, the concluding observations of the UN Committee on Turkey, (CRC/C/OPSC/TUR/CO/1) of June 2, 2006, paras. 17-19; on the Sudan (CRC/C/OPSC/SDN/CO/1) of June 8, 2007, paras. 23-24.

to manifest and propagate his religion or belief

in worship, teaching, practice and observance.[393]

'Every person' here would include a child of eight or even five. It is obvious the draftsman was not considering children when that section was penned; or he thought a reasonable man would know that section can't possibly apply to a child of ten or twelve.

Section 7 of the Child's Rights Act provides:

(1) Every child has the right to freedom of thought, conscience and religion.

(2) Parents and, where applicable, legal guardians shall provide guidance and direction in the exercise of these rights having regard to the evolving capacities and best interest of the child.

(3) The duty of parents and, where applicable legal guardians to provide guidance and direction in the enjoyment of the right in Subsection (1) of this section by their child or ward shall be respected by all persons, bodies, institutions and authorities.

The import of this provision is, a child has the right to change his religion or adopt a religion different from the one being practiced by his parents; he also has the right to practice said newfound religion in the privacy of his parents' home. So if the parents of a fifteen year old are Christians, the child can decide to adopt Islam in exercise of his fundamental right, then proceed to wash and bow in his father's sitting room. Is that freedom? or confusion? What about the parents' right to freedom of religion? Their right to their privacy? Their right not to be confronted with something they don't like? Possibly something they abhor, in their own very home? We must not forget that religion is one of the most important aspects of a man's life, many wars have been fought on this front. Can we in all seriousness and with good conscience bring it down to the home? Into the family?

[393] Constitution of the Federal Republic of Nigeria, 1990. CAP C38, LFN 2004.

A Nigerian writer said, “Those who think that there is no justification for these rights really need to think otherwise. For example, the right to freedom of thought, conscience and religion means that it is not in the interest of the child for parents to foist their ideas and religious idiosyncrasies on the child taking into cognisance the ever-evolving choices which the child may make in the future.”[394] He obviously subscribes to the liberationist idea of the child’s right to an open future. If the child is to be left blank to grow up and form his own ideas, then why does he go to school? The school system will still indoctrinate him, teach him all the theories and formulas he should be left to propagate and form by himself when he grows up. Or is it only parental “indoctrination” that must be stopped and resisted at all cost? If the child is left blank, what is the basis on which he will make all those future choices? What would be the basis for comparison of new ideas? What would be the foundation on which he would build?

The provision in the CRA is a replica of the one in the CRC,[395]giving parents and guardians the duty of providing guidance and direction. This duty would seem to have cured the obvious anomaly inherent in the provision; but---has it? The Committee interpreted ‘guidance and direction’ to mean ‘counselling and advice’ which the child has the liberty to accept or reject. If the child’s newfound religion leads him to believe he has to kill “unbelievers or heretics” to make heaven while the parents’ religious belief is one should forgive people that have wronged him. What possible guidance or direction can they give this child?

More importantly, how possible is it for these polar opposite groups to enjoy this religious freedom while cooped up in the same space? And especially while one is still largely dependent on the other for survival. Equal rights agitators appear to have provided the answer: give children the freedom to choose whether to leave the home or not. When children have been chased out of their homes, we can then raise another campaign on how to take care of street children. In a number of federal cases in the US, parents have sought to have their children exempted from certain school activities on the grounds that the children’s participation in those activities violates their right to freedom of religion. In *Mozert*

[394] C F Madu, What is a Child’s Right to Freedom. Avilable at http://www.voicesofyouth.org/en/posts/what-is-a-child-s-right-to-freedom- Accessed 21/10/15.
[395] Article 14, CRC.

v. Hawkin's County Public Schools[396], fundamentalist parents of several Tennessee public school children brought civil action against the school board for violating their constitutional right of freedom of religion. They claim that elementary school readers introduce ideas repugnant to their and their children's deeply held religious tenets. The readers in question depict children who question parental authority, discuss situation ethics, consider the tenability of divergent religious beliefs and advocate tolerance of opposing views---views to which the parents of the children strenuously object. So the parents brought a civil action against the school board for violating their constitutional right of freedom of religion. Those parents sought to prevent their children from exposure to beliefs or practices opposed to their (the parents') religious convictions; and invoked the constitutional protection of their right to religiously instruct their children. The district court upheld the parents' claim, but that decision was overturned by the appellate court and the U.S. Supreme Court refused to hear an appeal, effectively killing the parents' case.

The view of Judge Douglas in a similar case -*Wisconsin v. Yoder*[397] was:

> All parties seem to agree that parents have the right to control the religious upbringing of the child, yet also think it is important to determine if the children find the readers offensive. However, if parents have the right to control their children's religious beliefs, as the parents aver, then the children cannot have any rights in the matter which need to be or could be protected. In fact that children agree with their parents---if they indeed do---is legally irrelevant; even mentioning the children's agreement is a diversion from the presumed fundamental legal issue. On the other hand, if children have rights which merit mention in this legal proceedings, then

[396] (1987) 827 F. 2^{d} 1058.
[397] (1972) 406 U.S. 205.

> the parents cannot have a right to control the children's religious upbringing. If the children have rights, these may need protecting not only from state intrusion, but at least in some instances, from parental indoctrination. The parents cannot consistently argue for both rights; nor can the judge consistently recognise both.

The crux of the matter in this case appears to be the contention that the parents' right to guide and direct cannot stand side by side with the child's right and freedom. One must step down, and we all know which one. I am particularly baffled that the court did not at all consider the age of the children involved in this case. The court seemed to have completely forgotten the part about "having regard to the evolving capacities of the child". Elementary school children are mostly ten years old or below. What kind of freedom was the court thinking of when it decided that parents should not interfere in their lives? Such young children are very easily impressionable and one can imagine what message the children got out of the whole episode. Putting it in black and white, those children must have learned that they can do just about anything without fear since the State will surely intervene to ensure there are no repercussions from parents. Then they would go on to practice what they learned from those readers i.e. questioning parental authority at every conceivable turn. And at such young age? Totally incompatible with harmony in the family.

4.6.7 Right to Freedom of Expression.

By Section 39 (1), every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference. This does not however invalidate any law which is reasonably justifiable in a democratic society for the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts; or imposing restrictions upon persons holding office under the Government

of the Federation or of a State, members of the armed forces of the Federation or member of the Nigerian Police Force or other Government security services or agencies established by law.[398]

"The right to freedom of expression embodied in article 13 is often confused with article 12. However, while both articles are strongly linked, they do elaborate different rights. Freedom of expression relates to the right to hold and express opinions, and to seek and receive information through any media. It asserts the right of the child not to be restricted by the State party in the opinions she or he holds or expresses. As such, the obligation it imposes on States parties is to refrain from interference in the expression of those views, or in access to information, while protecting the right of access to means of communication and public dialogue. Article 12, however, relates to the right of expression of views specifically about matters which affect the child, and the right to be involved in actions and decisions that impact on her or his life."[399]

Nigeria was also indicted for not allowing children to speak at a public hearing on a bill to control the sale of tobacco in July 2009. The reason given was that children should be protected from discussions about tobacco. The Committee thinks that involving children in this kind of consultation allows children to contribute to their own protection.

Completely unrestrained freedom of expression however can infringe on the rights of others. In the South African Constitutional Court case of *Le Roux v Dey*[400] which is a case heralded as the first ever in which children were sued for damages for defamation for creating a manipulated image of the principal and vice principal of their school, by attaching to the heads of the authorities a photograph of two gay body builders in asexually compromising position, whilst superimposing the school badge on the hands and genitals of the bodies depicted. The image was circulated via mobile phones throughout the school. The vice principal, Dey pressed criminal charges (for the criminal offence of defamation – the children were diverted to perform community service); they were, in addition, disciplined for breaching school disciplinary codes by the school authority; and furthermore, sued under the civil law of defamation, on the grounds that the image depicted the vice principal as being

[399] Committee on the Rights of the Child General Comment no 12 paragraph 81.
[400] (2011) 3 SA 274 (CC).

of low moral character and in a homosexual relationship. The claim succeeded in both the high court and on appeal, albeit that the amount of damages awarded was decreased on appeal. On further appeal to the Constitutional Court of South Africa, it was contended that the vulnerability and immaturity of children was not catered for in the existing test for defamation, and it was further claimed that children had the right to experiment with satire as part of their right to freedom of expression. The majority decision in the Constitutional Court found that the respondent had been defamed by the image. Once established that defamatory materials had been published, the onus would then shift to the publisher to prove absence of wrongfulness or intent, it was held. The Court was mindful of the need to preserve school discipline and felt that once learners lose respect for their teachers, they could lose both credibility and control. The Court stated that "there was a line that cannot be crossed", alluding to the fact that a learner who damaged property belonging to a teacher, or attacked a teacher's bodily integrity, would not escape penalties.

