

Nigeria's Legal Frameworks Safeguarding the Best Interests of Children: A Critical Examination of Policy Implementation Gaps, and Socio-Cultural Influences

Obi Helen Obiageli, PhD

Nnamdi Azikiwe University, Awka

D.C.J. Chukwurah, PhD

Chukwuemeka Odumegwu Ojukwu University

ABSTRACT

This study undertakes a critical examination of Nigeria's Legal Framework for Safeguarding the best interests of children, with a focus on policy implementation gaps and socio-cultural influences. Despite the existence of Laws and policies aimed at protecting child rights, Nigeria continues to grapple with challenges related to child welfare, including child abuse, neglect and exploitation. Never in the history of the nation has the children been under the kind of siege and abuse as they are today. This research investigates the extent to which Nigeria's Legal framework is effective in safeguarding the best interests of children, and identifies the socio-cultural factors that influence policy implementation. Using the doctrinal research methods this study reviews laws protecting children's rights. The findings showcase a deeper understanding of the complexities surrounding child protection in Nigeria and provide recommendations for strengthening the legal framework and improving policy implementation to better safeguard the best interests of children.

Keywords: *Child protection, legal framework, policy implementation gaps, socio-cultural influences, Nigeria, best interests of the child.*

1.0 Introduction

In Nigeria, the best interest of a child is a fundamental principle in matters concerning children. However, the extent to which this principle is upheld can vary due to factors such as cultural norms, legal frameworks, and societal challenges. Equally the

protection of children's rights is a fundamental obligation of any society, and the legal framework plays a crucial role in safeguarding the best interests of children. Nigeria, as a signatory to the United Nations Convention on the Rights of the Child (CRC), has enacted various laws and policies aimed at protecting child rights. However, despite these efforts, Nigeria continues to grapple with significant challenges related to child welfare, including child abuse, neglect, and exploitation.

The Nigerian government has established a legal framework for child protection, which includes the Child Rights Act (2003) and the Violence Against Persons (Prohibition) Act (2015). These laws provide a foundation for protecting children's rights, but their implementation remains a significant challenge. Policy implementation gaps, socio-cultural influences, and institutional weaknesses have hindered the effective protection of child rights in Nigeria.

This study seeks to critically examine Nigeria's legal framework for safeguarding the best interests of children, with a focus on policy implementation gaps and socio-cultural influences. The research aims to investigate the extent to which Nigeria's legal framework is effective in protecting child rights, and to identify the socio-cultural factors that influence policy implementation.

Through exploring these issues, this paper hopes to contribute to a deeper understanding of the complexities surrounding child protection in Nigeria. While efforts are made to prioritize the best interest of the child, there may still be instances where these principles face challenges or is not fully realized due to various factors including legal loopholes, resources constraints, and social issues.

Historically, the concept that children have specific rights deserving of enforcement and protection is a comparatively modern development. The popular assumption in time past was that most adults and parents in particular, had the best interests of the child at heart, there was thus no necessity to think in terms of children's rights¹. This idealized perception of adult-child relations ignored the grim realities on ground. Subsequent to the various reform movements of the 19th century, concern for the protection of the dignity, equality and basic human rights of children came to the forefront of public consciousness. Children have since become a constituency in their protection against the abuse of parents and other adults, economic exploitation and social neglect. Today, children's rights advocacy has moved beyond the simple question of protection to also embrace an element of "self-determination" on the part of the child to the extent that children are granted a degree of autonomy in the enjoyment of their rights².

Far back history, freeman notes that an article entitled "The Rights of Children" appeared as far back as 1825. But it is Eglantyne Jebb (1876-1928) the founder of the save the children fund who is considered one of the founding pioneers of the movement for children's rights. Galvanized by the plight of the millions of children who died both during and in the aftermath of the first world war. MS Jebb was instrumental to the drafting of the declaration of Geneva on the Rights of the Child which was formally adopted by the League of Nation in 1924³. The 4 states in its preamble that "mankind owes to the child the best that it has to give" and went on to define the duties of adults towards children. The Geneva Declaration in effect marked the beginning of serious attention to the rights of the Child.

As early as 1946, Lobbying efforts in respect of children were directed at United Nations which had come into being the previous year. The first major step taken on behalf of children by this body was the creation of UNICEF in 1946 which had as its initial mandate the provision of relief assistance to children affected by the second world war. In 1959, the General Assembly of the United Nation utilizing the framework of the Geneva Declaration, adopted the UN Declaration on the Rights of the Child. This document proceeds from the premise that by reason of their physical and mental immaturity, children need special safeguards and care including appropriate legal protection before as well as after birth. Since its adoption the UN Declaration on the Rights of Child has served as a platform for public and private initiatives all over the world in the interests of children⁴.

