

**AN EXAMINATION OF THE LEGAL AND INSTITUTIONAL FRAMEWORK FOR  
THE ELIMINATION AND PREVENTION OF CHILD LABOUR IN NIGERIA**

**BY**

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**DEPARTMENT OF PRIVATE LAW,  
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ZARIA, NIGERIA**

**October, 2018**

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THE ELIMINATION AND PREVENTION OF CHILD LABOUR IN NIGERIA**

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PhD/Law/58778/2013-2014**

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**DEPARTMENT OF PRIVATE LAW,  
FACULTY OF LAW,  
AHMADU BELLO UNIVERSITY,  
ZARIA, NIGERIA**

**October, 2018**

## **DECLARATION**

I hereby declare that the work in this thesis titled " An Examination of the Legal and Institutional Framework for the Elimination and Prevention of Child Labour in Nigeria " was performed by me in the Faculty of Law, under the supervision of Prof. B. Babaji, Prof. A.M Madaki and Prof. (Mrs.) I. F. Akande. The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this work has been presented for another degree or diploma at any institution.

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**Grace Perpetual, DAF1EL**

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**Date**

## CERTIFICATION

This Thesis titled: **An Examination of the Legal and Institutional Frameworks for the Elimination and Prevention of Child Labour in Nigeria** by **Grace Perpetual, DAFIEL** meets the regulations governing the award of the Degree of Doctor of Philosophy, Ph.D, Ahmadu Bello University, Zaria and is approved for its contribution to knowledge and literary presentation.

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## **DEDICATION**

This thesis is dedicated to God Almighty for His Grace that saw me through this journey and my Late father. Barrister Daniel Attah Agada who during his sojourn on earth made education a priority in my life.

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ACRWC	-	African Charter on the Rights and the Welfare of the Child
AHTU	-	Anti Human Trafficking Unit
BBC	-	British Broadcasting Corporation
BUDFOW	-	Business Development Fund for Women
CC	-	Criminal Code
CEACR	-	Committee of Experts on the Application of Conventions and Recommendations
CEDAW	-	Convention on the Elimination of Discrimination Against Women
CLU	-	Child Labour Unit
CPA	-	Criminal Procedure Act
CPC	-	Criminal Procedure Code
CRA	-	Child Rights Act, 2003 No.
CRL	-	Child's Rights Law.
CSOs	-	Civil Society Organizations
CYPL	-	Children and Young Persons Law
DWCP	-	Decent Work Country Programme
EA	-	Evidence Act
ECOWAS	-	Economic Community of West African States
EFA	-	Education for All
FAO	-	Food and Agricultural Organisation
FC	-	Family Court
FCT	-	Federal Capital Territory
FEAP	-	Family Support and Economic Advancement Programme

FGM	-	Female Genital Mutilation
FHC	-	Federal High Court
FMLE	-	Federal Ministry of Labour and Employment
FMoJ	-	Federal Ministry of Justice
FMWASD	-	Federal Ministry of Women Affairs and Social Development
GJP	-	Global Jobs Pact
HC	-	High Court
HIV/AIDS	-	Human Immuno- Deficiency Virus/Acquired Immune Deficiency Syndrome
ICCPR	-	International Covenant on Civil and Political Rights
ICESCR	-	International Covenant on Economic, Social and Cultural Rights
ICT	-	Information and Communication Technology
ILO	-	International Labour Organization
IOM	-	International Organisation for Immigrants
IPEC	-	International Programme on the Elimination of Child Labour
LGA	-	Local Government Area
LMIS	-	Local Government Management Information System
MDAs	-	Ministries, Departments, Agencies
NAPEP	-	National Agency for Poverty Eradication Programme
NAPs	-	National Action Plans
NAPTIP	-	National Agency for the Prohibition of Traffic In Persons
NBA	-	Nigerian Bar Association
NDE	-	National Directorate of Employment
NDLEA	-	Nigerian Drug Law Enforcement Agency
NEEDS	-	National Economic Empowerment and Development Strategy.

NHRC	-	National Human Rights Commission
NICN	-	National Industrial Court of Nigeria
NIS	-	Nigeria Immigration Service
NPA	-	National Priority Agenda
NPF	-	Nigeria Police Force
NSAA (2008)	-	National Situation Assessment and Analysis on Orphans and Vulnerable Children (2008)
NSC	-	National Steering Committee
NSCDC	-	Nigerian Security and Civil Defence Corps
PC	-	Penal Code]
PM	-	Primary Meridian
PWDs	-	Persons with Disabilities
SAN	-	Senior Advocate of Nigeria
SCREAM	-	Supporting Children’s Rights through Education, the Arts and the Media
SMEDAN	-	Small and Medium Enterprise Development Agency of Nigeria
SoP	-	Standard of Practice
SSCCL	-	State Steering Committee on Child Labour
SURE-P	-	Subsidy Reinvestment Project
TiPPEAA	-	Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015
UBE	-	Universal Basic Education
UNCRC	-	United Nations Convention on the Rights of the Child
UNGADRC	-	United Nations General Assembly of the Declaration of the Rights of the Child
UNICEF	-	United Nations Children Education Fund
UNICJRI	-	United Nations Interregional Crime and Justice Research Institute
UNODC	-	United Nations Office on Drugs and Crime

USAID	-	United States Agency for International Development
WOFEE	-	Women Fund for Economic Empowerment

## ABSTRACT

Far too many children in the world remain trapped in child labour, compromising their individual and our collective future. Current estimates indicate that 168 million children worldwide are child labourers, accounting for almost 11 percent of the child population as a whole. 85 million Children are in hazardous work that directly endangers their health, safety and moral development. The risk of child labour is highest for children in sub-Saharan Africa, where one child in every five is in child labour. It should be noted that not all work done by children is classified as child labour that is to be targeted for elimination. Children's or adolescents' participation in work that does not affect their health and personal development or interfere with their schooling, is generally regarded as being something positive. This includes activities such as helping their parents around the home, assisting in a family business or earning pocket money outside school hours and during school holidays. These kinds of activities contribute to children's development and to the welfare of their families; they provide them with skills and experience, and help to prepare them to be productive members of society during their adult life. The term "child labour" is often defined as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. In its most extreme forms, child labour involves children being enslaved, separated from their families, exposed to serious hazards and illnesses and/or left to fend for themselves on the streets of large cities – often at a very early age. Whether or not particular forms of "work" can be called "child labour" depends on the child's age, the type and hours of work performed, the conditions under which it is performed and the objectives pursued by individual countries. The answer varies from country to country, as well as among sectors within countries. The aim of the research is the examination of the existing legal and institutional framework to determine its adequacies or not in protecting children from child labour in Nigeria while the objective include the determination of the effects of multiplicity of laws on coordination and implementation of child labour prevention laws as well as identifying gaps and inconsistencies in these laws and make appropriate recommendations. In conducting the research work, empirical, doctrinal and teleological research methodology have been adopted. Oral interview, using key informant interview guide with relevant stakeholders such as NAPTIP, CLU-FMLE, FMOJ, FMWASD and NIS for first-hand information on the subject matter was conducted. Doctrinal method of research which involves consultation and literature review of other writers and researchers work was done in the course of this research to bring out their relevance to this research. This work also adopted the personal knowledge and experience of the researcher who has worked in this field for the past eight years and has collaborated with national NGOs, INGOs and FMWASD for the rehabilitation of Child Labourers. The primary method of data collection (review of legislations and case laws) as well as secondary method of data collection (which is the use of the internet) were employed and information harvested were used. In the course of this work, the following findings were made; there are disparities due to multiplicity of laws and sanctions, exclusive civil and criminal jurisdiction of the NICN on child labour in both matters; poor budgetary allocation and late release of funds hindering the actualization of the mandates of the institutions and the overlapping functions of agencies empowered to curb the menace which has contributed immensely to frustrating the bid to fight child labour. Based on above, the following are the recommendations; Review and harmonisation of child labour laws and upholding stricter sanctions; The issue of jurisdiction is fundamental in law and as such, should not be toyed with and as such all laws should be amended to recognize the exclusive jurisdiction of the NICN. For effective coordination and referral system, it is recommended that the CLU in FMLE and other national institutions should meet regularly and ensure implementation of legal and institutional framework.

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## **CHAPTER ONE**

### **GENERAL INTRODUCTION**

#### **1.1. Background to the research**

Child Labour has remained one of the greatest dilemmas of our time in particular, but not exclusively, in developing countries. Around the world, millions of children under the age of fifteen are engaged in the work force, often lacking proper education and schooling.<sup>1</sup> Families are dependent upon income generated by children who in turn miss out on education and fail to make progress and build prosperity for coming generations in a world that is increasingly shaped by knowledge and information. Child Labour causes social, educational and economic problems, primarily in the domestic realm of each country and society. Therefore, building legal, institutional and social protection to reduce risks related to developmental and life-cycle vulnerabilities of children is crucial to humanity, particularly in a developing country like Nigeria. This is increasingly reflected in the focus on the elimination of worst forms of Child Labour globally and in the child-sensitive focus of many of the Sustainable Development Goals (SDGs) as well as the different legal and institutional instruments on children's rights, welfare and wellbeing.