Several judges of the Constitutional Court disagreed, as emerges from the minority judgements. Their reasons differ. Judge Yakoob, for instance, averred that the interpretation of the image as defamatory or not should in the first instance be undertaken from a vantage point rooted in children's rights. Hence, the fact that the image was crudely and clumsily produced, as well as the context of it having being effected in the school environment, would render it improbable that the reasonable viewer would have thought that the image had been produced by an adult– its childish origins would have been apparent. Second, noting that children traditionally poke fun at teachers and that their jokes are sometimes bland, crass and tasteless, the learned judge held that the Constitution nevertheless required that children's freedom of expression be afforded appropriate protection, to the full extent that this contributes to their best interests. The judge summarised that the object of attack was authority, and the institution of the school, rather than the person himself. This was, however, one of the minority judgements: the majority held the schoolboys liable, swayed by the objective construction of the image as derogatory and the need to maintain school discipline.

Commenting on the case and its construction of childhood, Sloth-Nielsen and Kruusel xxiv opined that the judges all recognise the evolving maturity of the teenager and the need to recognise increasing

levels of responsibility which go with it. However, it is argued that they disagree on the level of liability to be afforded a schoolboy prank, xxiv with the minority far more tolerant of teenage experimentation and exuberance (and poor judgement), and the majority emphasising the belittling and degrading nature of the image.

This diversity of opinion is typical of the sort of confusion that comes with equal rights for children. If the child is free to make his own choices and decisions like an adult, shouldn't he also be held responsible for the consequences of his choices like an adult? If he is denied caution and training as a child, his immaturity will continue into adulthood. Is he to be punished then? If yes, for what? For not being trained? If he was trained but failed to learn then there is moral justification for visiting him with the full consequences of his actions and he would deserve any punishment he gets for his actions. If however he is allowed to grow up without direction and training and is then treated as one who had training when he becomes an adult, I think that is more unjust than taking away some of his freedom while ensuring he gets trained.

In MEC for Education, KwaZulu-Natal v Pillay[401], the Constitutional Court upheld the right to freedom of expression of a student at Durban Girls High School to wear a gold nose stud to school, in keeping with her South Indian family traditions. This shows that expression is not just what someone says, but also what he does.

4.6.8 Right to Peaceful Assembly and Association.

Section 40 provides that every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests. Still the Independent National Electoral Commission has powers to deal with such a party in a certain manner if the party is not recognized by it.

This provision, which gives 'every person' the right to belong to any political party or trade union was obviously not made with children in sight. According to section 117(2) of the Constitution, only a person who has attained the age of eighteen is eligible to vote. Should a person who is not eligible to

[401] (2007) 1 SA 474 (CC).

vote be eligible to belong to a political party? I think not. It is important however, that this position be clearly stated.

Freedom of association for children is said to mean a right to meet in order to consult and react on issues which directly concern their rights and their wellbeing, but also on news headlines which interest them.[402] For UNICEF, it means that children have the right to join groups and organisations, as long as it does not stop other people from enjoying their rights.[403] The Committee is displeased that in countries where adults' freedom of association is well established, young people are barred or inhibited from using public spaces or from forming their own organisations simply because of their age. For instances, the Committee cited curfew laws which typically apply only to children. Such laws are said to not only stigmatize and criminalise young people, but also obstruct them from building relationships and getting involved in society. The Committee indicted:

a, the United Kingdom for a range of measures that have excluded young people from public spaces. Such measures include evening curfews, antisocial behaviour orders that restrict children's conduct and movement, and the proliferation of the 'mosquito' – an electronic devise heard only by children and young people which is used by small businesses to deter children from gathering in public places.

b, Japan, for a law which provided that children cannot join associations without permission from their parents until they turn 18.

c, Costa Rica, for article 18 of its Childhood and Adolescent Code which provides that children under 18 years old have the right to freedom of association, except for political or lucrative activities.

d, Jamaica; in 2008, children launched a peaceful protest against the poor condition of their community's roads, the country's Education Minister announced that they were in "breach of the peace". He then asked the police to investigate children's involvement in 'unlawful protests' and

[402]Humanium, Right to Freedom, Understanding Children's Right to Freedom. Available at humanium.org/en/fundamental-rights/freedom/. accessed 21/03/16.
[403] Participation rights – Unicef. Available at www.unicef.org>crc>files>Participation. 30/06/16.

warned educators who fail to "protect children from these illegal acts" that sanctions will be applied. This was viewed by the Committee as infringing on children's rights.[404]

If children are to join trade unions, political parties, associations and organizations, what time will they have to face their academics? To imbibe household duties? To prepare for their future? I consider most of the points of agitation in equal rights for children to be unacceptable, however canvassing for children to join public protests obviously trumps all.

4.6.9. Right to Freedom of Movement.

Section 41 (1) of the 1999 Constitution provides that every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit there from. Notwithstandingthe above provision, Section 41 (2) affirms any law which - imposes restrictions on the residence or movement of any person who has committed or is reasonably suspected to have committed a criminal offence in order to prevent him from leaving Nigeria; or provides for the removal of any person from Nigeria to any other country to be tried for any criminal offence; or undergo imprisonment outside Nigeria in execution of the sentence of a court of law in respect of a criminal offence of which he has been found guilty. This will obtain only if there is reciprocal agreement between Nigeria and such other country in relation to such matter.

Section 9 of the CRA provides:(1) every child is entitled to freedom of movement subject to parental control which is not harmful to the child

(2) Nothing is Subsection (1) of this section shall affect the right of a parent, and where applicable, a legal guardian or other appropriate authority to exercise control over the movement of the child in the interest of the education, safety and welfare of the child.

This exception is also under attack as we shall see. It is discussed under 'status offences'.

4.6.10 Right to Freedom from Discrimination.

[404] CRIN, Civil Rights: Freedom of Association and Children's Rights. Available at www.crin.org/en/library/publications/civil-rights-freedom-association-and -childrens-rights. 29/06/16.

Section 42 provides that "a citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person -

> (a) be subjected either expressly by, or in the practical application of any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions are not made subject.

Section 10 of the CRA provides: (1) a child shall not be subjected to any form of discrimination merely by reason of his belonging to a particular community or ethnic group or by reason of his race or origin, sex, religion or political opinion.

Article 2 of the CRC provides: States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's, or his or her parents' or legal guardian's race, colour, sex, language, religion, political opinion, national, ethnic or social origin, disability, birth or other status.

Every conceivable area of law is under a barrage of attacks because of this provision. Discrimination is the banner under which the battle rages. But as we have seen, the provision in the Constitution and the CRA made no mention of age and the provision in the CRC addressed discrimination among children; not as it concerns children and adults.

With regard to the constitution, what political opinion can a child hold? Children don't vote, neither do they belong to political parties. Obviously, this law doesn't fit because it was not made with children in mind.