1.1 Definition of a child in Nigeria

In Nigeria, the definition of a child is guided by various law. This is because Nigeria adopts a plural legal system, comprising of both statutory and customary law rules, with different interpretations of a child. Thus, the concept of childhood in Nigeria is dependent on the content of an enactment or judicial interpretation on one hand and on the other, the customary law interpretation of the area under consideration.

For instance, under section 30 of the Criminal Code Act, a child, for the purpose of conviction of unlawful carnal knowledge, is a person below the age of 12 years as he is declared incapable of having carnal knowledge under the same Act, a person below the age of 12 years is declared a child,

¹ M freeman, "*Limits of children's Brights*" in the ideologies of Children's Right (Australia, Martins Nijhoff Publishers, 1992) P -30

² I A Ayua and L E Okagbue (eds) *The Rights of the child in Nigeria* (Lagos, Nigerian Institute of Advanced Legal Studies, 1996) P1

³ P Veeman, *The Rights of the Child and Changing Image of Childhood*, (Australia, Martinus Nijhoff Publishers (1992) Pg IV.

⁴ I A Ayua and LE Okagbue op cit P. 4

thus not criminally responsible. Under the penal code, a child is a person below the age of 7 years, not being criminally responsible. The labour Act a civil law, in its section 59 (2) of the Act declares a person a child for the purpose of employment in Nigeria, if he is below the age of 14 years such as person cannot work in any industrial undertaking without supervision.

Under the children and young person's Act, a child was defined as a person under the age of 14 years, while a young person above the age of 14 years but below 17 years.

Nigerian customary law as established in the case of **Labinjo v Abake**⁵ declares a person a child, if he has not reached puberty. However, because customary law varies from one-community to the other, who is a child largely, depends on the particular custom in question. The constitution of Nigeria⁶, which is the supreme law of the Land, does not specifically define who a child is. Though, section 19 part 1, fifth schedule of the constitution vaguely provides that, child includes a step child, a lawfully adopted child, a child born out of wedlock and any child to whom any individual stands in place of a parent. This definition does not state who a child is or when childhood ends. Although section 29 (4) (a) of the constitution defines full age as 18 years and above, section 29 (4) (b) provides also that any woman who is married is deemed to be of full age. This is irrespective of the biological age of the women at the time of marriage. This provision may encourage child marriage which consequently may lead to child labour.

However, child Rights Act 2003, section 277 explicitly defines a child as any person under the age of 18th years. According to section 274 (1) of the Child Rights Act 2003, the provision of the Act supersedes the provisions of other enactments relating to children. The definition of a child under the child Right Act 2003 is consistent and consonance with regional and international treaties and conventions ratified by Nigeria. These include the United Nation Convention on the Right of Child (UNCRC) 1989; African Charter on the Rights and Welfare of the Child 1999. International Labour Organization (ILO) Worst Forms of Child Labour Convention No. 182 of 1999; (ILO Minimum Age Convention 1973, No. 138).

Thus, in Nigeria, the age of 18 is widely recognized as the threshold for Childhood and Individuals under this age are entitled to special protection and care under various laws and policies. This work adapts the provision of section 277 of Act, that a child is a person below the age of 18 years.

1.2 The Concept of the Best Interest of a Child

The major basis of child's right is hinged on the notion of best interest. Generally, the basis for this is hinged on their protection because of their vulnerability. Accordingly, in all judicial or administrative proceedings affecting a child, who is capable of communicating his/her own views, an opportunity shall be provided for the child to be heard either directly or through an impartial representative as a party to the proceedings, and those views shall be taken into consideration by the relevant authority in accordance with the provisions of appropriate law. Also, the law 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 consideration⁷.

The best interest of the child principle is applied in various contexts, including: family law (custody, access, and child support decisions; child protection, (decisions regarding child removal, foster care

⁵ (1924). 5 NLR 33

⁶ 1999 Constitution of the Federal Republic of Nigeria as Amended 2010

⁷ C.R.C Article 3

and adoption) Education (decisions regarding educational placement, support and resources. Healthcare, decisions regarding medical treatment, consent and confidentiality. In Nigeria family law Karibi-Whyte JSC (as he then was) in the case of *Williams v Williams*⁸, observed as follows: “The determination of the welfare of a child is a composite of many factors. Consideration such as the emotional attachment to a particular parent, mother or father, the inadequacy of the facilities such as educational, religious, or opportunities for proper upbringing are matter which may affect determination of who should have custody”. Also, in the case of *Odogwu V Odogwu*⁹, Per Olatawura, JSC. Observed “It flows, that money may in an inhospitable environment will not breed a child’s happiness, but diminish his growth and wellbeing”. What matters is the best interest of the child.