Child labour engulfs children across the world and this is detrimental to their health, development and general wellbeing.<sup>2</sup> Over 246 million girls and boys around the World are working instead of attending school and enjoying their childhood of which Nigeria account for

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<sup>1</sup> The International Labour Organisation (ILO) in 2016 estimated that throughout the world, around 168 million children under the age of 18 were working while 85 million work in hazardous condition. This calls to mind again the neglect of child protection around the world and also in Nigeria. Although child protection is one of the four key pillars of the national social protection strategy, the strategy is poorly resourced and implemented at all levels.

<sup>2</sup> This could lead to children dropping out of school or irregularly attending. Both boys and girls engage in street-hawking, sometimes dropping out of school to work. Increasing numbers of children also engage in begging

about 6.1% (15million). Parents cannot always afford the education of their children, and children often work in order to pay their fees, or do not attend school at all and work instead of pay for their siblings' education or the household's budget. Generally, working children have no time, money or energy to go to school. About six million working children in Nigeria, equally split between boys and girls, do not attend school at all, while one million children are forced to drop out due to poverty or because of parent's demand to contribute to the family income.<sup>3</sup>

Furthermore, many rural children from Northern Nigeria are usually sent out to the cities in order to study in Koranic schools; however, it is reported that many children, called "*almajiri*", end up in beggary and child labour in order to pay their teachers, or are not provided with shelter and food by their schools and are eventually homeless.<sup>4</sup> All these, are detrimental to their health, growth and development.

However, from the end of the 1980s, the international community has increasingly recognised the need for action to end child labour. United Nations (UN) undertook various efforts to promote the rights of children, while indulgently addressing the problem of child labour.<sup>5</sup>

Colonialism and modernization even though came with erosion of communal living, it however came with the protective measures for the protection of the child. Among this is the codification and ratification of children's rights and enactments of on the conventions on the protection of children especially from labour, trafficking, exploitation and abuse.

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<sup>3</sup> United Nations Children Education Fund (UNICEF) (2006), Facts sheet on Child Labour. [www.UNICEF.org/wcaro/WCARO\\_Nigeria\\_factsheets\\_childlabour.pdf](http://www.UNICEF.org/wcaro/WCARO_Nigeria_factsheets_childlabour.pdf). Re-accessed on 17/11/15 at 7.15pm

<sup>4</sup> International Trade Union Conference (ITUC). (2011), *Report of the WTO General Review of the Trade Policies of Nigeria*. Geneva. p.7 <http://www.ituc-csi.org/report-for-the-wto-general-council,9354.html> Accessed on 23<sup>rd</sup> October, 2015 at 6.02 am

<sup>5</sup> Starting with the Adoption of the United Nations Convention on the Rights of the Child (CRC) In 1989, Followed by the World Summit for Children In 1990, The Adoption of Various Soft Legal Instruments Such As The Programme of Action for the Elimination of the Exploitation of Child Labour and the United Nations (UN) Special Session of the General Assembly In 2002

In codifying the importance of children in every society, the United Nations in its Convention on Minimum Age exempted any persons below 16 years old from any form of labour except for vocational training and domestic agricultural purposes<sup>6</sup>.

It is part of the problem of child labour to treat all work done by children as child labour. Not all work done by children should be classified as child labour that is to be targeted for elimination. Children's or adolescents' participation in work that does not affect their health and personal development or interfere with their schooling, is generally regarded as being something positive. This includes activities such as helping their parents around the home, assisting in a family business or earning pocket money outside school hours and during school holidays. These kinds of activities contribute to children's development and to the welfare of their families; they provide them with skills and experience, and help to prepare them to be productive members of society during their adult life. To so classify all as child labour is unacceptable and it is a means to confuse and trivialise the issue. Children are naturally entitled to have the right and freedom to human dignity<sup>7</sup> education, rest and play.<sup>8</sup>

Despite the existence of these instruments, legal and institutional framework, social protection strategies, Child Labour is still in existence and tend to be on the increase with increased rate in the poverty levels of families and communities, lack of social welfare packages targeted at children and families and increased household vulnerabilities due to ill health, crisis and other factors. In Nigeria, multiplicity of legislation and institutional framework with regards to prevention and elimination of Child Labour as well as weaknesses which exists in the laws and

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<sup>6</sup> Convention No.138 Adopted on 23<sup>rd</sup> June 1973 by the International Labour Organisation General Assembly.

<sup>7</sup> Section 35 The 1999 Constitution Of The Federal Republic Of Nigeria (as Amended 2011).

<sup>8</sup> Section 12 Child's Right Act, 2003, Cap C50 Laws Of The Federation, 2004

operations of institutions tends to make prevention and elimination of Child Labour a difficult task.

## **1.2 Statement of the Research Problem**

There are multiple laws dealing with the prevention and elimination of child labour in Nigeria. These laws have created institutional agencies to enforce the provisions of these laws on the prevention and elimination of child labour. Example include the National Agency for the Prohibition of Trafficking In Persons and other related matters (NAPTIP) created by Trafficking in Persons (Prohibition) Enforcement and Administration Act (TiPPEAA) 2015 etc. Despite these efforts on the part of the state, child labour still persist to an alarming rate as discovered in the course of this research.

Pursuant to the above statement of research problem, the following research questions have been formulated:

1. Whether or not the multiplicity of laws and institutional agencies of government dealing with child labour makes coordination difficult therefore weakening implementation of those laws.
2. Whether or not the law has adequately empowered the institutions to enforce the provisions of the law protecting children from harsh working conditions.
3. Whether or not budgetary allocation and release are adequate to empower the institutions to fulfill their mandates under the laws.
4. Whether or not, it is constitutional for agencies to prosecute the child labour matters outside the jurisdiction of the National Industrial Court of Nigeria (NICN) in view of the



section 254(c) 3<sup>rd</sup> Alteration to the 1999 Constitution of the Federal Republic of Nigeria  
(As Amended 2011) which confers exclusive jurisdiction on the NICN.

## **1.2 Aim and Objectives of the Research**

The aim of this research therefore, is to examine or determine whether the persistence of child labour in Nigeria is due to the inadequacy of existing legal framework or the dereliction of duty by relevant institutional agencies responsible for preventing and eliminating child labour while the objectives of the research are as follows:

1. To determine the effects of multiplicity of laws on coordination and implementation of child labour prevention laws as well as identify gaps and inconsistencies in these laws.
2. To identify and analyse gaps in the mechanisms and its enforceability, policy and institutional framework on the prohibition of Child Labour in Nigeria.
3. To evaluate the impact of budget allocation and its subsequent release for the enforcement of the laws and operations of institutions that seek to eliminate, prohibit and prevent Child Labour in Nigeria.
4. To evaluate the impact and workability of section 254 (C) 3<sup>rd</sup> Alteration to the 1999 Constitution which confers exclusive jurisdiction on the National Industrial Court of Nigeria (NICN) on Child Labour in Nigeria.
5. To proffer suggestion on possible reforms for the gaps identified in legal and institutional framework on the elimination and prevention of Child Labour in Nigeria and how best to implement the recommendations.

#### 1.4. Justification of the Research

In 2018, it was estimated that 50.8% of children aged 5-17 years are in child labour<sup>9</sup> and 37.5% out of this figure are involved in hazardous child labour in Nigeria.<sup>10</sup> Most of this age group in employment are in the rural areas which account for 34.3% while the urban areas account for 24.3%.<sup>11</sup> 11% of children aged 15-17 years are engaged in child labour including hazardous work and labour.<sup>12</sup> Many children do not attend school because their labour is needed to either help at home or to bring additional income into the families.<sup>13</sup> This is an infringement on their right to education and this also contravenes section 1 of the Child's Rights Act, 2003 on 'the best interest of the child'. Child labour remains a major source of concern in Nigeria in spite of legislative measures. To curb this menace, Nigeria has signed and ratified several international legal instruments<sup>14</sup> and also has multiple legislations to deal with the protection of children and promote the rights the child to education, recreation, health and free from slavery and servitude. All these rights are being violated by the incidence of child labour and this negates the saying that 'children are the future of the nation' and this make their future bleak.

In Nigeria, where child protection issues are key concern, gaps exist in our legal and institutional framework. There is poor social welfare assistance provision for children, vulnerable households and families. These gaps for example, lack of social welfare packages targeted at children and families has helped to increase household vulnerabilities that led to increase in child labour in

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<sup>9</sup> Nigeria Bureau of Statistics (NBS), (2018), 2016-2017 Multiple Indicator Cluster Survey (MICS) [www.nigerianstat.gov.ng/pdfuploads/MICS-2016-17\\_National.pdf](http://www.nigerianstat.gov.ng/pdfuploads/MICS-2016-17_National.pdf). Accessed on 28/03/2018 at 11.30am

<sup>10</sup> *Ibid*

<sup>11</sup> International Labour Organisation (ILO), (2014), *The Twin Challenges of Child Labour and Educational Marginalisation in the ECOWAS Region*, p.17. [www.ilo.org/product](http://www.ilo.org/product). Accessed on 30/3/2016 at 2.11pm

<sup>12</sup> *Ibid* p.15

<sup>13</sup> UNICEF, The Children Education, [www.unicef.org/nigeria/children\\_1937.html](http://www.unicef.org/nigeria/children_1937.html)

<sup>14</sup> CRC ratified 1991; Minimum age for employment convention ratified in 1976, Convention on the Elimination of the Worst forms of Child labour ratified in 2001 but to mention but a few.