4.7 Status Offences

The concept "Child Justice Administration" was born out of the understanding that children are different from adults and need special care and protection against the harshness of the normal court process. Offences committed by adults are called crimes while those committed by children are called delinquency. In addition to such conducts which constitute delinquency

for the juvenile and crime for the adult, there are other behaviours which do not constitute crime for the adult but which are defined as delinquency. Such behaviours are prohibited among juveniles because of their status as young persons and are generally known as status offences.[405]

A status offense is behaviour that is unlawful for children, even thoughthe same behaviour is legal for adults. What transforms the conduct into a public offense is the age of the actor. The most common status offenses are truancy, running away from home, incorrigibility (disobeyingparents), truancy, curfew violations, gang association, begging, anti-social behaviour and alcohol possession by minors.[406]Initially, the aim of status offences was to give courts broad powers to intervene in the lives of children who were considered wayward, neglected or endangered. Differences between criminal and noncriminal behaviour were largely overlooked as courts focused on the task of salvaging young lives from ruin. Because status offences are not technically criminal, many status offenders are not guaranteed legal representation and may not even have access to relatives or trusted adults. There have been public and professional disagreements about the proper role of juvenile courts in status offense cases. On one side of the debate are children's advocates and youth service providers who argue that status offenders should receive treatment for family problems and that criminal justice sanctions, particularly incarceration, are not appropriate. On the other side are frustrated parents who want juvenile courts to discipline defiant children, law enforcement officers who want to be able to detain truants and runaways, and juvenile court judges who want incarceration as a sanction to enforce their court orders.[407]

It appears however that the emerging trend is intent on abrogating status offences. According to the CYPA, a child can be brought before a Juvenile Court Judge for being beyond parental control, a child can also be detained in police custody for the single purpose of preventing such a child from associating with known criminals or prostitutes.[408] . It is obvious however, that the CRC subscribes to

[405] E.E Alamika and I.C Chukwuma, *Juvenile Justice Administration in Nigeria*: *Philosophy and Practice* (Lagos, Center for law Enforcement Education, 2001) p.12.
[406] D J Steinhart, Status Offences. in The Future of Children: The Juvenile Court. Vol. 6, No. 3 – Winter 1996. p 86.
[407] ibid at 90.
[408] CYPA, *op cit* S. 3(b).

no such purpose. Article 40(20)(a) of the CRC provides that no child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national law at the time they were committed. I will set down below the views of some international bodies as well as provisions of some international documents with regard to status offences.

United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines):

"In order to prevent further stigmatisation, victimisation and criminalisation of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalised if committed by an adult is not considered an offence or not penalised if committed by a young person."

General Comment No. 10 of the Committee on the Rights of the Child:

"It is quite common that criminal codes contain provisions criminalising behavioural problems of children, such as vagrancy, truancy, runaways and other acts, which often are the result of psychological or socioeconomic problems. It is particularly a matter of concern that girls and street children are often victims of this criminalisation. These acts, also known as Status Offences, are not considered to be an offence if committed by adults. Committee recommends that the States parties abolish the provisions on status offences in order to establish an equal treatment under the law for children and adults."[409]

UN World Report on Violence against Children:

"Many children are arrested and detained for offences that are only a crime when committed by children. These 'status offences' include truancy, running away from home, or being 'beyond parental control'" [410]

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[409] General Comment 10, para. 8.
[410] UN World Report on Violence against Children, p. 194.

"In the interests of reducing the numbers of children taken into custody, criminal codes and other legislation related to crime and policing need to decriminalise status offences and survival behaviours (such as begging, loitering, vagrancy) to remove the legal basis under which many children are taken into custody"[411]

"Governments should ensure that all forms of violent sentencing are prohibited for offences committed before the age of eighteen, including the death penalty, and all indeterminate and disproportionate sentences, including life imprisonment without parole and corporal punishment. Status offences (such as truancy), survival behaviours (such as begging, selling sex, scavenging, loitering or vagrancy), victimisation connected with trafficking or criminal exploitation, and anti-social or unruly behaviour should be decriminalised"[412]

Children's Rights International Network (CRIN) holds that Status offence laws tend to have a disproportionate impact on children with the lowest levels of resources and the least available support from home or family environments. Because police are given great discretion to question and investigate children's activities, especially when they are without adult supervision, disadvantaged and street children are targeted because they are forced to spend more time in public spaces and face entrenched cultural biases that equate poverty with criminality.

Most importantly, regardless of their backgrounds or situations at home, status offences are a violation of all children's rights. They violate children's rights because they target what adults consider to be problematic behaviour in children but acceptable once above the age of majority. Thus, limits are placed on children's behaviour that are not tolerated by adults. The United Nations Guidelines for the Prevention of Juvenile Delinquency have spoken out against these limits, stating that status offences stigmatise, victimise, and criminalise young people. These guidelines, the Committee on the Rights of the Child, and the United Nations World Report on Violence Against Children have all called for the abolition of status offences to achieve equal treatment for children and adults.

[411] ibid, p. 204.
[412] ibid, 218-219.

CRIN believes that status offences are a form of age discrimination and should be eliminated. Status offences are not only unfair, they curtail the freedom children need to grow and develop. They prevent children from becoming integrated into adult society. Ultimately, then, status offences not only fail to respect children's rights, they are in conflict with children's best interests. With this in mind, it is time to call on every country to abolish status offences and protect children from harmful age discrimination. Curfew laws typically restrict children to their homes during night-time hours. Although they vary widely across jurisdictions with respect to times, targeted locations, and punishment for violations, curfews of any nature violate children's right to associate with one another. Curfews remove all children within a town or city's boundaries from the streets, banning them from public spaces regardless of their circumstances. Some curfew laws exempt children attending events sponsored by schools, religious organisations, or government bodies; however, these exemptions are inconsistent and far from universal. Moreover, adults are not subject to similar restrictions on movement and need not prove the worthiness of their activity to avoid criminal liability. Curfews confine children to their homes not because they threaten public safety, but simply because they are below the age of majority. Essentially, curfews punish every child out of adults' fear and assumption that children allowed to gather freely in evening and early morning hours will inevitably resort to criminal activity. Not only is this unfair, it is untrue. The vast majority of children are law-abiding, and even for those few who might contemplate unlawful behaviour, there is little evidence that curfews have any meaningful effect on crime rates. Because curfews prevent children from interacting with each other and their environments in meaningful ways, they do not respect children's rights and freedoms and should be abolished.

CRIN made a compilation of laws and policies made and passed by different countries and cities of the world at different times, in order to portray the cruelty mated out to children with regard to status offences. I will cite some of these laws here:

Australia: Queensland town introduces child curfew[413]

[413] ABC news, August. 16, 2007.

“A central Queensland Indigenous community is taking tough steps to curb juvenile crime, introducing a curfew on its young residents. Locals have had enough of unruly behaviour in the small town of Woorabinda...Under the plan, children under 16 will be banned from the streets from 6:00pm until 6:00am, unless accompanied by an adult. Woorabinda Mayor Laurence Weazel says the hardline approach also sends a clear message to parents. "The curfew

Belize: Beginning the night of Friday July thirteenth 2005, Belize City once again imposed a curfew for children. Under the terms of the city regulations, no child under the age of sixteen will be allowed to be in a street, park, or other public place between the hours of eight p.m. and six a.m. without an adult present. The goal is to protect children from criminal activities. Parents are urged to keep their children well supervised.

Colombia: Curfews were initially introduced in 2001 to curb the sexual exploitation of children in Bogota, but since that time have expanded to address concerns about children's potentially offending behaviour. The mayor of Bogota has imposed a night-time curfew on minors to clamp down on child prostitution and reduce crime rates in the Colombian capital. Under the new rules, any children under the age of 16 caught out on the streets between 11pm and 5am will be arrested by police. Any bars selling alcohol to minors will be fined over $1,000 for every child served.... [Bogota Mayor Antanas Mockus] said the curfew, which is timed to coincide with seasonal festivities, aims to reduce violence and drug abuse, and other crimes committed both by and against young people. In response to criticisms of the curfew, Mr Mockus said, 'I have received an avalanche of accusations saying these and other measures restrict people's freedoms, but I would prefer people to look on this from a different, more positive perspective.

Japan: Osaka prefecture in 2006 imposed a ban on youths under 16 going alone to any establishment with a karaoke machine after 7:00pm in an effort to promote "sound nightlife for young people". The region has Japan's most bountiful entertainment after Tokyo. Karaoke operators who violate the regulation and allow children to use their services after 7:00pm were to be fined.

United States: Richmond fights truancy with daytime curfew, April 11, 2010

On any given school day, an estimated 450 Richmond teenagers are truant, hanging out on the streets, at parks, in shopping malls, or worse, committing or falling victim to crime. State law says they have to be in school. But enforcement has meant dragging the students back to class or to the police station, where officers might have to wait with them - often for hours - until their parents pick them up....But with truancy rates double the state-wide average and with residential burglary rates committed by juveniles too high, Richmond Police Chief Chris Magnus decided to take an unusual step. He proposed a daytime curfew - one that went from 9 a.m. to 2 p.m. every school day. The City Council approved his idea unanimously, making it a municipal offense for a juvenile to be without a parent or guardian on city streets or in any public place when school is in session. Any minor found violating the new law will risk receiving a citation, a trip to juvenile traffic court and a possible fine. But the daytime curfew wasn't enough. Magnus believed businesses had to step up, too. So, the law stipulates that any employee who knowingly allows an unaccompanied minor to linger on the premises during curfew hours could be cited with a misdemeanour.