In William statsky¹⁰ the best interest of the child was referred to as “a standard of decision based on what world best serve the child’s welfare”.

Thus, state parties to Convention on the Right of the Child shall undertake to ensure the child is given such protection and care as is necessary for his or her well- being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her; and to this end, shall take all appropriate legislative and administrative measures. (Furthermore, state parties shall ensure that the institutions, services and facilities responsible for the care or standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff as well as competent supervision).

1.3 Principles Guiding the Best Interest of the Child

The primary principles of the best interest of the child are:

- Child-centered approach: the child’s needs, rights, and well-being are primary considerations.
- Best interest as a paramount consideration: the child’s best interest is the paramount consideration in decision-making.
- Individual assessment: Each child’s unique circumstances, need are assessed.
- Non-discrimination, decisions are made without discrimination based on race, colour, sex, language, religion or other status.
- Child’s views: The child’s views are considered in accordance with their age and maturity.
- Child’s well-being, the child’s physical, emotional and psychological well-being are prioritized.
- Family environment: The child’s right to grow up in a family environment is respected.
- Cultural and linguistic identity: The child’s cultural and linguistic identity are preserved.
- Protection from harm: The child is protected from all forms of physical or mental violence, injury or abuse¹¹.
- The age and health of the child: any history of family violence and any regular and any ongoing substance abuse by either parent is a serious consideration.
- The ability of each parent to care for the child.

⁸ (1987)2 NWLR (pt. 54) 66, p.74 Para. 9

⁹ (1992) 2 NWLR (Pt.225) 539 at 570

¹⁰ W P Statky, Family Law the Essentials (U.S.A, Delmar Cengage Learning 2004) P 176

¹¹ Child custody and parenting time/ California Courts/ Self Help Guide. <https://selfhelp.courts.ca.gov>.accessed March 12th, 2025

- Long-term perspective: Decisions prioritize the child's long-term well-being and development. The best interest of the child legal standard requires the evaluation of this guiding principle.

2.0 Legal Frameworks Safeguarding the Best Interest of the Children in Nigeria

Nigeria has established several legal frameworks to safeguard the best interests of the child.

2.1 The 1999 constitution of Federal Republic of Nigeria (as amended) has provisions that protect the best interest of the child. Chapter IV contains an elaborate Bill of Rights.

The Rights Guaranteed include the right to life (Sec. 33), thus particular right is very cardinal because life is the foundation upon which all other rights are predicated and is the most precious gift to every citizen. The right to personal liberty (sec. 35). The right to fair hearing (sec. 36) and the right to freedom of movement (sec. 41) non-discrimination (sec 42) stipulates that no child should be discriminated against due to circumstances of his birth, sex, religion etc. The 1999 Nigerian Constitution Equally Provides in its Chapter two some fundamental objectives and directive principles of state policy. Section 17, (3) (f) of the constitution emphasizes the need to protect the rights of children.¹² Section 18, education objectives; government shall provide free compulsory and universal primary education, free secondary education; free universal education; and free adult literacy programme. Section 13, imposes a constitutional obligation on all arms and tiers of government to observe the fundamental objective relating to socio-political, economics, educational and cultural matters. Section 14, provides that the security and welfare of the people shall be primary purpose of government. Section 16 provides for Economic objectives, the control of the economy, to secure maximum welfare, freedom and happiness of every citizen on the basis of social justice, equality of status and opportunity, harnessing and distribution of material resources of the community to serve the common good, provision of suitable and adequate shelter, suitable and adequate food for all Nigerians by the state.

The gaps here is that these provisions are only directive principles of state policy and no action can be brought against the government for enforcement of the provisions as they are not justifiable. The non-justiciability of chapter two provisions means that government and officials cannot be held accountable for failing to implement the objectives and principles. There is lack of explicit protection against child labor and exploitation. Limited protection for children's education rights, including access to quality educational and protection against corporal punishment. The constitution does not provide adequate protection for environmental conservation, including protection against pollution and climate change. The non-justiciability of chapter two provisions undermines the rule of law and principle of constitutionalism, which requires that government and public officials be subject to the law. The citizens are denied access to justice and opportunity to seek remedies for violation of their socio-economic rights. The consequences are: Perpetuation of poverty and inequality. It leads to underdevelopment by limiting the ability of citizens to challenge government policies and actions that violate these objectives and principles. The non-justiciability of chapter two provisions erodes trust in government and undermines the legitimacy of the states.