Nigeria. This research was carried out in order to determine the adequacies or not of existing laws on child labour as well as fashion out how best to implement the suggested recommendations. This research will be beneficial to the academic, legislators, government at all levels, civil society groups, social works and work force generally.

### **1.5. Scope of the Research**

The research examined legal instruments (its adequacy or inadequacy), policy environment, operations and mandates of institutions; enforcement mechanisms as well as institutional framework for the elimination and prevention of Child Labour and promotion of child protection in Nigeria. This work limits itself to municipal legal and institutional framework on Child Labour operational in Nigeria as well as examination of institutions saddled with the responsibility of preventing and eliminating Child Labour in Nigeria.

### **1.6. Research Methodology**

The research adopts doctrinal, empirical, and teleological research methodology. Doctrinal method of research which involves review of primary data source (that is review of statutes, legislations and case laws) and secondary data source (literature review of books, reports, journals, other writers and researchers work) was used in the course of this research. This brought out their relevance to this research, their contribution to the body of knowledge in this regards and differentiated them from what this research is bringing to enhance the body of knowledge on the subject matter.

Empirical method of research which involves collection of facts and data through interviews, and questionnaires from target groups to generate primary data. This data was used to investigate further and to get first hand reasons for increased incidence in child labour despite existing legal

and institutional framework. In line with this, Key Informant Interviews (KII) with relevant stakeholders was conducted during the researcher's visit to some of the institutions established for the protection of children such as National Agency on the Prohibition of Trafficking in Person (NAPTIP), Child Labour Unit of Federal Ministry of Labour And Employment, Social and Child Development Departments of the Federal Ministry of Women Affairs and Social Development, Nigeria Immigration Service and Federal Ministry of Justice for first-hand information on the subject matter. The secondary method of data collection (which is the use of the internet) was also employed and information harvested via the institutions' websites and other relevant sites on the internet was used. Furthermore, the personal knowledge and experience of the researcher who has worked in this field for the past eight years as both a protection specialist and researcher and having collaborated with non- governmental organization for the rehabilitation of child labourers as well worked closely with United Nations Children Education Fund (UNICEF) and Federal Ministry of Women Affairs and Social Development (FMWASD)-Child Development Department from the entrenchment of child protection in Nigeria has greatly facilitated this research.

## **1.7. Literature Review**

The legal and institutional framework for the elimination and prevention of child labour includes international and domestic instruments of which various discourse has been done on. In view of this, this research reviewed legislations, case laws and both international and national books, reports, works, articles, journals, publications and surveys conducted on child labour. Reviewing other works and publications gave further insight to the issues discussed in this research.

**Humbert**<sup>15</sup>: in her book offers a rich and detailed account of the causes, instruments and problems relating to the monitoring and implementation of what essentially amounts to a ban of child labour in international law. She also examines whether the prohibition of child labour in international law should be imposed through trade measures; she equally explores the status of child labour in international law. She made a wide- ranging analysis of the problem, she examined the various UN and ILO instruments and revealed the weaknesses of the current framework installed by these bodies to protect children from economic exploitation. After assessing the extent to which trade measures such as conditionality's, labelling and trade restrictions, and promotional activities can reduce child labour, she suggested an alternative legal framework which takes into account the needs of children. This work examined only legal frameworks on child labour at the international level. This research shall examine both the legal and institutional frameworks for combating child labour in Nigeria as well as putting child protection enforcement mechanism in place.

The book “*fundamentals of Child Rights*”<sup>16</sup> discussed the concept of right, child abuse and giving its meaning and types, stating the basic principles of the rights and why child rights. In the book, the author also traced the history of child rights to the UN Convention on the Rights of a Child (CRC) of 1989 as well as elucidated the provisions of the convention and the relationship between child survival and development from the perspective of the Convention. He emphasized the role of family in the survival and development of the child. He stated that family provides the foundation on which a child develops. A child from a stable family background is bound to have a successful childhood life and will go on to be a successful adult, but if this foundation provided

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<sup>15</sup> Humbert, F. (2009) *The Challenges of Child Labour in International Law* , Cambridge University Press, United Kingdom

<sup>16</sup> Oleribe, E.O.O. (2002) *Fundamentals of Child Rights*, Anti-Child Abuse Society of Africa Publication, National War College Printing press, Abuja

by the family is destroyed; the future of such a child will be very bleak.<sup>17</sup> He went further to proffer mitigating measures to child abuse situations, to include government assistance to parents in the implementation and enforcement of these rights, through the provision of material assistance and support initiatives- particularly with regards to nutrition, education, clothing and housing.<sup>18</sup> In this book, he asserted that children have always been working and that the story is yet to change.<sup>19</sup> He opined that when children are used in all kinds of jobs for economic gains to the adult population, they are said to be victims of child labour.<sup>20</sup> He traced the dangers of child labour to include deprivation of their much needed time for leisure, play and recreation as well as time for education and personal development, accidents which could result to death, drug abuse, gambling and other criminal activities.<sup>21</sup> He further opined that these acts contravened Article 32 of the UNCRC which states that “*state parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or interfere with the child’s health or physical, mental, spiritual, moral or social development*”. He concluded by saying that the adult population should be sensitive to the needs of children bearing in mind their fragility and vulnerability. This book is relevant to this research; however, the object of this research is examining the legal and institutional frameworks on the elimination and prevention of child labour in Nigeria.

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<sup>17</sup> *Ibid* p34

<sup>18</sup> *Ibid* p35

<sup>19</sup> *Ibid* p72

<sup>20</sup> *Ibid*

<sup>21</sup> *Ibid* .p73

**Elijah and Okoruwa**<sup>22</sup> in their work examined the effects of child labour on school attendance in Nigeria. They opined that child labour is a hurdle against ensuring free, quality education for all children.<sup>23</sup> They investigated the motivating factor into child labour in Nigeria, examined Nigerian efforts at the reduction and improvement of child labour and school attendance rates. Their investigation revealed that most of the child labourers are in the informal sector of the economy with family characteristics as a very important determining factor of children's educational attainment and labour.<sup>24</sup> The future implication according to them is that it will not only damage the children but will also inhibit the emergence of skilled workforce and will force the continuous cycle of impoverishment which could lead to high child mortality rate due to the hazardous nature of the work. They examined the Education For All (EFA) regulations and Children and Young Persons Law 2004 with regards to labour issue as well as the ILO-IPEC program. They then stressed the fact that despite child trafficking, child labour laws and educational enforcement provisions that are in force in Nigeria, many are still violating them. Though this work is relevant to this research, it however did not do an in-depth analysis of the legal and institutional frameworks on prohibition of child labour in Nigeria.

**Pegus**<sup>25</sup>: in her work reviewed the laws on Child Labour in Barbados within the context of ILO Conventions Nos. 138 (Minimum Age for Admission to Employment) and 182(Worst Form of Child Labour) and its relevant ILO Recommendations Nos. 146 and 190. In the review, she identified gaps and inconsistencies in the laws relating to child labour in Barbados and went ahead to provide a guide for legislative reforms that will ensure compliance with the

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<sup>22</sup> Elijah, O.A and Okoruwa, V.,(2013) *Analysis of Child Labour and School attendance In Nigeria: the present and future implications*. In: M Rajasekhar (ed) on "Child Labour -Global Perspectives" AMICUS, the ICFAI University press, India, page 154-173.[www.books.iupindia.org](http://www.books.iupindia.org). ISBN 81

<sup>23</sup> *Ibid* p.1

<sup>24</sup> *Ibid*

<sup>25</sup> Pegus, C.(2005) *A Review of Child Labour Laws of Barbados* [www.ilo.org](http://www.ilo.org). Accessed on 10/04/2015 at 1.50pm

requirements of ILO Conventions and Recommendations. She further recommended that there is the need for an effective legal framework for the elimination and prevention of child labour in Barbados. This recommendations was made after examining both the substantive laws and ancillary non-legal elements contained in the conventions like the policy framework, the administrative and institutional arrangements for the monitoring and enforcement of the laws that seek to eliminate and prevent child labour in Barbados. She examined child labour and law prohibiting it in Barbados while also bringing it within international context of the convention of minimum age. This work even though similar and relevant to this research, it should be noted that this research shall examine the legal and institutional framework for combating child labour in Nigeria.

**Lansky**<sup>26</sup>: in this work, the author stated that child labour was in direct conflict with children's access to education and this is in contravention of the adoption of universal primary and secondary education policies globally. He however noted that there is great public awareness of the problem and a broad consensus to take action against it. These actions include the strengthening of legal frameworks for action against child labour, countering specific cases of child labour and reducing its worst abuses as well as the expansion of market- based initiatives. This is not the focus of this research.