South Korea: The government, in 2010 introduced policies aimed at curbing the amount of time children spend playing online games. The first involves barring online gaming access to young people of school age between 12am (midnight) and 8am. The other policy suggests slowing down people's internet connections after they have been logged on to certain games for a long period of time. The Culture Ministry is calling on games providers to implement the plans. It is asking the companies to monitor the national identity numbers of their players, which includes the age of the individual. Parents can also choose to be notified if their identity number is used online...A total of 19 role playing games will eventually be included - a huge proportion of the online gaming market in the country."

Bahrain: Committee report of 2001 kicks against this law "In cases of exposure to delinquency, such as begging, peddling, truancy from educational institutions and lack of parental control, the sociologist at the Office of the Women's Police serves notice, in writing, on the guardian to provide the juvenile with the care and supervision needed to ensure that the juvenile is never again found in a

situation that exposes him or her to the risk of delinquency. A copy of the said notice is sent to the Juvenile Welfare Unit at the Ministry of Labour and Social Affairs, the staff of which monitor the juvenile's welfare and endeavour to overcome any obstacles impeding the rectification of his or her conduct. If the juvenile is again found to be at risk of delinquency six months after the notice was served, the juvenile's case is once again referred to the Women's Police, who takes the necessary measures to bring the matter, through the Juvenile Social Welfare Unit, to the attention of the juvenile court. The situations that entail a risk of delinquency include: (i) Frequentation of delinquents, suspected delinquents or persons renowned for their bad conduct; (ii) Engagement in, or assisting persons engaged in, acts associated with prostitution, vice, moral corruption, gambling or narcotic drugs, etc.; (iii) Lack of a legitimate livelihood or reliable provider.

Nigeria: Reports of large numbers of children being detained for being "beyond parental control" are common in the press and the UN human rights system alike. The Committee remains gravely concerned that the juvenile justice system in the State party, in particular, the Shariah court system, does not conform to international norms and standards. Some children are detained for 'status offences' such as vagrancy, truancy or wandering, or at therequest of parents for 'stubbornness or for being beyond parental control'.

What I see in the preceding reports is an attempt by governments to curb the excesses of children and bring them under hand in order to promote the best interest of the child as well as protect the society. To the Committee however, all such moves are unacceptable. The Committee seem to be particularly irked by the detention of young people over the issue of disobedience to parents.

4.7.a The American Experience

Child protection law is highly developed in the USA. It has also had its own traumas. Just like in Nigeria, child protection law in America is a state affair. With the passage of time, American law as well as courts began to recognise more autonomy for children. As early as 1954, an American court

granted children the status of rights-bearing persons in the case of Brown v Board of Education.[414] The case of In *re Gault*[415] reinstituted certain procedural protections for children in delinquency proceedings. In Tinker v Des Moines Independent Community School District,[416] the court limited school prohibitions of children's political expression. Again in *Planned Parenthood of Central Missouri v Danforth*,[417] the court recognised a girl's right to choose abortion without consulting her parents. The U.S. News & World Report for instance announced in 1974 that "as children get lawyers, lobbyists and political sympathizers, the growing trend is to view them as at least semi-independent persons with their own rights – not automatically subservient to parental or official authority." The article pointed out that compulsory school attendance, juvenile courts and even child-labour laws have deprived children of rights they once enjoyed.[418]

In 1974, the federal Juvenile Justice and Delinquency Prevention Act (JJDPA) was adopted. Its passage was preceded by months of well-publicized testimony in congressional hearings. In these hearings, a broad coalition of youth service workers, child development specialists, and community groups attacked state methods of handling noncriminal minors. States were criticized for excessive incarceration of disobedient or runaway children, for punishing children when others in the family were also to blame for the behaviour, and for abandoning a focus on treatment. The JJDPA that emerged from these hearings contained a strong federal policy against placing noncriminal minors in secure institutions. The JJDPA also encouraged the referral of status offenders to counselling, treatment, and other programs in nonsecure (unlocked) environments. These status offender provisions became known as the "deinstitutionalization" mandate of the JJDPA and states which adopt it received funding from the federal government. Its import was that status offenders or noncriminal minors could no longer be locked in institutions and that they would instead be referred to an array of community services. By 1980, it was clear that states were unable to deliver the full promise of status offender reforms because they were not dedicating enough resources to meet the needs of runaways, truants, and other youths who were no longer subject to secure detention.

[414](1954) 347 U.S. 483.
[415](1967) 387 U.S. 1.
[416](1969) 393 U.S. 503.
[417](1976) 428 U.S. 52.
[418] U.S. News & World Report, cited in Gross and Gross, Children's Rights Movement, pp. 207-212.

Complaints came from angry parents and frustrated law enforcement officers that runaway children, emboldened by knowing they could not be locked up, were living on the streets under dangerous conditions and beyond the reach of the justice system. President Ronald Reagan's appointee to head the Office of Juvenile Justice and Delinquency Prevention asserted in 1984 that the deinstitutionalization movement had emancipated children to live "wherever and however they choose" and had released them from reform schools to "the exploitation of the streets."[419]

Claims began to arise to the import that deinstitutionalization has not worked and that runaway and truant youths need to be more tightly controlled for their own protection. The challenge is also prompted by public concern about violent juvenile crime and the perceived need for tough responses to all forms of youthful misbehaviour. When juvenile violent crime rates began to rise sharply in the 1980s, creating widespread fear and concern about youth violence, new attention was riveted on runaways, truants, and disobedient children. Policymakers began to hear calls for a reassertion of public control over these noncriminal youths. The federal policy against secure detention of status offenders became increasingly vulnerable.[420]

In 1993 in Washington State, these undercurrents of dissatisfaction merged with public reaction to the deaths of three runaway children to produce a revolt against the policy of deinstitutionalization. The most widely publicized incident was the murder of a 13-year-old girl named Rebecca Hedman, a repeat runaway who was working as a prostitute to fund her addiction to crack cocaine. Rebbeca walked out of the drug treatment center where her parents had dropped her off. She called them on phone, telling them that she was on the streets and not to try and find her this time. The institution didn't even call Becca's parents when she left because state law at the time didn't allow parents to admit their children to drug treatment without the child's consent unless the child was 12 or younger. One month after Rebecca called her parents on phone, she was dead, beaten to death by a man who had paid her $50 for a sexual encounter. Lamenting her mother said " we couldn't stop her from running away, we had no parenting rights" Urged by Rebecca's parents and with passionate support

[419] I Schwartz, *Justice for Juveniles, Rethinking the Best Interest of the Child*, (Lexington, MA: D.C Heath 1989)p.119.
[420] ibid, at 91.

from parent lobbying groups, Tacoma lawmaker Mike Carrell introduced what came to be known as the "Becca Bill" in Washington State. The Becca Bill was a broad crackdown on all types of status offenses. As sent to the governor by the Washington legislature early in 1995, it provided:

five days of detention for apprehended runaways in a secure crisis residential center; up to six months of secure detention for youths defined as habitual runaways; suspension of driving privileges for truants and habitual runaways; and a process for committing children without their consent to residential drug treatment and mental health facilities. Governor Mike Lowry

signed the Becca Bill in May 1995 but vetoed, among other things, the sections on long-term detention of habitual runaways and suspension of driver's licenses. The law allows parents to use legal petitions called ARY (At Risk Youth) to obtain court orders that require children to participate in social services, to attend schools, and to obey their guardians. Kids who disobey these court orders can be found in contempt and jailed.[421] The law also established that anyone providing shelter to a runaway must notify police or the child's parents.

As can be expected, the Becca Bill has also come under attack. According to a 2008 publication of the American Bar Association, detaining youth status offenders increase the possibility of their engaging in antisocial behaviour, while also limiting their access to helpful interventions they might receive at home or out in the community. However as far as Senator Hargrove is concerned, what matters is that adult and youth crime rates have declined in the state since 1995. He attributes this development to the Becca Bill, which he said has helped keep truants and runaways from becoming adult criminals. David Edwards, a Grey Harbour County Superior Court judge, also said he believes his use of detention for truants and at risk kids is part of why juvenile crime rates in the county have dropped.[422]

Other states have bridled at the status offender deinstitutionalization mandate of the JJDPA. For example in 1996, the Iowa legislature passed a resolution asking the federal government to repeal the JJDPA provisions prohibiting detention of status offenders. In the same year, the California legislature

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[421] The "Becca Bill" 20 years later: How Washington's Truancy Laws Negatively Impact Children. Available at www.statusoffencereform.org/blog/guest-blog/the-becca-bill. Accessed 8/7/16.
[422] ibid.

considered a bill that would allow six months of secure detention for status offenders beginning upon apprehension. In 1996 congressional hearings convened by the Senate Judiciary Subcommittee on Youth Violence, state officials from Iowa, Oklahoma, Virginia, and Wyoming asked Congress to weaken or remove the status offender mandate and allow states broader discretion to spend JJDPA funds without federal controls.