The 1999 Nigerian constitution recognizes three streams of law-the English common law, Islamic or sharia law,¹³ and customary law¹⁴; close to these section are: Section 1 (3) recognizes the supremacy

¹² **S17 CFR. 1999, Social Objectives;** children, young persons and the aged are protected against any exploitation whatsoever and against moral and material neglect.

¹³ Sections 260, 261, 262 and 277 CFRN. 1999

¹⁴ Sections 270, 275, 276 and 278 CFRN 1999

of the constitution, but also acknowledges the importance of Islamic and customary laws; Section 4 (5) provides for the rights of individuals under Islamic and customary laws; Section 6 (5) recognizes the jurisdiction of Islamic and customary courts in certain matters. The Nigerian constitutions recognition of these laws creates gaps; conflicts and inconsistencies.

Jurisdictional Conflicts: The co-existence of three streams of law can led to jurisdictional conflicts, as each system has its own courts and procedures.

- **Inconsistent Decisions:** The different legal systems may produce inconsistent decisions, leading to confusion and uncertainty.
- **Inequality and discrimination:** Discrimination against female children and women. Sharia law and customary law often discrimination against women denying them equal rights and opportunities.
- **Inequality before the law:** The recognition of multiple legal system can lead to inequality before the law, as individuals may be subject to different laws and punishments based on their religion culture, or geographical location.
- **Obstacles to Justice:** The complexity of multiple legal systems can limit access to justice, particularly for the children, the marginalized group. The co-existence of three streams of law can lead to delay and inefficiency in the administration of justice¹⁵.
- **Challenges to Human Rights:** The recognition of these laws can lead to human rights violation, particularly in relation to freedom of expression, religion and association.
- **Limitation on Fundamental Rights,** the multiple legal system can limit fundamental rights, such as the right to life, liberty and security of the person.
- **Impediments to National Unity:** Ethnic and Religious tensions; the recognition of multiple legal systems can exacerbate ethnic and religious tensions, undermining national unity.
- **Fragmentation of the Legal System:** The coexistence of three streams of law can fragment the legal system, making it difficult to achieve a unified and cohesive national legal framework.¹⁶

2.2 Child's Right Act/ Child Rights Law of Various States of the Federation

Legislation on best interests of children consists of the child's Rights Act 2003 (CRA) and the child's Right Law (CRLs) of the various states of the federation.

The Act is divided into twenty-four parts and eleven schedules. The various parts address broadly rights and responsibilities, protection and welfare of children, duties and responsibilities of government, institutions for children, as well as other miscellaneous matters. In terms of contents, the Nigerian Child Rights Act borrowed a leaf from United Nations Convention on the Right of the Child 1989 (CRC) and the organization of African Union (OAU) charter on the Rights and Welfare of the Child (1999) in respect of the guiding principles for the promotion and protection of the rights of children.

Part I (Sections 1-2), the Act provides that the best interest of the child shall be of primary or paramount consideration in all actions to be undertaken whether by an individual, public or private body, institutions or service, court of law or administrative or legislative authority.

¹⁵ I Oraegbunam, Sharia Criminal Law, Islam and Democracy in Nigeria Today. African Journal Online, <https://www.ajo.info.accessed> on 14th March, 2025

¹⁶ P Ostien, A J Dekker, Sharia and National Law in Nigeria. Scholarly Publications Leiden University – <https://scholarlypublications.universiteit.leiden.accesse> 14th March, 2025.

Further, the Act provides that the necessary protection care shall be given to the child for his/her well-being, taking into account the rights and duties of the child's parents, legal guardians and other bodies legally responsible for the child.

Part 11 (section 3-20) of the Act provides for the rights and responsibilities of a child in Nigeria. Accordingly, it entrenches the following fundamental rights of the child namely, the rights to survival and development, to a name, the freedom of association and peaceful assembly, to freedom of thought, conscience and religion, to private and family life, to freedom of movement, to freedom from discrimination, to dignity of the child, to care, protection and maintenance, to free, compulsory and universal primary education as well as encouragement of the child to attend and complete secondary education. Right to leisure recreation and cultural activities, to health and health care services. The Act also guarantees the right to special protection measures for a child in need of such protection as is appropriate to his/her physical, social economic, emotional and mental needs and under conditions which ensures his/her dignity. Promote the child's self-reliance and active participation in the affairs of the community, as well as the provisions to a child with such assistance and facilities necessary for the child's education, training, employment, rehabilitation and recreational opportunities in a manner conducive to the child's overall development. Further, the right of an unborn to protection against any harm or injury caused willfully, recklessly, negligently or through neglect before, during or after the birth of that child; and to benefit from the estate of the deceased parents if any one of them dies in state, having survived any one of them.¹⁷

Part xx of the CRA (Sections 2004-238) and the corresponding parts and sections of CRLS, provide for the child justice administration, which has now replaced the juvenile justice administration, which had been in existence in the various parts of the country for well over six decades. The Act/ Laws prohibit the subjection of any child to criminal justice process and to criminal sanctions¹⁸. The child's Rights Act 2003 is a comprehensive legislation aimed at protecting the rights and welfare of children in Nigeria. However, despite its provisions there are still gaps in the law that need to be addressed.