**Osmnet**<sup>27</sup>: in her work assessed, analysed and evaluated the causes, problems and effect of child labour on the development of a child. She also did a comparative analysis between Nigerian and Indian legal framework and policies for the control of child labour in both countries. She gave the definition of child labour according to Moyi (2011) to be low wages, long hours, physical

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<sup>26</sup> Lansky, M. (1997) *The Perspective, Child Labour: How the challenge is being met*. In International Labour Review, Vol. 136, No. 2 International Labour Organisation. [www.ilo.org](http://www.ilo.org)

<sup>27</sup> Osmnet, L. (2014) *Child Labour; the Effect on child, Causes and Remedies to the Revolving Menace*. A paper presented at the University of Lund, Sweden



and sexual abuse of children<sup>28</sup>. On the causes of child labour, she identified the socio-economic factors to include poverty as the root cause, family size and condition of living, traditional or cultural factors, corruption, civil war, urban migration, and globalization. She examined the relationship between child labour, family income and education. She concluded by stating that the legislations in both countries are inadequate on child labour abuses. Though this work is relevant to this research, it only dwelled on some of the legal frameworks in both countries. It however did not discuss or examine the institutional framework, an area which this research is focusing on.

**Monawer and Hossain**<sup>29</sup> in their work evaluated the issue of child labour from an Islamic perspective. They opined that Islam emphasises on ‘work’ and sets many guidelines in relation to work ethics especially as it relates to labour and labour rights. According to them, Islamic teachings emphasis that people should put enough effort to earn their livelihood through labour. From Islamic perspective, both intellectual and physical labours are important and should be honoured. They further highlighted that according to Islam, work is considered as worship (*ibadah*), responsibility (*amanah*), human cooperation (*t a’awun*), and obligation (*shari’ah* obligation). Islam considers work as a matter of self-dignity, but Islam also imposes some restrictions towards works. When child labour is applied in business organisations, Islamic ethical principles can be followed. The employers should be ethically guided in doing businesses. Businesses should be guided by four important principles: ‘*ihsan*’ (goodness and generosity), relationship with others, equity, and accountability. The businesses should be morally driven. Thus, in case of dealing with children, the employers should practice goodness,

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<sup>28</sup> Ibid p.12

<sup>29</sup> Monawer, A. T and Hossain, D. M., (2016), *Child Labour: Islamic Perspective*. In Esteem Academic Journal, Vol. 12, No.2, December 2016, Pp. 15-30

generosity, equity, accountability, and morality. They posited in their work that all kinds of child labour are not treated as hazardous. Mainly the works that are physically and mentally problematic for the children and can be considered as obstacles in their development are treated as hazardous child labour. From their discussion, it can be understood that in Islam, children have very special status and rights, so harmful and unlawful works can be considered as prohibited in Islam. There are two(2) terms in relation to child labour. One is *umaalah* and the other is *tashgheel*. *Umaalah* means to use the child as a worker that means the child is treated as any other labourer. It represents the works that may harm a child physically, psychologically and socially. *Umaalah* represents the exploitative nature of work (for example, using children in industries where severe manual work is needed). Using the children as construction workers and employing them in any workshop where they are exposed to health hazards are the examples of *umaalah*. Whereas, *tashgheel* is that kind of work that helps either to develop the life skills of a child or to bring any benefit to him/her. These benefits can be in the form of money or any other benefit. For example, an orphan child may get employed and get money. He/she can also be provided with shelter and care. Thus, it can be said that among these two categories (*umaalah* and *tashgheel*), *umaalah* is prohibited in Islam. They further clarified the term '*khidmah*'. The literal meaning of this word is service. Here service does not represent a job or an occupation rather it is a kind of favour. *Khidmah* is permitted in Islam. The person who performs *khidmah* is called *khadim*. There is a common tendency to employ children for the household works. In such cases, if the children are treated badly by the employers and are given tasks that create excessive pressure, it can become harmful for the body and mind of the children. It can affect their physical, psychological and social development. This kind of work cannot be treated as *khidmah*. The health of the children is considered highly important in Islam, so any work that is harmful

for children's health is forbidden in Islam. They concluded by stating that Islam allows child labour which is termed as "*tashghil*" as long as it is in line with the teachings and principles of Islam. Even though this work is relevant to this research, it is however restricted to Islamic views on child labour. This research examines the Legal and Institutional framework for Child Labour elimination in Nigeria which is broader than the perspective of the reviewed work.

**Mutihir**<sup>30</sup>: in her work, defined child labour as the employment of children in a manner that deprives them of their childhood and is harmful to their physical and mental development, discussed the rights of child especially right to education, rest and play while stating the statistics of children involved in child labour. According to her, International Labour Organization (ILO) in 2010 estimated that throughout the world, around 215 million children under the age of 18 were working. She described the conditions under which these children work and also went on to state the causes, effects and consequences of child labour on children. She, just like other writers, believe that there are many forms of child labour world wide ranging from agriculture, manufacturing, mining, construction to domestic services, being forcefully used for commercial sexual exploitation, drug trafficking, organized begging on the streets and armed conflicts. These activities are very harmful and they violate the child's human rights. Whilst child labour takes many different forms a priority is to eliminate without delay the worst forms of child labour as defined by Article 3 of ILO Convention No. 182 on the Worst Forms of Child Labour, 1999. She further stated that UNICEF suggested that building a protective environment for children, tackling poverty and proper education as well as increased funding from donors will help eradicate child labour. She concluded, by stating that labour that jeopardizes the physical, mental or moral well-being of a child, either because of its nature or because of the conditions in which

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<sup>30</sup>Mutihir, B. M.(2014) *Combating The Menace Of Child Labour In Africa*: In: the lawyers' ChroniCNIe Accessed on 15/09/14 at 3.30pm

it is carried out, is of critical concern as it deprives children of their freedom and human rights. Though this work is relevant to the research being undertaken, it however did not discuss it within the Nigerian context. She however, listed the international legislations and stated the roles of institutions working on child labour issues without bringing out the gaps in the legislations or operations of the institutions which this research in its object seeks to bring to the fore.

**Ladan**<sup>31</sup> in his paper, examined and analysed the rights of child domestics as victims of human rights violation and trafficking. He provided conceptual clarification of selected terms like child abuse, child labour, child trafficking, victims of crime and human rights violation as well as examining the history, nature and scope of child domestic service or labour and went on to determine the why, how and when child domestic service becomes a human rights violation, and identified the role of judges and prosecutors in the protection of victim's rights. He then made recommendations giving some viable options for Nigeria. This work deals with one out of many forms and types of child labour, and the rights children have and the consequent violations by those who take these children in as domestic servants in their households. The research seeks to examine the legal and institutional framework for combating all forms of child labour in Nigeria.

**Srivastava**<sup>32</sup> in his article defined child labour, gave statistics of child labour globally with emphasis on Asia looking at India as a case study. He looked at the forms and consequences of child labour and also the various interventions carried out in India to eliminate and prevent child labour. He however, observed that, though there is an existing policy curbing child labour in

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<sup>31</sup> Ladan, M.T (2005) *The Rights of Child Domestics as Victims of Human Rights Violation and Trafficking in Nigeria*. A paper presented at a 2-day workshop for judges, Magistrates and prosecutors at Country Home, hotel Jos p.6

<sup>32</sup> Srivastava, K. (2011) *Child Labour Issues and challenges*.  
<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3425238/> accessed on 10/04/2015 at 2.01pm

India, there is the lack of enforcement mechanisms in India. This research seeks to examine the legal and institutional frameworks with regards to Nigeria situation on combating child labour.

**Baradaran and Barclay:**<sup>33</sup> in their work proposed the use of fair trade labelling as an approach and solution to combating child labour. Fair trade according to them is the market- based approach that helps producers in developing countries obtain special trading conditions and increased profits in exchange for meeting various human rights and labour standards that benefit workers. Fair trade relies on market incentives and private monitoring with effective punishment for non- complying fair trade companies. Unlike prosecutions that focus on a small number of resulting problems of child labour and trafficking, fair trade focuses on improving incomes, working conditions, health and education of a large number of workers. They saw fair trade as better option to penalties and punishments of human rights violators including issues of child labour. Their work focused on the promotion of fair trade as an alternative to developing stiffer legislation and increased prosecution of child labour. Though their work is relevant to this research, this research however, examined the legal and institutional framework for the elimination and prevention of child labour in Nigeria.

The examination of the normative framework for the promotion and protection of human rights in Nigeria was done by **Ladan**<sup>34</sup> in a lecture delivered at the institute for peace and sustainable development, Niger state. In the lecture, he looked at the provisions of the 1999 Nigerian constitution which he regarded as the supreme law of the land and which provides for the promotion and protection of child rights as stated in sections 33-42. He also examined chapter two of the Nigerian Constitution under the heading- Fundamental objectives and directive

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<sup>33</sup>Bardaran, S.and Barclay, S. (2011) *Fair Trade and Child Labour*; Columbia Human Rights Law Review Available at <http://ssrn.com/abstract=1823546>

<sup>34</sup> Ladan, M.T. (2009) *Introduction to National and International Legal Frameworks on Human Rights*: A lecture delivered at Abdulsalam Abubakar Institute for Peace and Sustainable Development, Niger state

principles of state policy which provides the nearest articulations to economic, social and cultural rights in Nigeria. However, the ideals of (Economic and Social) ECOSOC Rights embodied in the provisions of chapter two of the Nigerian constitution are couched not as rights but duties of state. Even though this lecture is relevant to the research, it can be said to be broad and not specific to issues of child labour. The lecture examined human rights issues generally but this research will examine the legal and institutional frameworks for combating child labour in Nigeria.