4.8Child's Rights and the Concept of Equality

A prominent jurist postulated that:

"…equality examined from human rights perspectives, does not actually mean treating everyone in the same manner. This is because it is a truism that when people are unequally placed, treating them in the same manner in reality breeds and perpetuates injustice, instead of curing injustice. … Violations of rights and their solutions cannot be addressed without recognition of the unequal positions of men and women (and children)[423] in the society."[424]

Concurring with the above postulation and having regard to the established immaturity of children, to treat children in a different way from the way adults are treated does not seem to the researcher as unequal treatment. Certain rights and corresponding responsibilities have always been denied children, having regard to their immature age and concomitant inability to make the right decision in serious matters. Instances are –

- the Nigerian Constitution does not allow a person under the age of eighteen to exercise

his civil right in the issue of voting.[425]

- the right to fair hearing entails that an adult charged with a criminal case has the right to

be tried by a competent court in public[426] while it is the right of children charged with

[423] My addition.
[424] J. Mertus, et al, *Local Action/Global Change,*(UNIFEM and the Centre for Women's Global Leadership, 2008).
[425]1999 Constitution, S.117 (2).
[426]*ibid* S. 36 (4).

criminal offences to be tried in private.

No true equality can be achieved by treating children like adults. No matter the quantity of rights heaped on their shoulders, children will always be children; immature, foolish, ignorant of societal values, irresponsible, not knowing what is best for them and severely in need of direction.

A Senior Advocate of Nigeria had this to say about children and rights

> It is commonly believed that a parent could allow his child to enjoy certain rights and may decide to withhold others. Even these rights that were enjoyed by children were determined by the usefulness of the child to both or either parent(s) at the farm or roadside market. Utility was the scale of measurement…. In some cases, a child could be refused his meal if he refuses to work on the farm with his parents. In the same vein rights are denied a child for refusal to run errands or carry out menial jobs.[427]

According to the learned SAN, such reaction is cruelty and every child has a right to be protected from such. He concluded by asserting "children are said to be the leaders of tomorrow, any society that wants good leaders that would lead the country to the new millennium must take good care of the children in the society."[428] The researcher quite disagrees with the postulations of the learned SAN. The children of today will definitely become the leaders of tomorrow, whether they will become "good leaders" will depend heavily on what they are able to learn today, the level of discipline they are able to acquire. A child that will survive tomorrow has to learn today like the biblical Moses to work with what he has in his hands. It should be expected that a child that grows up, seeing his meal

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[427] Y O Ali, "*Legal Support for the Rights of a Child in Nigeria*." Available at http://www.yusufali.net/publications.htm,P.1.
[428] *ibid* at p.4.

and his school fees coming from the farm or the roadside market would try to throw his bit into the endeavor. Even the CRA makes it the duty of a child to obey his parents, though it prescribes no consequence for a child's disregard of such duty. It is hard to believe that normal parents want to be cruel to their children. When they withhold or deny certain things, they are trying the best they could to instill discipline and prepare their children for the future.

CHAPTER FIVE

5.1 CONCLUSION

Should children have equal rights with adults?

There is a reason the drafters of human rights documents didn't think it very pertinent to elaborately state or provide for children to be specifically granted these rights and I dare to venture a guess. The drafters knew that there was no need. They knew that when a group, community or family is protected from marginalization or discrimination, the children of such group or community are automatically protected. They knew the adults of such group would ensure their children's welfare. A very reasonable conclusion, unless of course the child is being protected from the adults in his family.

Children differ from adults in their physical and psychological developments, and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of children in conflict with the law. These and other differences are the reasons for a separate juvenile justice system and require a different treatment of children. The protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice (repression/retribution) must give way to rehabilitation and restorative justice objectives in dealing with child offenders.

The view that protective rights are oppressive to children is far from the truth. Even quite young children can and do determine (within reasonable limits) such things as what to wear, how to spend their free time, and who their friends are; the scope of their choices should also expand with age. It seems clear however, that certain other choices should not be permitted. For instance, it would be totally wrong and unwise to let a child refuse to go to school, skip homework, or regularly wriggle out of household chores. Such obviously natural impulses must be controlled and more desirable traits consciously substituted for them, these things don't happen on their own. Abandoning children to their own devices will certainly create a jungle environment, therefore we cannot afford to let the chips fall where they may. Sadly, children are coming to identify with the erroneous postulation in Disney's "Frozen" that freedom equates with 'no right, no wrong and no rules'. If this was to become the trend, then I wonder what position the law will take in the society.Given the desirability of helping

children to develop self-control and enabling virtues, and the likelihood that it is easier for them to do so when they are young and have help, there is at least a prima facie case for setting limits for children.

Equal rights promise children the power to ensure that their basic needs are met without direct reliance on the good graces of adults. What it delivers instead, is a weapon that in the short term helps children to get their own way. With a great deal of freedom, little guidance from adults and an environment studded with tempting diversions, children will have great difficulty maturing and those difficulties will often continue on into adult life. What kind of society would these people build?

Liberation would place a new emphasis on the importance of childhood as a time of life to be enjoyed at the expense of preparation for adult life; but the very fact of childhood is rooted in the idea of a learning system. There must be a time of training during which the learner must surrender some rights otherwise the exercise will become futile, nothing learned, ample time wasted.With equal rights, children can choose whether to go to school or not, whether to be treated for serious ailments or not, to eat what they like whether it is healthy or not, to watch what they want whether it is damaging to them or not, associate with any criminal or prostitute they deem fit. There will be no need for them to obey their parents, no need to respect anybody. Is it possible they can find the need to obey the law when they have grown up? I think not.Equal rights will take children out of homes and leave them out in the streets; it will give children already made criminal gangs and an easy fall into vice and crime. In fact, if equal rights for children succeed, there is no hope of a better future.

My experience and understanding from stories of adults in this part of the world is that, after the initial spate of teenage rebellion, young people begin to settle down and to realise with time and acquired experience that parents insisted on the course of action they did with very good reasons. They begin to appreciate their parents more for not allowing them to make what would have been debilitating and perhaps irretrievable mistakes. To realise that even where the choice of parents proved to be the wrong one, parents acted with love and best interest of their children at heart. When they become parents, their greatest desire is to give back to their children, what their parents gave to

them; to impart in their children, the values their parents instilled in them. People that were allowed to always have their way as children and therefore made more mistakes have been known to despise their parents for not being strong enough to insist that they did the right thing.

Those parents who declared that they have no issues with having their children live as free as they are actually taking the coward's way out. They are actually trying to avoid the weight of responsibility, the pain of love and sacrifice, the call of duty; they are in essence, trying to save their own skin.

The perceived success of the plan to emancipate women is in my own estimation, nothing to gloat over. The possibility of it, the success of it is not the issue; the issue is: at what cost? That it became necessary at all is of course a testament to the failure of men as head and protector and provider for their families, they used their power instead to oppress and suppress and live carelessly and show that they could. And the women, striving to escape the suppression and subordination, neglected to consult with moderation. Leaving the home front porous and children vulnerable, leaving children to strangers, they ruthlessly pursued careers and outside interests just to prove that they can as well. The result is a debacle of the values for which the family unit has been known.

Children have been known to be forgotten in school because mummy was very busy, pursuing something very important so she told daddy to get the children. Unfortunately, daddy was even busier, pursuing something even more important. Twenty years ago, primary school pupils were dismissed by 1.30 pm and secondary school students by 2.30 pm. Today, schools dismiss by 4.00 or 4.30 pm. It became necessary so as to give mummy and daddy more time to finish their business of the day. Even that time is still proving to be inadequate. Some children rarely see their parents, they had left for work before the children wake up and the children are sleeping by the time they come home. So why not just give children their independence, to cater for themselves the much they can. Of course wolfs are gathering to get their own share of the carnage. The family is losing its appeal and children are fast losing the natural touch. There is blood in the water and the sharks are circling. The situation is a considerable mess, and we all contributed to it. Be that as it may, I think it is wisdom still, to try and salvage the little we have left.