- Limited definition of a child: The Act defines a child as a person under the age of 18, but it does not provide clear guidelines on the protection of young people between the ages of 18 and 21.
- **Insufficient provision on child labour, the Act prohibits child labour**, but does not provide adequate penalties for offenders nor does it establish a clear mechanism for monitoring and enforcing child labour law.
- **Lack of specific provisions on online child protection:** The Act does not specifically address online child protection, including issues related to cyber bullying, online harassment, and child pornography.
- **Inadequate Provision on Children with Disabilities:** The Act does not provide sufficient protection and support for children with disabilities including access to education, health care and social services.
- **Limited provisions on Alternative Care:** The Act does not provide adequate guidelines on alternative care arrangements, including foster care, adoption, and institutional care.
- **Insufficient Provisions on Child Participation:** The Act does not provide adequate mechanism for child participation in decision-making processes that effect their lives.

¹⁷ O I Tajudien Legal Framework for the Protection of the Rights in Nigeria. International Journal of Judicial Sciences, <http://univagora.ro/jour/index.php/aijjs>, accessed 14th March, 2024

¹⁸ N Umejiaku, Juvenile Justice Administration in Nigeria (Enugu: Ebenezer Productions Nig. Ltd 2023) p.81

- **Lack of clear guidelines on Child protection in emergencies:** The Act does not provide clear guidelines on child protection in emergency situations, including natural disasters, conflicts and epidemics.

2.3 The Matrimonial Causes Act (MCA) 1970

The Matrimonial Causes Act (MCA) 1970 is a Nigerian Law that governs, marriage, divorce and related matters. While the MCA does not explicitly define, the best interest of the child, it contains provisions that aim to protect the welfare and well-being of children in the context of marital disputes and dissolution.

Section 71, provides that in proceedings for divorce, separation, or nullify, the court shall consider the welfare of any child of the marriage as the first and paramount consideration. In **Williams v Williams**¹⁹ Karibi-White J.S.C stated that by paramount consideration I mean “Pre-eminent and superior consideration”.

Section 71 MCA states principles guiding the court as paramouncy of the child’s welfare, the best interest of the child when making decision about custody, maintenance and education. The court should adopt a child centered approach, taking into account the child’s needs, wishes, and feelings²⁰.

The MCA has an inherent gap. The MCA does not provide clear guidelines on how to determine the interest of the child. The MCA does not explicitly recognize children’s rights, including their right to participate in decision making processes that affect their lives. The MCA’s provision on child maintenance is limited, there is no clear mechanism for ensuring compliance with maintenance order.

2.4 The Nigerian Labour Act 2004

The Labour Act, 2004²¹ has provisions that protect the best interest of children, particularly in relation to employment. The following are key provisions made by the Act.

- **Prohibition of child Labour:** The Act prohibits the employment of children in industrial undertakings, except in cases where the child is employed in a family business or undertaking.
- **Minimum Age for Employment:** The Act sets the minimum age for employment of 15 years, except for apprenticeships or vocational training, which can start at 13 years.
- **Restrictions on Employment of Young Persons,** the Act restricts the employment of young persons (those under 18 years) in certain occupations, such as mining, construction and manufacturing.
- **Prohibition of night work for young persons:** The Act Prohibits the employment of young persons in night work, except in cases where the work is necessary for their education or training.²²
- **Medical Examination for young required before employment**

Those provisions aim to protect children from exploitation and ensure their safety and well-being in workplace. But there are gaps that needs to be abridged.

¹⁹ (1987) 2 NWLR 66

²⁰ E I Nwogugu, Family Law Nigeria (3rd edn, Ibadan, HEBN Publishers PLC (2014) P. 263.

²¹ Cap LI LFN, 2004

²² Section 60 Labour Act 2004

The labour Act's provision on child labour and young persons' employment are not always effectively enforced, particularly in the informal sector. There are insufficient penalties; the penalties for non-compliance with the Act's provisions are often insufficient, failing to deter employers from violating the law.