**Dada:**<sup>35</sup> researched into the issues of child hawking and examined factors promoting child labour which includes poverty, exploitation by the adults and children's own choices as a result of ignorance, rapid population growth of many less developed countries, high rates of unemployment, inflation, low wages and deplorable working conditions as contributors to incidents of street trading and child labour. He saw these factors as reasons for children attempting to help and support their families among other things. According to him, there is an increase in the number of children hawkers in Nigeria and also stated the problem, hazards and dangers associated with it (motor accident, rape, kidnapping, extortion, sexual molestation and the child involvement in robbery and other anti-social behaviours, sexual defilement, sexual assaults, neglect and threat of punishment for speaking out) of street hawking among Nigerian children. The study discovered that the level of awareness of the dangers inherent in child hawking among the affected children was low, parents' levels of education, parents' occupations and the sizes of the family were significantly related to the problem of child hawkers in the study area. The study recommends intensified enlightenment programmes on the problem of child

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<sup>35</sup> Dada, M.O.,(2013) *A Sociological investigation Of The Determinant Factors And The Effects Of Child Street Hawking In Nigeria: Agege, Lagos State* culled from International Journal of Asian Social Science:<http://www.aessweb.com/journal>, p.114. Accessed on 6/2/2015 at 9.44am

hawkers, positive and genuine commitment by the government, mass, free and compulsory education, and a serious fight against poverty though he mentioned different legislative provisions on child labour, this research seeks to examine the legal frameworks, institutional operations and enforcement mechanisms established for the protection of children from child labour and exploitation.

**Jones, Presler-Marshall, Cooke, Akinrimisi,**<sup>36</sup> these authors in their work opined that there is a need to build a synergy between child protection and social protection in Nigeria. According to them, building social protection to reduce risks related to developmental and life-cycle vulnerabilities is crucial, particularly in developing country contexts. The report is informed by a transformative social protection conceptual framework which aims at identifying policy and programming gaps and offer recommendations on how the country can implement its national development and social protection strategies to be more responsible to children's protection vulnerabilities.

**Okulaja**<sup>37</sup> in his article reported that “Nigeria has the highest number of children out of school” in ranking Nigeria amongst the worst place for a child to be in 2010, a report by the Global Campaign for Education (GCE) has stated that Nigeria has more children out of education than any other country in the world. The report claims that an astounding 8.2 million children are not provided with adequate education in Africa's most populous country. Comparing the nation's wealth with the apparent low standard of education, the report claims that “the report is made all the more appalling by the fact that Nigeria is far from being poor, by African standards.” For primary education, the report claims many students drop out of the school in their first year of

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<sup>36</sup> Jones. N, Presler-Marshall. E, et al(2012) *Promoting Synergies between Child Protection and Social Protection in Nigeria (unpublished work)*, UNICEF [www.UNICEF.org](http://www.UNICEF.org) Accessed on 22/07/14 at 1.15pm

<sup>37</sup> Okulaja, A. (2010), *Nigeria: Millions Lack Schooling*. In: *The New*, October 22, 2010 .Accessed on 1/12/14 at 1.45pm. Culled from [www.Next.com](http://www.Next.com).

education due to ‘unequal provision of education’ and this it argued, is caused by the lack of political will to address and arrest the issue. The report particularly criticised the northern region of the country for an abysmal amount of children denied good education. The report noted that delivering education for all is highly achievable and brings other poverty dividend such as reducing HIV deaths by seven million and doubling child survival by 50% if mothers are educated.

The president of the Global Campaign for Education- Kailash Satyarthi, in a statement to political leaders warned “if scientists can genetically modify food and NASA can send missions to mars, politicians must be able to find the resources to get millions of children into school and change the prospects of generations of children.” GCE called on leaders meeting at the United Nations in New York that week, to make funding for education a priority in order to meet the target of universal access to basic schooling by 2015. This work only looked at how education can be used as a tool to combat child labour. It however did not examine the frame work for the elimination and prevention of child labour in Nigeria the crux of this research work.

**Eroke**<sup>38</sup> writes on efforts by the International Labour Organization (ILO) and the Department for Equal Opportunities (DEO), Italy to rehabilitate victims of human trafficking and child labour. She recognises that, all over the world, trafficking in human beings is not only a serious crime, but an abuse of individuals human rights. According to the United Nations (UN), it is one of the fastest growing areas of international criminal activity, as it often involves a number of different crimes, panning different countries and involving an increasing number of victims. Trafficking can be compared to modern day form of slavery because it involves the exploitation of people

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<sup>38</sup> Eroke, L. (2012) *Nigeria: Rehabilitating Victims of Human Trafficking, Child Labor* [www.AllAfrica.com](http://www.AllAfrica.com). Accessed on 6/02/15 at 9.44am



through force, coercion, threat and deception. It also has consequences not only for the victims but also for their families and the nations involved. Victims of human trafficking required assistance in order to regain their confidence because of the physical and psychological trauma they experience in the hands of traffickers and this involves medical help, psychological support, legal assistance, shelter and everyday care. “Trafficking in human beings is not only a serious crime, but it is also an abuse of an individual’s human rights. Being trafficked results in the sustained physical and psychological abuse of the victim solely for the financial gain of others and it starts the moment the individual is deceived, persuaded or forced into the hands of the traffickers. Trafficking has consequences not only for the victims but also for their families and the nations involved”, she explained. She considered child trafficking to be child labour, limiting her write up to interventions carried out for trafficked victims including children and also the effects such trafficking can have on the victims. This research seeks to examine the enforceability of legislations, challenges and hindrances to its implementation and legal and institutional framework for the elimination and prevention of child labour in Nigeria.

**UNICEF**<sup>39</sup> in its work addressed the issue of child labour in the context of child protection from system approach which includes promoting legal reforms in education, social protection, data needs and challenges. The work also looked at prevention and responses to violence against children in domestic work as well as engaging the business sector in supporting child protection. The work was titled “Nepal: an integrated response to child labour”, Burkina Faso: rehabilitating children working in small-scale gold mines”, et al. this work did not examine the legal and institutional frameworks on elimination and prevention of child labour in Nigeria; the focus of this research.

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<sup>39</sup> UNICEF (2014) *Child Labour and UNICEF in Action: Children at the Center*. [www.unicef.org](http://www.unicef.org) accessed on 10/04/15 at 1.56pm

According to the global labour grouping of the International Trade Union Confederation (ITUC),<sup>40</sup> some 15 million children work in Nigeria<sup>41</sup> often in dangerous jobs, and many workers in Africa's most populous nation live in fear of violence from police and employers. The report said many core international labour standards that the energy- rich African giant is a signatory to were regularly breached and there was widespread discrimination against women and minority groups in the labour market. They stated that "unions frequently experience violent attacks and there is little protection from anti- union discrimination" said the report submitted to the 153-member World Trade Organization (WTO) in Geneva. Women and minority groups face discrimination in getting jobs and getting promoted, it said. "The gender pay gap stands at 68 per cent and the majority of women are employed in precarious and informal economic activities." The WTO in discussing Nigeria's trade policies, stated that, a process through which all its members pass regularly ..., and the ITUC insists that the trade body should look at labour practices. The report briefly highlighted the challenges of having signed on several conventions.<sup>42</sup> without implementations. This situation of failure not only hurts Nigerians, it also undermines efforts by other government to uphold decent employments standards in the globalised economy," Burrow declared. This report has brought to fore the gaps in the implementation of policies and legislations ratified. Even though this is relevant, this research seeks to examine and analyse the legal and institutional frameworks on the prohibition of child labour in Nigeria.

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<sup>40</sup> [www.panapress.com/Global\\_labour\\_group\\_alleges\\_child-labour-in-Nigeria-13-780911-17-lang2-index.html](http://www.panapress.com/Global_labour_group_alleges_child-labour-in-Nigeria-13-780911-17-lang2-index.html) Re-accessed on 17/11/15 at 23.02 pm

<sup>41</sup> "Some 15 million children are at work, many in dangerous jobs," said the ITUC — the Brussels-based International Trade Union Confederation, which represents some 175 million workers in 151 countries, including Nigeria, around the world.

<sup>42</sup> Nigeria, has ratified all eight of the core International Labour Organization (ILO) conventions protecting workers' rights including freedom of unions to organize and ending child labour.

According to “Understanding Child Work Project(UCWP),”<sup>43</sup> child labour and educational marginalization represent major challenges in the ECOWAS region. The rates in the region are among the highest in the world. Almost 21 million children aged 5-14 years, 25 per cent of children in this category are in child labour. At the same time, an alarmingly, high number of primary school – aged children are out of school, often due to work demands. The report tried to bring to fore other challenges of child labour and educational marginalization. The report promotes translation of plans into concrete action by helping to build the evidence base necessary for the design and targeting of specific interventions against child labour. This report focuses on the challenges and solutions to educational marginalization and child labour while the focus of the research is examination of the legal and institutional framework on the elimination and prevention of child labour in Nigeria.