A child may say, "I have a right to do what I want with my own body and life" the consequences however, belie this position. A child's irresponsibility may well boomerang on parents' themselves. Who spend a lifetime helping instead of being helped by a son or daughter whose lack of employment skills was caused by failure to take school seriously? What about those mothers who wind up taking care of their daughters and their children? Do we want to reduce parents' power to protect themselves from this kind of foreseeable consequence of irresponsible behavior on their children's part? The answer that parents can simply ignore their offspring's needs does not satisfy: it overlooks the bonds of love and caring we hope are inherent in such relationships.

The United Nations as an organization is a backdoor operator. It doesn't engage in confrontations with governments, it doesn't engage in frontal attacks against the laws of nations, it only makes its own for the nations. The UN works through, welfares, Non-Governmental Organizations, agencies, little groups and individuals. These bodies are equipped to reach the grassroots easily and sow the seeds of UN intentions.

As we saw in chapter two, there are concrete reasons America refused to ratify the CRC. Two of those reasons are as applicable to us as a nation that I believe we should be bothered also. One, America understood the potential of the UNCRC to cause major problems in the family, its potential to disrupt parents-child relationship. That potential is obviously on the way to being realized and we should not be in the center when a disaster of that magnitude hits. Secondly, the UN is an organization that is not content to let a nation go home with a ratified treaty and apply it as it sees best. The UN comes home with you and applies the treaty for you through less than overboard means. Bearing that in mind, we cannot rely on our CRA because the UN will bypass the contents of the CRA, and apply not only the written contents of the CRC but also the undisclosed terms.

In the light of the above, the question we need to answer now is not what is written in the CRA, it is rather what the UN views and convictions on the issue of equal rights for children are. And according to this work, the answer is staring us in the face. Some proponents of equal rights for children at least

agree that there is a level of readiness a child should attain to qualify for equal rights, the UN on the other hand holds that everybody is born having that readiness.

Some would argue that individual parents could still instill the right values into their children regardless of policy. These children go to school, they interact with other children. the more children expect to run their own life, the more difficult it would be for parents to persuade them to practice appropriate self-control; and since as children grow older, more and more interactions must be based on persuasion rather than power, the baseline of expectation about compliance with parental preferences would drop.

Mill is not merely concerned with freedom of belief; he is equally concerned with freedom of action, with the exercise of one's deeply held beliefs. It is better in his view for someone to live on her own rights – even if she is wrong – than to engage in the "ape-like quality of imitation". A person's life is her own even if it is, from some external perspective, misguided. She will be better off making her own "mistakes" than in mimicking other people's "correct" views. She has a better chance of discovering what really is best for her.[429]Furthermore, if her life is self-directed, she can see and learn from her mistakes; something she cannot do if she merely follows someone else's life plan. This may seem reasonable but some mistakes have such crippling consequences that they leave no room for any further life plan.Experience is very important but it will be foolishness for each generation to learn by its own experience or it would become an eternal rigmarole, no progress. We move forward when we build on the experience of preceding generations. But how do we gain from their experience if we are so equal with them that they are not allowed to teach us anything. No teacher was born with the knowledge they impart, it was gathered in the course of passage of time, a period of training and learning and a lot of experience.

The experiences I had in China got me thinking: we were in a church vicinity on a Saturday morning and saw about eight couples who just wedded, taking pictures. Except for the photographers, not a single soul was in sight to witness the happy moment with these very young people. Throughout the

[429]Mill, J.S., On Liberty (1859)*TheUtilitarians*, New York: Dolphin, 1961.

day we met more of them, some walking down the street hand in hand with the lady carrying the train of her wedding gown. I wondered at the absurd occurrence and was forced to ask questions of the Chinese people here and this is the answer I got “of course your parents can come if they live around and have the time, otherwise it is basically your business”

A few days later, there was news of a student who jumped down from the top of a building and died. I wondered what could be the problem of a 22 year old girl in the university, studying with a scholarship with a standing job offer for when she graduates. Well I was baffled by the answer I got: her boyfriend left her and broke her heart. We were told that such occurrences are frequent and often triggered by flimsy excuses. For instance the incidence of a boy whose employer delayed his salary for two weeks. Incredible. People get owed five months’ salary here in Nigeria and still go to work. I don’t know but could this be the result of too much freedom? Eat alone, die alone, enjoy alone, and mourn alone? Policy has not succeeded in bringing these suggestions into laws yet but I know for certain that there is more freedom and equality for children in these developed nations of the world than there is in developing nations like Nigeria.

Child rights laws in America are as advanced or even more advanced than the provisions of the CRC in many aspects. Children have more freedom and are more independent of parents’ control. The result is a proliferation of children who leave home and live in the streets, children who steal and pilfer to feed themselves, children who indulge in drugs and unprotected sex at will, carelessly bringing children into the world, littering cities with street children. Children without care or consideration for others;

While we spend all the time trying to hear what children have to say, weighing their speech in balances and trying to carry out their instructions, which time do we spend in teaching them societal values?, the way things are done or are they to learn their own ways and continue in them? When we succeed in subjugating the world unto children who have not been taught, who lack simple care and consideration for fellow humans, then we will enter the era of the reign of children, a reign of terror, and a terrible dictatorship. Fulfilling the bible prophesy: “as for my people, children are their

oppressors, and women rule over them. O my people, they which lead thee cause thee to err, and destroy the way of thy paths."[430]

As we saw in chapter two, rights are far from absolute, neither are they inalienable. Notwithstanding the level and kind of rights possessed by adults, they still get told what to do by the law; they either abide by these rules or face consequences. I believe they are able to abide by these rules because they already have instilled in them the idea of limits. If we fail or neglect to instil the same value in our children, we face a future filled with adults who have never been told what to do in their life, who cannot handle being told what to do, and who in consequence are helpless to do otherwise than break the law at every turn; a horrible future to envisage.

Liberationists argue that some adults are as irrational as children, I consider those adults to be the failure rate, the exception to the rule, the example of what will happen if children are not taken in hand. Let us remember that policies have never been based on exceptions.

All statements in General Comments are as good as rules, they will transform into practice and procedures with the help of NGOs working with our children, family court psychologists, child welfare services, local child rights committees, UN agenciesetc, all in the pay of the UN, and all specially trained to carry out the will of the UN; it's only a matter of time. Except we stand and say no, to this ploy to destroy our children and consequently, the future. The easiest way to destroy a specie is to tamper with the seed. Children are the seed of mankind, they need our protection.

Liberationists kick at protective rights and advocate that children should have all and only the rights that adults have. I think this stance is better because it will take only little time to show how untenable, impossible and unlikely this view is. TheCommittee's stance on the CRC however is a more dangerous take. This is because while the committee applies all the rights of adults to children, it also retains children's rights which adults don't have. For instance adults don't have the right to be taken care of by anybody. One would argue that they once had that right, when they were children.

[430]Isaiah 3: 12, King James Version.

And I will argue that children will soon have adult rights when they become adults. Again, a child cannot be sentenced to capital punishment or a term of imprisonment regardless of the enormity of his offence, adults don't have that privilege.

Protecting children from natural consequences of their actions teaches them to be irresponsible. Even if the full wrath of the law should not fall upon them as being learners, there must be a consequence. Without consequence, the law will be only a very huge joke. The cane at least should not be thrown away.

It is discovered that most of the provisions in chapter IV the 1999 constitution contain salient exceptions where children are concerned. I believe this is because the drafters of the constitution supposed that any reasonable man would know that such exceptions should apply. Well with changing times and trends, such supposition has become a gaping lacuna through which many good intentions and many a child could fall.

Finally section 43 of the Convention on the Rights of the Child vests on the Committee on the Rights of the Child, the authority to interpret the provisions of the CRC. That provision also gives the Committee, the duty of ensuring compliance with the provisions of the CRC. One might argue that the provisions of the CRC, or the interpretations thereof are not directly our concern. However, our own CRA in section 265 gives the national and state Committeesthe duty to ensure observance of not only the provisions of the CRA, but also the provisions of the CRC. The logical conclusion to be drawn from the above is that in adjudicating on children's issues, a family court judge is duty bound to consult with the interpretations given by the Committee. Therefore the provisions of the CRC and the interpretations of the Committee are very much our business.