The minimum age for employment in Nigeria is 12 years age. According to Section 59(1) of the labour Act, read in conjunction with section 91 of the same Act states that "no child under 12 years of age shall be employed or work in any capacity except where she/ he is employed by a member of his/her family to perform light work of an agriculture, horticulture or domestic character. The Labour Act (section 59) prescribes different age for different types of employment which ranges from below 14 to 16 years. According to sections 28 (1) (b) and 277 of the child Rights Act of 2003, a child under 18 years shall not be employed to work in any capacity except where he/she is employed by a member of his/her family to perform light work of agricultural, horticultural or domestic character. The labour Act appears to be contradictory to section 277 of the Child Rights Act 2003 which prescribes the age of 18 years in all cases. It is worthy to note that the child Rights Act, section 29 recognizes the provisions relating to young persons in section 58,59,60, 61, 62 and 63 of the labour Act and this section shall also apply to children under the child Rights.

The minimum age for employment is lower than international labour organization (ilo) convention 138 also to the 15 years compulsory education age. Therefore, the minimum age of employment in Nigeria does not meet the international standard²³.

2.5 The Nigerian Criminal Code Act ²⁴

The Nigerian Criminal Code Act contains provisions that aim to protect the best interest of children.

Some keys provisions:

Protection from Exploitation and Abuse: section 21, prohibits the employment of children in brothels or for the immoral purposes. Section 222, prohibits the procurement of children for immoral purposes. Section 223, prohibits the detention of children in brothels or for immoral purposes.

Protection from Sexual Abuse: **Section 218** prohibits the defilement of children under the age 13 years. The person is guilty of a felony, and liable of imprisonment for life. Sections 219 and 221 prohibits indecent assaults of children. Protection from Cruelty and Neglect

Section 226 deals with preventing a child from being born alive- any person who, when a woman is about to be delivered of a child, prevents the child from being born alive by any act or omission of such a nature that if the child had been born alive and had then died, he would be deemed to have unlawfully, killed the child, is gully of a felony and is liable to imprisonment for life.

Section 277 addresses conspiracy to defile a woman or girl; section 30 provides that a child under the age of 7 is not criminally responsible for any act or omission. Section 357 and S.358 define rape and punishment.

²³ Policy and Legal Advocacy Centre <http://Laws of Nigeria.placing.org>.accessed 15th March, 2025

²⁴ Chaper 77, Laws of Federation of Nigeria, 1990 now Criminal Code Act, C 381, LFN 2004 applies to states in Southern Nigeria.

The criminal code Act is guided by the principle of the best interest of the child; thus, the provisions prioritize the best interest of the child, ensuring that their welfare and well-being are protected; the provisions provide for the punishment of offenders who commit crime against children.

Meanwhile the criminal code Act has some inherent gaps:

- Limited definition of a child, the Act defines a child as a person under the age of 14, which may not be consistent with international standard.
- Insufficient provision on child protection. The Act did not provide sufficient protections for children, particularly in relation to online exploitation and abuse.
- Limited enforcement, the Acts provisions may not be effectively enforced, particularly in rural or marginalized communities.

In spite of the numerous measures in the criminal code to protect reproductive rights of women and children, some provisions of the criminal code, however, contravene women's human rights to health, sexual and reproductive rights, particularly right to security of person, bodily integrity and reproductive self-determination. A typical example is the prohibition of women from procuring abortion stated in section 229 of the criminal code. Clearly, section 229 of the criminal code is inconsistent with the protocols to the African charter on human and people's Rights of Women in Africa which provide that: State parties shall ensure that the right of women, including sexual and reproductive health is respected and promoted. This includes: (a) the right to control their fertility: (b) the right to decide whether to have children, the number of children and the pacing of children (c) the right to choose any method of conception.²⁵

The Criminal Code Act has provisions that discriminate between indecent assault on men and women/ children. Section 353, Any person who unlawfully and indecently assaults any male person is guilty of a felony, and is liable to imprisonment for three years. While section 360 provides, any person who unlawfully and indecently assaults a woman or girl is guilty of a misdemeanor and is liable to imprisonment for two years.

Nigeria has ratified the protocol to the African Charter and is therefore under obligation to ensure that its municipal laws confirm to the protocol.²⁶

2.6 The Penal Code (PC)

The Nigerian Penal Code, applicable in Northern Nigeria, contains provisions that aim to protect the best interest of children. The code provision is the following: Protection from exploitation and abuse, sections 21, 22 and 23. Protection from cruelty and Neglect section 55, Section 235 prohibits the willful abandonment or neglect of children. Section 236, prohibits the cruel treatment of children. Section 237, prohibits the exposure of children to unnecessary risk or danger. Protection from sexual abuse: Section 283 prohibits the defilement of children under age of 14. Section 282 protect from rape. Section 222 indecent treatment of girls. Sections 232, 233 and 234 of the penal code deals with abortion. An abortion may be legally performed only to save life of pregnant woman. Apart from this any person who voluntarily causes a woman with child to miscarry is subject to 14 years imprisonment and / or payment of fine.