## **1.8. Organizational Layout**

This research work in its chapter 1 introduced generally the issues of child protection and child labour in Nigeria, discussed the problems, set out the objectives of the work, stated the justification for the research, described the methodology used and defined the scope of the research. Chapter 2 looked at the conceptual framework and the development of child labour prohibition laws in Nigeria by giving the overview, defining child, child labour, child work and other related terms. It also traced the historical development of child labour prohibition laws while stating the causes and effects of child labour and protection issues. The chapter also discussed the various forms and types of child labour. Chapter 3 dealt with the analysis of legal framework for combating child labour and on protection of child’s right in Nigeria. Chapter 4

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<sup>43</sup> International Labour Organisation, *The Twin Challenges of Child Labour and Educational Marginalisation in the ECOWAS Region*. [www.ilo.org](http://www.ilo.org). Accessed on 10/04/15 at 2.01 pm

discussed the institutional framework, the roles of domestic institutions and the enforcement mechanism in the prohibition of child labour and protection of children in Nigeria. Chapter 5 was on data presentation and analysis. Chapter 6 is the concluding chapter which dwelled on the summary, findings and recommendations of the research.

## **CHAPTER TWO**

### **CONCEPTUAL FRAMEWORK AND THE DEVELOPMENT OF CHILD LABOUR PROHIBITION LAWS IN NIGERIA.**

#### **2.1 Introduction**

Children have always worked in Nigeria but over the years the number had increased significantly. The end of the oil boom in the 70s coupled with mounting poverty drove millions of children into Labour. Child labour is so wide spread in Nigeria that it has been accepted by many as part of normal life. But the practice is only an aberration which takes away the innocence of millions of children. Many societies, especially poor rural dwellers (including Nigerian poor rural societies), do not necessarily view child work as bad, even at an age of eight or nine years. This is partly due to the fact that in many societies, an apprentice of eight or nine years is not considered a child.<sup>44</sup> In Nigeria, child labours do mostly occur in semi-formal and informal businesses with hundreds of thousands of young domestic servants, mainly working for prosperous urban families. Domestic servants are the least visible categories and often sexually harassed.<sup>45</sup> Children working are a workforce with no bargaining powers.<sup>46</sup> Child labour is a denial of childhood and it is a threat to the future of the country.<sup>47</sup> Realising this as a great threat, made Nigeria to ratify the three (3) conventions as follows: (1) International Labour Organisation (ILO) Conventions (2) Optional Protocols on prevention, prohibition and (3)

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<sup>44</sup> Grootaert C. and Kanbur R., (1995)*Child Labour: An Economic Perspective*, In: International Labour Review, Vol. 134, P. 189

<sup>45</sup> UNICEF (2006) Information Fact Sheet on Child Labour. Nigeria Country Programme.  
[www.unicef.org/wcaro/WCARO\\_nigeria\\_factsheetschild\\_labour.pdf](http://www.unicef.org/wcaro/WCARO_nigeria_factsheetschild_labour.pdf) accessed on 23/10/15 at 6.25am

<sup>46</sup> UNICEF, end child exploitation and labour today,  
[www.UNICEF.org.uk/doduments/publications/ecechild2\\_a4estimates2000-2012](http://www.UNICEF.org.uk/doduments/publications/ecechild2_a4estimates2000-2012) analytical report ILO p.vii

<sup>47</sup> Nwiro E.(2010) [www.thisdaylive.com/articles/child-labour-a-threat-to-nigeria-s-future/81845](http://www.thisdaylive.com/articles/child-labour-a-threat-to-nigeria-s-future/81845). Accessed on 27/10/15 at 2.37pm

elimination of child labour especially its worst forms. To understand the efforts of Nigerian government in this regard, this chapter deals with the historical development of laws preventing and prohibiting child labour in Nigeria, define various terms as it relates to child labour, while bringing to focus the forms, causes and effect of Child Labour on the child, family, community and nation at large.

## **2.2 Conceptual Clarification of Terms**

### **2.2.1 Meaning of a Child**

The UN Convention on the Rights of the Child (UNCRC) in its Article 1 defines a child as “everyone under 18 unless the law applicable to a child is attained earlier.” This means that the concept or definition of a child is subject to national laws of each country governing and guiding issues of the child. Therefore, child according to the Child Rights Act,<sup>48</sup> is a person under the age of eighteen years. Children and Young Persons Law<sup>49</sup> on the other hand, defines a child in its section 2 to be a person under the age of fourteen years and a young person as one who has attained the age of fourteen years but under the age of eighteen years. The 1999 Constitution of the Federal republic of Nigeria **section ()** puts the age of majority at 18 years. In some societies, a person of eight or nine years is no longer considered a child.<sup>50</sup>

A child could also be “a young human being below the age of puberty or below the legal age of majority” or “a young person especially between infancy and youth.”<sup>51</sup> In contrast to western world and international legal instruments, in many African communities (Nigeria inclusive), childhood is not perceived and conceptualised in terms of age but in terms of intergenerational

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<sup>48</sup> Section 277, Child Rights’ Act, 2003 Cap C50, LFN 2004

<sup>49</sup> Cap C10, Laws of Lagos State, 2004

<sup>50</sup> Grootaert K. et.al (1995) *Child Labour, An Economic Perspective*, In: International Labour Review, vol. 134, p.189

<sup>51</sup> [www.merriam-webster.com/dictionary/child](http://www.merriam-webster.com/dictionary/child). Accessed on 12/11/15 at 12.50 noon

obligations of support and reciprocity to parents and elders, and the attainment of adulthood is often marked by initiation ceremonies which usually culminates into marriage.<sup>52</sup> The age of a person could also be determined based on physiological, medical and psychological features. It is therefore, difficult for one definition of a child. In some cultures, a boy is considered a man once the ‘voice breaks’ or start having wet dreams. At that stage, he is no longer considered a child. In some places, the development of breast of the female or commencement of mensuration makes them to be considered as young women instead of as children. The cultural diversities and perceptions of the concept of childhood contributes to the wide spread acceptance of child labour. There is a strong consensus that the social concept of childhood has changed greatly in recent years. Recognising the difference in the social status of the child in recent years sees the twentieth century as the “century of the child”.<sup>53</sup> This new social concept of children is seen as a period of life devoted to education and growth and not to work or labour. This is evidenced even in the legal instruments protecting the rights of children drafted in recent years.<sup>54</sup>

From the definitions above, in this research, it could be said that a child is anyone below 18 years or subject to the legal definition of the country. Going by this position and taking into consideration cultural and traditional perspective on childhood or on who is a child, there is a lot of room for manipulating the type of work this category of persons should be engaged in.

### **2.2.2 Meaning of Child work**

It is a minor’s salutary employment, especially within the family. Child work within family unit can be a positive experience as it is believed to facilitate skills and social adaptation and is often

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<sup>52</sup> Humbert f., (2009) *The Challenges Of Child Labour In International Law*, Cambridge University Press, United Kingdom P 16

<sup>53</sup> Ibid p. 15

<sup>54</sup> Art. 3(1) UNCRC 1989; Art 2 Of International Labour Organization (ILO) Convention No. 5, Minimum Age (industry) of 1919

viewed as an expression of family solidarity. Children working at the weekend or helping out at home on the farm during holidays is a positive development but serious work is meant for adults even in the house. Any work that does not hinder children's development, wellbeing and schooling or do not affect their health physically or mentally is said to be child work. Where work is considered to be part of a child's training to becoming a responsible adult, it is considered as child work. Child work entails children being engaged in light work which is usually for a short time or period even though it is an economic activity.

### **2.2.3 Meaning of Child Labour**

Child labour according to Black's Law Dictionary<sup>55</sup> is "the employment of workers under the age of majority". This term typically focuses on abusive practices such as exploitative factory work, slavery, sale and trafficking of children; forced or compulsory labour, such as debt bondage or serfdom; and the use of children in prostitution, pornography, drug trafficking or anything that might jeopardise their health, safety, or morals."

Furthermore, Child Labour refers to the subset of children's work that is injurious, negative or undesirable to children. Child Labour is a work carried out to the manifest detriment and endangerment of the child, in violation of the rights of the child. It can also be described as both paid and unpaid work and activities that are mentally, physically, socially or morally dangerous and harmful to children. It is a work that deprives them of opportunities for schooling or that requires them to assume the multiple burdens of schooling and work at home or in other places and work that enslaves them and separates them from their families.<sup>56</sup>

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<sup>55</sup> Garner B. A., (2009), *Black's Law Dictionary*, Ninth edition, Thomas Reuters, U.S.A, p.273

<sup>56</sup> Pegus C., (2005), *A Review of Child Labour Laws of Barbados- a Guide to Legislative Reform*.  
[www.unicef.org/lac/spbarbados/legal/national/Barbados/others/review-child-labour-laws-barbados\\_IL0\\_2005.pdf](http://www.unicef.org/lac/spbarbados/legal/national/Barbados/others/review-child-labour-laws-barbados_IL0_2005.pdf)



Any work that is carried out full-time at too early an age; too many hours are spent on working; it exerts undue physical, social or psychological stress; it includes work and life on the streets in bad conditions; inadequate pay; too much responsibility; it hampers access to education; it undermines children's dignity and self-esteem, such as slavery or bonded labour and sexual exploitation; it is detrimental to full social and psychological development, is said to be child labour.<sup>57</sup>

Child labour conventionally refers to children working before they reach the lawful minimum age for employment in their country often the same cut-off age for compulsory attendance and completion of school.<sup>58</sup> It could also be said to refer to when children work in any type of situation that is dangerous and harmful to the children's health or the work hinders their education. To some people, it refers to low wages, long hours, physical and sexual abuse while others see it as a form of abuse when children work in bad condition and hazardous occupations.