5.2 RECOMMENDATIONS

The researcher acknowledges the fact that the problem with equal rights for childrenlies not in extending fundamental rights to children but in the CRC's and the Committee's interpretation and contortion of these provisions. It is therefore recommended:

1. In the face of recent and very untoward developments, it has become very obvious that generalization and a presumption of reasonableness will no longer suffice. It becomes very pertinent therefore that the Constitution of the Federal Republic of Nigeria be amended to plug all the loopholes in its Chapter IV which are bound to lend themselves to conflicting interpretation with regard to children's rights. The extent of children's rights as well as the limits to those rights should be elaborately stated. For instance

   (a). section 34 should explicitly provide for the removal of work children are compelled to do in school as a form of punishment, correction or discipline from the ambit of forced or compulsory labour.

   (b). section 37 should be amended to limit the right of children to use phones in the classroom and in fact the school compound.

   (c). section 38 should be amended to delimit the age at which a person can exercise this freedom.

   (d). section 40 should be amended to clearly state that children cannot join political parties and trade unions; and in fact groups and organizations without permission from parents.
2. The CRC or CRA should never be a basis for abrogating any existing law concerning children and young people.
3. The government should invest on research concerning children's laws, find out how well these laws have worked to better the society in nations that have applied them before we import them
4. States that have adopted the CRA are advised to drop it or use it only as a reference for making their own laws; adopt the good parts of that law and discard the bad.

5. The CYPA is a fairly good document and will with a little amendment serve to protect our children. The global document cannot work for us, our society is different.
6. Activities of NGO's, UN agencies and all such bodies should be monitored by government. They should not be allowed to carry out agendum that is contrary to our law.
7. The CRC'S and consequently CRA's definition of child appear to be at the root of the confusion concerning child rights law. I much prefer the definition in the CYPA which differentiates between a child and a young person, our child law document should retain that differentiation.
8. Principals and heads of secondary and primary schools should be sensitized about this trend of individuals and groups going to schools to educate children on their rights. This version of education is not helping as it leaves children headstrong and out of control.

9. There should be policy to help and support family life by releasing women with tender children an hour or two earlier from work so they can take better care of their children.
10. Philosophical theories drive policy, therefore it is recommended that lawyers take more interest in them especially in an issue like the one under consideration where even the privilege of interpreting the law has been wrested from the court.

BIBLIOGRAPHY

TEXTBOOKS

Archard, David William, 'Children's Rights', in Edward N. Zalta (ed) *The Stanford Encyclopeadia of Philosophy* (Palo Alto, CA: Stanford University Press, 2014)

Alamika, EE, and Chukwuma, IC, *Juvenile Justice Administration in Nigeria*: *Philosophy and Practice*(Lagos, Center for law Enforcement Education, 2001)

Akande, JO, *Introduction to the Constitution of the Federal Republic of Nigeria, (1999*), (Lagos: M.I.J. Professional Publishers Ltd. 2000)

Anyogu, F., 'Women, Sexual Rights and Vulnerability to HIV/AIDS in Nigeriain Arinze-Umobi C &Ikpeze O (eds)*Gender Rights Law in Nigeria*(1), (Onitsha: Folmech Printing and Publishing Co. Ltd, 2008)

Arinze-Umobi, C, *DomesticViolence Against Women* in *Nigeria: A Legal Anatomy*, (Onitsha: FolmechPrinting and Publications Co. Ltd., 2008)

Baumrind, D., 'Authoritatrian vs. AuthritativeParental Control*'* in Conger J (ed),*Contemporary Issues in Adolescent Development* (New York: Harper & Row 1975)

Becker, W.C., 'Consequences of Different Kinds of Parental Discipline,' in Martin I. Hoffman and Lois Wladis Hoffman (eds), *Review of Child Development Research,*(New York: Russell and Sage Foundation, 1964)

Bentham, J, *Judicial Procedure, Anarchical Fallacies, works on Taxation,* volume II, Bowring J, (ed) (Edinburgh: William Tait, 1843).

Black, M, *Ambiguities of Rationality* Newton Garver and Peter H. Hare (eds), (Buffalo, N. Y.: Prometheus, 1986).

Blustein, J, *Parents and Children: The Ethics of the Family* (Oxford: Oxford University Press, 1982)

Bolaner, DO,*et al* (eds),*Lexicon Websters Encyclopedic Dictionary* (Deluxe edn), (New York: Lexicon Publishers inc, 1990)

Brennan, S, 'Children's Choices or Children's Interests: Which do their Rights Protect?' in D. Archard and C. Macleod (eds), *The Moral and Political Status of Children: New Essays*(Oxford: Oxford University Press, 2002).

Brighthouse, H, 'What Rights (if any) do Children Have?' in D. Archard and C. Macleod (eds), *The Moral and Political Status of Children: New Essays*(Oxford: Oxford University Press, 2002).

Bronfenbrenner, U, 'The Roots of Alienation' in Bronfenbrenner, U,*Influences on Human Development* (Hinsdale, ILL: Dryden Press 1972).

Buckingham, C.E, *Early American Orphanages:Ebenezer and Bethesda*, Social Forces (Oxford University Press, 1948).

Burlingham, B., 'Problems Confronting the Psychoanalytic Educator' in *Psycho analytic Studies of the Sighted and the Blind (*New York: International Universities Press, 1972)

Cohen, H, *Equal Rights for Children*, (Totowa, NJ: Littlefield, Adams, and Co. 1980)

Cohen, S., 'In The Name of Prevention of Neurosis: The Search for Psychoanalytical Pedagogy in Europe, 1905-1938', in Barbara Finkelstein (ed.) *Regulated Children, Liberated Children: Education in Psychoanalytical perspective*, (New York: Psychohistory Press, 1979).

Donelly, J, *Universal Human Rights in Theory and in Practice*(Ithaca and London: Cornel University1989)

Elshtain, J B, 'The Family, Democratic Politics, and the Question of Authority' in G. Scarre, (ed)*Children, Parents and Politics* (Cambridge: Cambridge University Press, 1989).

Eze O. C., *Human Rights in Africa: Some selected problems,* (Nigeria Institute of International Affairs (NIIA)Macmillian Nigeria Publishers 1984)

Farson R., *Birthrights*, (London: Collier Macmillan, 1974,)

Franklin, B, *The Rights of Children* (Oxford:Basil Blackwell, 1986)

Garner, B.A, *Black's Law Dictionary* (8thedn New York: Thomas West, 2004)

Griffin, J., 'Do Children Have Rights?' ' in D. Archard and C. Macleod (eds), *The Moral and Political Status of Children: New Essays* (Oxford: Oxford University Press, 2002).

Hardyment, C., *Dream Babies: Three Centuries of Good Advice on Child Care* (New York: Harper & Row, 1983).

Harris, J., ‘The Political Status of Children’ in Keith Graham (ed), *Contemporary Political Philosophy: Radical Studies* (Cambridge: Cambridge University Press, 1982)

Healy, J.M., *Endangered Minds* (New York: Simon & Schuster, 1990).

Houlgate, L, ‘Children, Paternalism, and Rights to Liberty’ in Onora O’Neill and William Ruddick (eds) *Having Children: Philosophical and legal Reflections on Parenthood,* (Oxford University Press, 1979)

Inhelder, B., and Piaget, J., The *Growth of Logical Thinking from Childhood to Adolescence: An Essay on the Construction of Formal Operational Procedures,* Ann Parsons and Stanley Milgram (trans) (New York: Basic Books, 1985)

Jaggar, A., *Feminist Politics and Human Nature* (Totowa: Rowman&Allanheld, 1983)

Kandel D., and Lesser, G.S., ‘Parent-Adolescent Relationships and Adolescent Independence in the U.S. and Denmark’, in UrieBronfenbrenner,(ed) *Influence on Human Development* (Hinsdale, ILL.: Dryden Press, 1972).

Mertus J., et al, *Local Action/Global Change* (UNIFEM and the Center for Women’s Global Leadership, 2008)

Mill, J S, ‘On Liberty’in Mill JS (ed), *TheUtilitarians*(New York: Dolphin, 1961)

Muncie J, *Youth and Crime: A Critical Introduction*, (London, Sage, 1999)

Oputa, C.A., *Human Rights in the Political and Legal Culture of Nigeria; Second Idigbe Memorial Lecture,*(Lagos: Nigerian Law Publishers Ltd. 1988)

Packard, V, *Our Endangered Children*. (Boston: Little, Brown 1983)

Purdy, L M,*In Their Best Interest? The Case Against Equal Rights for Children*(Ithaca and London: Cornell University Press 1992)

Rousseau, J,*Emile, or On Education*, Allan Bloom (Trans)(New York: Basic Books, 1979)

Sandel, M,*Liberalism and the Limits of Justice*(Cambridge: Cambridge University 1982)

Schuler M.A., et al, *Women’s Human Rights step by step*, (Washington: Women Law and Development International,1997)

Sommerville, J., *The Rise and Fall of Childhood*(Beverly Hills, Calif.: Sage, 1982)

Story, J., *Commentaries on Equity Jurisprudence, as Administered in England and America*, (13thedn) (Totowa: Little & Brown 1846).