²⁵ Article 14 of the Protocol to the African Charter also Article 16 (1) (c) of CEDAW

²⁶ J N Ezeilo, Women, Law and Human Right, Global and National Perspectives (Enugu, ACENA Publishers, 2011) P. 219

There are existing gaps in the penal code. The penal code has limited definition of a child. The code defines a child as a person under the age of 14 years, which may not be consistent with international standards.

Insufficient provisions on child protection, particularly in reflection to online exploitation and abuse. Limited enforcement particularly in rural or marginalized communities.

2.7 The Violence Against Persons (Prohibition) Act (VAPP Act) 2015 and VAPP Law of States

The Violence Against Persons (Prohibition) Act aims to eliminate Violence in Nigeria, Protect Victims, and Punish offenders. It particularly addresses gender-based violence, harmful-cultural practices and domestic violence. It defines violence to include physical, emotional and psychological harm. It provides that every person including children has the right to freedom from violence²⁷. It prohibits harmful practices, including female genital mutilation (FGM)²⁸, forced marriage and child marriage. It provides that every child has the right to protection from harmful practices.²⁹ It provides that every child has the right to protection from abuse to neglect. It prohibits rape³⁰ and other forms of sexual violence against children. It prohibits trafficking in persons including children.

The VAPP Act has limitations or gaps which are: Limited enforcement, the VAPP's provisions may not be effectively enforced particularly in rural or marginalized communities, Insufficient funding, VAPP Act implementation may be hindered by insufficient funding for programs and services aimed at preventing violence against children.

Cultural and social barriers, VAPPA's provisions may face cultural and social barriers, particularly in communities where harmful practices are deeply ingrained.

3.0 Socio-Cultural Influences on the Best Interest the Child

In Nigeria, socio-cultural influences play a significant role in shaping the concept of the best interest of the child. These social-cultural influences can both positively and negatively impact the best interest of the child. Understanding these influences is essential for developing effective policies and programs that promote the well-being and development of children. Some key social-cultural influences are highlighted.

* **Traditional Values:** Respect for elders, in Nigerian culture, children are taught to respect their elders, which can sometimes lead to prioritizing the interests of older family members over those of the child. Family unity, the importance of family unity and harmony can lead to decisions that prioritize the family's interest over the child's individual needs.

* Cultural Practices such as "early marriage", In some Nigerian cultures, early marriage is practiced, which can compromise the best interest of the child. Early marriage does physical and emotional harm to children, as girls are forced into marriage at a very young age, often too much older man. This can lead to physical harm, including complication during pregnancy and child birth, as well as emotional trauma. It can lead to limited educational and economic opportunities. Girls who are married off early are often forced to drop out of school, limiting their future economic prospects and perpetuating the cycle of poverty. Early marriage can lead to increased risk of domestic

²⁷ Section 6 Vapp act

²⁸ Section 20 Vapp act

²⁹ Section 1 Vapp act

³⁰ J. N. Ezeilo, Op Cit p. 435

violence; these girls are vulnerable to abuse and exploitation by their husbands and in-laws. Early marriage has long-term health consequences, including high-risks of maternal and infant/ mortality, as well as increased risk of contracting HIV/AIDS.

Female genital mutilation (FGM) is still practiced in some Nigerian Communities despite being harmful to the child's physical and emotional well-being.

Child labour is common in Nigeria, particularly in rural areas, where children are expected to contribute to the family income through exploitative labour³¹.

Socio-economic factors such as poverty can lead to decisions that compromise the best interest of the child, such as sending children to work instead of school. Access to education can be limited in some Nigerian communities, affecting the child's future prospects and well-being. Inadequate access to healthcare can compromise the child's physical and emotional well-being on policy and legislative framework.

The Child Right Act (2003) provides a framework for protecting the rights and well-being of children in Nigeria . However, some religious groups see human rights as an imposition of the west that is contrary to religious or cultural practices. Although there are many ways in which Islamic law is compatible with the Child Rights Act³²; There exist five main clauses which are contrary to Islamic within the 2003 Act.

The first clause is about child marriage within part III. In the child Rights Act, it is stated that any marriage that a child takes part in, shall be considered unlawful because children area not capable of being part of a valid marriage contract. The law contradicts the Islamic doctrine that a girl's father may betroth her without obtaining her consent.