According to ILO,<sup>59</sup> which classifies all intolerable child work as child labour, child labour is a form of denial of the right to education and of the opportunity to reach full physical and psychological development.

According to the Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, the ILO further distinguishes between the following categories of child labour:

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<sup>57</sup> UNICEF,(1997) *The State of the World's Children*, UNICEF Report by Carol Bellamy, Executive Director, p.24

<sup>58</sup> [www.unicef.org.uk/Documents/publications/ecechild2\\_a4](http://www.unicef.org.uk/Documents/publications/ecechild2_a4). Accessed on 24/10/15 at 4.15pm

<sup>59</sup> ILO,(1998) *Child Labour, Targeting the Intolerable*, : In Report VI(1), International Labour Conference, eighty-sixth session, Geneva, p.8. [www.ilo.org/ipec/informationresources/wcms\\_IPEC\\_PUB\\_11151/lang--en/index.htm](http://www.ilo.org/ipec/informationresources/wcms_IPEC_PUB_11151/lang--en/index.htm). Accessed on 5/11/15 at 9.52 am

1. Labour that is performed by a child who is under the minimum age specified for that kind of work (as defined by national legislation in accordance with accepted international standards), that is thus likely to impede the child's education and full development.
2. Labour that jeopardises the physical, mental or moral well-being of a child, either because of its nature or because of the conditions in which it is carried out, known as hazardous work.
3. Unconditional worst forms of child labour which have been defined in its Article 3 of Convention No. 182 to include the "worst forms of child labour." This worst forms comprises of "all forms of slavery or practices similar to slavery such as the sale of and trafficking of children, debt bondage and serfdom and forced and compulsory labour including forced or compulsory recruitment of children for use in armed conflict; use or offering a child for prostitution, for production of pornography or pornographic performance; Use of children for illicit activities, in particular for the production and trafficking of drugs as defined in various international treaties; or work which by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children. In other words, any job that impacts negatively on children's education and development.

According to Bhat,<sup>60</sup> the definition of child labour is not simple because it involves three difficult concepts, which are "child", "work", and "labour." He claims that the term of childhood can be defined by age but in some societies, a person ceases to be a child at different ages. He further stated that the onset of puberty occurs at different ages for different people. He is of the opinion

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<sup>60</sup> Bhat B.A., (2010), *Gender education and child labour: A Sociological Perspective*, Center of Central Asian Studies, University of Kashmir, J and K, India, 190006:June, Vol.,5(6) p.323

that child labour should be defined bearing in mind cultural differences and societal norms in the definition of the above three terms.

Child labour depends on whether the work is exploitative, abusive, dangerous to the health, growth and development of the child and also whether it contravenes any of his/her rights. If they are exposed to environmental hazards in the course of work which can negatively affect their health and safety, it can then be said to be child labour.

Outside slavery-like situations, the International legal position on child labour reflects the balance that Convention Nos. 138 and 182 strikes between the need to accommodate "light work" up to a few hours per day within the context of the household and as part of informal education and training which belongs to the normal process of growing up on the one hand and the protection against abuses and hazardous work on the other hand. The type of work determines whether it can be classified as child labour or not.

Section 28 of the child Rights Act, 2003 defines child labour as any form of forced or exploitative labour on children which out-rightly must be prohibited.

Child labour is simply the single most important source of child exploitation and child abuse in the world today.<sup>61</sup> It is a violation of the fundamental rights of children. It should *be noted that child labour is more in the agricultural sector than other sectors as "one third of the worldwide agricultural workforce is made up of child labourers."*<sup>62</sup>

On the other hand, Islamic law emphasises on 'work' and sets many guidelines in relation to work ethics. Issues related to labour and labour rights have great importance in Islam. According

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<sup>61</sup> International Labour Organisation, *Targeting the Intolerable*, *op. cit.* p.4.

<sup>62</sup> UN official: *End child labour on Farms*. [www.upi.com/Top\\_news/2007/06/13/UN\\_Official\\_End\\_child\\_labour\\_on\\_farms](http://www.upi.com/Top_news/2007/06/13/UN_Official_End_child_labour_on_farms). Accessed on 13/11/15 at 10.53am.

to Islamic teachings, people should put enough effort to earn their livelihood through labour. From Islamic perspective, both intellectual and physical labours are important and should be honoured. Here, it is also highlighted that according to Islam, work is considered as worship (*ibadah*), responsibility (*amanah*), human cooperation (*t a'awun*), and obligation (*shari'ah* obligation). Islam considers work as a matter of self-dignity, but Islam also imposes some restrictions towards works. For instance, Possumah, Ismail and *Shahimi*<sup>63</sup> opined that “...payment for labour should be made before the sweat of the labourer dries up”. The minimum wage to live a decent life should be ensured. There should be a cordial and healthy relationship between the employer and the employee and the employer should not overburden the employee with work that is beyond his capacity. They went further to state .... in the case of setting working hours, employers are told not to force employees to “work beyond his capacity” workload is “excessive”, then they are told to “share the burden”. The Muslim scholar, Maulana Manazir Ahsan Gilani, has gone as far as suggesting that the basic necessities of an employer and employee should be the same and that the number of “working hours should be fixed according to the capacity of (each) worker”.<sup>64</sup> When child labour is applied in business organisations, Islamic ethical principles can be followed. The employers should be ethically guided in doing businesses.<sup>65</sup> Businesses should be guided by four important principles namely ‘*ihسان*’ (goodness and generosity), good relationship with others, equity, and accountability.<sup>66</sup> The businesses should be morally driven.<sup>67</sup> Thus, in case of dealing with children, the employers

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<sup>63</sup> Possumah, Ismail & Shahimi (2013), *Bringing Work Back in Islamic Ethics*, Journal of Business Ethics, Vol.112 p.265

<sup>64</sup> Hossain D. M and Monawer A.T.M (2016) *Child Labour Perspective*, In: Esteem Academic Journal Vol. 12 No.2, University Teknolog Mara, p.20

<sup>65</sup> Possumah, Ismail & Shahimi (2013), *op. cit*, p.265

<sup>66</sup> Ali, A., Al-Aali, A., & Al-Owaihian, A. (2013). *Islamic Perspectives on Profit Maximization*. Journal of Business Ethics, 117, 467-475

<sup>67</sup> Ibid

should practice goodness, generosity, equity, accountability, and morality. It was mentioned earlier, in the literature related to child labour, that it is not all kinds of labour that are treated as hazardous. Mainly the works that are physically and mentally problematic for the children and can be considered as obstacles in their development are treated as hazardous child labour. From the discussion, it can be understood that in Islam, children have very special status and rights, so harmful and unlawful works can be considered as prohibited in Islam. Azzaam and *al-Muwaajidah* refers to two terms in relation to child labour. One is ‘*Umaalahl*’ and the other is ‘*tashgheel*’.<sup>68</sup> ‘*Umaalahl*’ means to use the child as a worker, which means the child is treated as any other labour. It represents the works that may harm a child physically, psychologically and socially. ‘*Umaalahl*’ represents the exploitative nature of work (for example, using children in industries where severe manual work is needed). Using the children as construction workers and employing them in any workshop where they are exposed to health hazards are the examples of ‘*Umaalahl*’. Whereas, ‘*tashgheel*’ is that kind of work that helps either to develop the life skills of a child or to bring any benefit to him/her. These benefits can be in the form of money or any other benefit. For example, an orphan child may get employed and get money. He/she can also be provided with shelter and care. They also mentioned that “child labour must be in service of educating and raising children”.

Thus, it can be said that among these two categories (‘*Umaalahl*’ and ‘*tashgheel*’), ‘*Umaalahl*’ is prohibited in Islam. Another term that needs clarification in this respect is ‘*Khidmah*’. The literal meaning of this word is service. However, here service does not represent a job or an occupation rather it is a kind of favour. ‘*Khidmah*’ is permitted in Islam. The person who performs ‘*Khidmah*’ is called ‘*Khadim*’.

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<sup>68</sup> Azzaam, H. F. H., & al-Muwaajidah, M. I. (2008), *Ruling on Child Labour in Islamic Law*, (Hukmu Umaalatil Atfaalifil Fiqhil Islami), *al-Majallah al-Urduniyyah fi al-Diraasat al-Islaamiyyah*, 3, 203-221

For example, welcoming the guests, sending children to buy small groceries from the shops or helping parents in household tasks are considered as '*Khidmah*'. However, in many South Asian countries, there is a common tendency to employ children for the household works.<sup>69</sup> In such cases, if the children are treated badly by the employers and are given tasks that create excessive pressure, it can become harmful for the body and mind of the children. It can affect their physical, psychological and social development. This kind of work cannot be treated as '*Khidmah*'. The health of the children is considered highly important in Islam, so any work that is harmful for children's health is forbidden in Islam. The employers should not be oppressive to the employees and practice generosity ('*ihsan*') in dealing with the employees. Employing children in hard and dangerous labour falls into the category of inflicting hardship and harm, even if done unintentionally or through ignorance. If we say, as explained by shariah, that inflicting harm is prohibited, it follows that subjecting children to hard labour is therefore not permitted.