Sumner L.W,*The Moral Foundation of Rights*, (Oxford: Clarendon Press 1987)

Schwartz I. *Justice for Juveniles, Rethinking the Best Interest of the Child*(Lexington, MA: D.C Heath 1989)

The Christian Bible, King James Version

Welsh, P, *Tales Out of School*(New York: Viking Press, 1986)

Winn, M, *Children without Childhood* (New York: Pantheon, 1983)

JOURNALS

Brennan, S. and Noggle, R., 1997, 'The Moral Status of Children: Children's Rights, Parents' Rights, and Family Justice' (Spring 1997) 23(1)PA Research II Periodicals, *Social Theory and Practice*,pp. 1-26.

Dayton, J.J.D., 'Corporal Punishment in Public Schools: The Legal and Political Battle Continues' (1994) 3(3) *Education Law Quarterly*, pp.448-459

Enemchukwu, R., 'Restriction on Corporal punishment and the Best Interest of the Child' (2014) 6, *Unizik JPPL*, pp. 237-249.

Falconer D P 'Child and Youth Protection' (1935) *Social Work Yearbook*, 3(5) p.63

Gainborough, J., and Lean E, 'Convention on the Rights of the Child and Juvenile Justice'(2008) 7(1), *The Link,Child Welfare League of America*, pp. 1-15.

Gunn, T J, 'The Religious Right and the Opposition to the U.S. Ratification of the Convention on the Rights of the Child', (2006) 20(17)*Emory International Law Review*, pp.111-126

Hafen, B C, 'Puberty, Privacy, and Protection: The Risks of Children's Equal Rights', (1977) 63*American Bar Association Journal*, pp. 1383-88.

Hoffer, W., 'Psychoanalytic Education', (1945)25(5) *Psychoanalytical Study of the Child* pp. 293-307.

Myers, E.B, 'A Short History of Child Protection in America', (2008) 42(3) *Family Law Quarterly*, 53-65

O'Neill. O, 'Children's Rights and Children's Lives',(1988) *Ethics,*98, pp.445-463.

Ramcharan, M., 'Human Rights in Africa; Whither Now?' (1975), 12 *University of Ghana Law Journal,* pp.1-18

Schoeman, F, 'Rights of Families: Rights of Parents, and the Moral Basis of the Family', (1980), *Ethics,* 91(2) pp. 6-19

Smolin, D.M., 'OvercomingReligious objections to the Convention on the Rights of the Child' (2006) 20*Emory International Law Review*, pp. 81-103

Steinhart, D.J., 'Status Offences' (Winter 1996) 6(3)*The Future of Children: The Juvenile Court,*pp.86-99.

Strauss, M., 'CorporalPunishment in America and its Effect on Children'(1998) *Journal of Child Centred Practice,*

Wald, M.S., 'Children's Rights: A Framework for Analysis,' (1979) 12,*University of California, Davies Law Review,*pp. 255-282.

REPORTS

Diversion in South Africa- A review of policy and practice, 1990-2003, Wood C., Institute for Security studies publication

Existing Diversion Programmes in Nigeria, September 2006, by UNICEF;

Ezejiofor in '*Text for Human Rights Teaching in Schools*.' Constitutional Rights Project 1999.

Financial and Educational Law Training Program, 2002 Student Issues

General Assembly Resolution, A/RES/55/2, United Nations Millennium declaration (New York, 2000)

Isua, N.B, 'Juvenile Justice and the Jurisdiction of the Family Court' presented at the 2009 All Nigerian Judges Conference, Abuja.

Justice for Children: The situation for children in conflict with the law in Afghanistan, UNICEF, P.12.

Ohia, O, Soronnadi, V., *et al, Child Abuse and Neglect*, Women's Aid Collective, 2002

State of the World's Children, 2005, UNICEF

UN World Report on Violence against Children,

INTERNET SOURCES

A Brief History of Human Rights. http://www.humanrights.com/what-are-human-rights/brief-history/cyrus-cylinder.html 14/10/15

Ali, Y.O., "*Legal Support for the Rights of a Child in Nigeria*." Available at http://www.yusufali.net/publications.htm.

Amnesty International, United States of America: *Indecent andinternationally illegal, the death penalty against childoffenders*. Available under http://web amnesty.org/library/index/eng.AMR511432002/OpenDocument

American Declaration of Independence, adopted in congress on July 4, 1776. available at

http://www.kidport.com/reflib/usahistory/americanrevolution/DecInd.htm

Contemporary slavery fact sheet, No. 14. http://www.phdre.org/conventions-

CRIN, Guide to Non-discrimination and the CRC. CRIN 2009, P. 1. Available athttp://www.crin.org.docs.CRC-Guide 15/05/16

TharmanShanmugaratnam, Development of Character and Discipline. Available at http://www.moe.gov.sg/media/speech| Accessed 18/7/2014

Ennew, J, The History of Children's Rights: whose story? http://www.culturalsurvival.org/ourpublication.

History of Human Rights. https://en.m.wikipedia.org/wiki/History-of-human-rights.

General Comment No.8 (2006) on "The right to protection from corporal punishment and other cruel and degrading forms of punishment (para.2) available at

http://www.ohchr.org/english/bodies/crc/docs/co/CRC.C.GC.8.pdf. 15/7/14

Global Initiative to End All Corporal Punishment of Children, Global Progress. Available at http://www.endcorporal punishment.org/pages/frame.html

How Washington's Truancy Laws Negatively Impact Children. Available at www.statusoffencereform.org/blog/guest-blog/the-becca-bill. Accessed 8/7/16.

Humanium, Children's Rights History. http:www.humanium.org.

Human Rights and Social Issues at the U.N.: A Guide for U.S. Policymakers. Available at http;//www.heritage.org/research/reports/2006/08/human-rights-and-social-issues

History of Children's Human Rights. http://www.childrensrightswales.org.uk/history-of-children-rights.aspx. 12/10 15

Japan reconsiders corporal punishment. Available at http://www.asian-nation.org/headlines/2007/02/japan-reconsiders-corporal-punishment/accessed 15/6/2014

Mclaren, K.L., "Tough is not Enough: Getting Smart about Youth Crime", A review of research about what work to reduce offending by young people. Available at http://www.myd.govt.nz/about-myd/publications/tough-is-not-july2015.html

Magna Carta, 1215 articles 39, available at http://www.fordham.edu/halsall/source/magnacarta.html

Marie-Louise Kristola, The Children – on youth violence. Available at http://www.sr.se/sida/artikel.aspx?programid=787&artikel=1657404. Accessed on 18/7/14.

Participation rights – Unicef. Available at www.unicef.org>crc>files>Participation. 30/06/16

P. Sandstrom, Children and Youngsters Have Lost the Feeling for Limits. Innocent Games can Turn into Severe Violence. (Swed.), available at http://web.abo.fi/meddelanden/forskning/1998_13_barnvald.sht

UNICEF, Profiles of Existing Diversion Programmes in Nigeria, September 2006. available at http://www.unicef.org/nigeria/ng-publications-diversion.pdf

http://www.unicef.org/crc/26/1/16

http://www.highbeam.com/doc/1p2-823765.html. accessed 17/8/2014

http://www.foxnews.com/us2010/06/24/tx-commissioner-wants-corporal-punishment-in-war-zone-schools. Accessed 18/7/2015

NEWSPAPERS

Child Marriage-YerimaQuized, *Granted Bail*, Vanguard Newspapers, 18 May 2010 p.13.

Pasco County cases put spotlight on kids who commit crime. Tampa Bay Times, Thursday, 19 August 2010.

Newsweek, February 16, 1987, pp. 56, 61.

13 year old gets light sentence for murder, Jet Newspapers, 31st January 2000

U.S. News & World Report, cited in Gross and Gross, Children's Rights Movement, pp. 207-212.

ABC news, August. 16, 2007