Second; in part VIII it is established that once a child is adopted, their adoptive parents or parents are now solely responsible for the child, taking away the birth parents right to make any decisions regarding the child; the concept is in tension with Surrah 33: 4-5 where it is stated that children should still remain attached to their birth parents name. Thirdly, it is upheld in part VIII of the child's Rights Act that in the instance that a child's parents are not married to each before the child birth, either the mother or father can claim custody to the child. For many in the Islamic community, when a child is born out of wedlock it is a serious matter, this clause in the Child Rights Act can be seen as too casual.

The fourth subject of tension between the Child Right's Act and the Islamic Community is regarding the subject of guardianship or custody as stipulate in Part IX of the act, Islamic Law generally regard the mother as the rightful steward of a child. However, the CRA considers the welfare and wants of the child as well as the capability and wishes of the parents when deciding on who is going to be the child's guardian.

Fiftly, the issue of withholding corporal punishment from children, as brought up in part xx of the CRC is thought by some to be not only un-Islamic but also un-African³³.

³¹ The Right to custody or guardianship is discussed in Q 65:7, the right to education is expressed in Tirmidhi, Hadith 218

³² Child Rights Act in Nigeria-Wikipedia <https://en.wikipedia.org> accessed 16th March, 2025

³³ Child Rights Act in Nigeria, Wikipedia <https://en.wikipedia .or> accessed 16th March, 2025

4.0 Conclusion and Recommendations

Child protection is a critical issue globally, with millions of children facing various forms of abuse, neglect, and exploitation. In Nigeria, the challenges facing child protection are compounded by factors such as poverty, cultural and religious belief, institutional weaknesses and implementation gaps. These notwithstanding, the Nigerian government has established legal frameworks for child protection, which include the Child Rights Act (2003) and the violence Againsts (Prohibition) Act (2015). These in addendum to the 1999 constitution, the Nigerian Criminal Code Act, the Penal Code, the Matrimonial Causes Act (1970); The Nigerian labour Act 2004. These Laws provide a foundation for protecting children's rights, but their implementation remains a significant challenge. Policy implementation gaps and socio-cultural influences dominantly prevail. By examining these issues, this study has contributed to a deeper understanding of the complexities surrounding child protection in Nigeria and has provided the following recommendations for strengthening the legal framework and improving policy implementation to better safeguard the best interests of children.

4.1 Recommendations

Strengthen Policy Implementation: The Nigerian government should strengthen its efforts to implement Laws and Policies aimed at protecting children's rights including increasing funding and resources for relevant agencies.

Sensitize Communities: Community sensitization programs should be implemented to raise awareness about the importance of protecting children's rights and the negative consequences of harmful traditional practices.

Improve Access to Education and Healthcare: The Nigerian government should prioritize increasing access to quality education and healthcare for all children, particularly those in rural and disadvantaged areas.

Enforce Laws prohibiting child marriage and labour: Laws prohibiting Child Marriage and Labour should be strictly enforced, and offenders should be held accountable. Establish Child-friendly justice systems to ensure that children's rights are protected and their best interest are prioritized in judicial proceedings.

Collaborate with traditional and Religious Leaders to promote positive change and challenge harmful traditional practices;

Domestication of international laws and conventions such as convention on the Rights of the Child (CRC) adopted in 1989, the CRC is the most widely ratified human rights treaty, providing a comprehensive framework for protecting children's rights. Optional protocol to the CRC on the sale of children, child prostitution and child pornography adopted in 2000. This protocol aims to prevent the exploitation of children. African charter on the Right and Welfare of the Children (ACRWC), adopted in 1990 that provides regional framework for protecting children's rights. Protocol to the African charter on Human and Peoples' Rights on the Rights of women in Africa, adopted in 2003. This protocol includes provisions related to the protection of girls' and women's rights. International Labour Organization (ILO) convention 182 on the worst form of child labour.

Nigeria should borrow a leaf from countries with international best practices on child protection and welfare. Such as the Children Act 1989 which provides the legislative framework for child protection in England.

American Law Institute (ALI) principles on Gender and Sexual Orientation bias on child custody sweden prioritizes prevention and early intervention, providing support services for families and children.

New Zealand's child protection system focuses on community-based care and support, with an emphasis on preventing child abuse and neglect. Canada's Child Welfare System prioritizes the best interest of the child, with a focus on prevention, early intervention and community-based care.

Nigerian needs regular monitoring and evaluation of progress to identify areas for improvement and ensure that laws and policies are effective in safeguarding the best interests of children.