Islam allows child labour which is termed as '*tashgheel*' as long as it is in line with the teachings and principles of Islam. Several prophetic traditions support this ruling. An authentic hadith is reported by Muslim and narrated from Anas bin Malik (May Allah be pleased with him). Anas bin Malik said: "Once, the Messenger of Allah (Peace be upon him) came to me while I was playing with the boys. He greeted us and sent me on an errand". (Sahih Muslim, Book 2, Hadith 8). Another authentic hadith is reported by Bukhari and narrated by Anas. Anas bin Malik said: Whenever the Prophet (peace be upon him) went into privacy, a servant and I used to carry a skin of water container and a spear and he would cleanse himself with the water (Sahih Muslim, Book 2, Hadith 87). These references from Hadith prove that the Prophet (peace be upon him)

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<sup>69</sup> Edmonds, E. V., (2003), *Child labour in South Asia*. Paris: Organisation for Economic Co-operation and Development.

used to assign some works to children, so according to Islam, in some cases, children can be assigned with some tasks. Anas bin Malik served, as an assistant of the Prophet of Islam (peace be upon him) for more than nine years. He worked under the Prophet (peace be upon him) for a prolonged period and thus, the work was continuous and not temporary.<sup>70</sup> Children can be allowed to do some works because childhood can be considered as the age of education. These tasks can be for their skill development. There are some children who are able to carry out some sorts of tasks better than elderly people, particularly those tasks that are simple and repeated. According to Azzaam and al-Muwaajidah, it was seen in psychological and sociological research that there are some positive aspects of assigning children with some works. It injects a sense of responsibility in the children. If children get paid from the work, it can add extra income for their families.<sup>71</sup> Moreover, children also get trained through this. This training can help them to perform well in their future occupations. In a working environment, children may learn to respect the others as well as they can get love and mercy from others. It also helps them to become capable of facing difficulties in their future life. According to a number of Muslim classical scholars such as Ibn Humam, al-Ayni, al-Khurashi, and al Sharbini, a person will not be considered as a child until he/she reaches puberty. Puberty is a sign of adulthood, but even before puberty, a child can have mental maturity. These children can be employed in works that are permissible in Islam. The classical Muslim scholars such as Badruddin al-Ayni, Muhammad al-Khurashi, and Muhammad al-Khatib al-Sharbini also supported this view that child labour is

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<sup>70</sup> Azzaam, H. F. H., & Al-Muwaajidah, M. I. (2008). Ruling on child labour in Islamic law (Hukmu Umaalatil Atfaalifil Fiqhil Islami), *al-Majallah al-Urduniyyah fi al-Diraasat al-Islaamiyyah*, 3, 203-221

<sup>71</sup> Ibid

permitted in Islam.<sup>72</sup> However, definitely, every work should be done by maintaining Islamic values and ethics. Due to this, hazardous child labour is not permitted in Islam.<sup>73</sup>

The child should not be employed for any immoral activities. For example, using children in activities such as prostitution and drug trafficking cannot be tolerated from Islamic perspective. Any kind of adultery is prohibited in Islam. In Al- Qur'an, this issue was highlighted several times. Islam prohibits physical relationship outside marital bondage.

Al- Qur'an also highlights the issue of homosexuality and prohibits it. Islam rules that wine and any other kind of intoxication is harmful for health and thus, is prohibited.<sup>74</sup> These laws are applicable to every aspect of the lives of the Muslims.

*Azzaam* and *al-Muwaajidah* highlighted that while dealing with child labour, nine important issues must be considered.

Firstly, the child should not be assigned any illegal task. Secondly, only the children who have mental maturity and can differentiate between the right and the wrong can be employed. It should be remembered that immature children cannot be held accountable for any kind of responsibility. Thirdly, before employing any children, permission must be sought from the parents. Parents are responsible for care and education of the children, so permission to work should come from them. Fourthly, it is important that the tasks assigned to children should enrich them in terms of knowledge and skill. It should ensure their welfare. Fifthly, it is important to specify the kind of job, work period and the payment that will be assigned to children. In many cases because of the absence of enough laws and rules, children get wrongly exploited, so before

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<sup>72</sup> Ibid

<sup>73</sup> Hossain D. M and Monawer A.T.M (2016), *Child Labour Perspective* In :Esteem Academic Journal Vol. 12 No.2, University Teknolog Mara, p.21

<sup>74</sup> Ibid



taking any children for any job, these issues should be clearly settled. Sixthly, work should not harm children's education. Seventhly, the work should not harm the manners of children. It should help upholding the Islamic manners. Eighthly, children should be given enough opportunity to play in order to ensure physical growth. Ninthly, children must be treated with mercy and compassion.<sup>75</sup>

The case of Anas Ibn Malik illustrates the principle of '*tashgeel and 'Khadim*'. The last Prophet (PBUH) employed Anas ibn Malik as his '*Khadim*'. This is an example of how *tashgheel and 'Khidmah*' can be applied in the best manner. The expected nature of child labour can be understood *from* the life of Anas. As a young companion of the Prophet, Anas used to assist him in various activities. It was mentioned in a few authentic Hadith (such as al-Bukhari, Book: 78, no. 6038) that Anas served the Prophet (PBUH) of Islam for more than nine years following the Prophet's (PBUH) migration to the city of Medina (from Makkah) until his death. It can be found from various sources that the Prophet (S.A.W) used to keep a very good and cordial relationship with Anas. The Prophet (S.A.W) never criticised Anas for anything. If Anas did not do any task even after he was asked to do it, the Prophet (S.A.W) never charged him for that. It can be identified from the authentic sources that the Prophet never even uttered the word Uff (the softest expression out of any dissatisfaction or displeasure) for Anas. The Prophet (PBUH) was very affectionate towards Anas. He used to call Anas – Unays (little Anas) and bunayy (small kid) out of affection. Arabs use these diminutive forms of names (known as *Tasgheer*) in order to show affection and love. Out of love the Prophet also used to call Anas as *Abu Hamzah and Zul Uzunayn*. Moreover, the Prophet (PBUH) used to maintain a cordial relationship with Anas' family. He used to visit Anas' home. It can be found from several sources that Anas used to be

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<sup>75</sup> Azzaam, H. F. H., & al-Muwaajidah, M. I. (2008). *Ruling on Child Labour in Islamic Law* (Hukmu Umaalatil Atfaalifil Fiqhil Islami), *al-Majallah al-Urduniyyah fi al-Diraasat al-Islaamiyyah*, 3, 203-221

assigned with the simplest possible tasks that are not physically demanding. It was found that Anas used to carry water, *miswak* (the chew stick) and *asaa* (the hand stick used to rely on) of the Prophet (PBUH). He was not allowed to do hazardous tasks. For example, Anas was not allowed to take part in one of the most important holy battles for the Muslims – the *Ghazwat al-Badr*. As a child he was not considered as fit for the battle.<sup>76</sup> In return for this service to the Prophet (PBUH), Anas achieved many things. He gained profound knowledge on the Islamic issues. Moreover, he gained Prophet's love, compassion and good wish. He learnt about *Shama'il al -Nabiyy* – the great Prophetic manners and way of conducting his life. He also learnt about the Prophet's way of salat (the compulsory prayer that the Muslims have to perform five times a day). Anas also gained knowledge about the household lifestyle and maintenance of relationships. For example, he was taught the importance of keeping privacy in a relationship. Thus, Anas never disclosed any private matter of the Prophet even to his mother or close friends. These trainings of Anas were lifetime achievement for him. Later, he became one of the most successful Muslims in terms of knowledge and wealth.

Among the Muslims, Islam is considered as a complete solution for all aspects of human life. In Islam, both material and spiritual aspects of life get enough importance. That is why, unlike the secular thoughts (that emphasizes only on the material aspects), Islam asks for both physical and spiritual development. Moreover, Islam supports collectivism. Due to this, the social problems also can be solved through collective efforts. The problem of hazardous child labour can be dealt from four different levels of a society: individual, family, employment, and state.

At an individual level, a child can get himself/herself prepared about the dos and don'ts of life though utilizing the knowledge of *akhlaq*. Islam emphasizes that children should get enough

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<sup>76</sup> Hossain D. M and Monawer A.T.M (2016) *op cit* p.23

education and guidelines on ethics from their childhood. They should learn how to lead a life by following Islamic guidelines. If a child possesses this knowledge, he/she might help himself/herself to choose or to reject a job/work that is offered to him/her. The concept of *fitrah* – ‘the Islamic concept of human nature’ is important here. In Islam, it is believed that every man has an inherent quality of knowing what is good. Islam is considered as a religion of *fitrah*. Mohamed<sup>77</sup> states that: *Fitrah* may be described as a God-given innate state or inclination to believe in God and to worship Him. It can also be translated as “original priority” or “primordial faith” – an original ontological state that disposes the individual to the good and the lawful. However, it is also true that God (Allah) has given free will to man. Because of this free will, the mind of man can get corrupted and thus, *fitrah* can get harmed. He further states that in the Qur’an, Allah says: “We showed him the way: whether he be grateful or ungrateful [rests on his will] (76:3) Say, "The truth is from your Lord": Let him who will believe, and let him who will, reject [it]: (18:29). Here come the issues such as ‘*Adab* and *Akhlaq*.’ Human’s *fitrah* (that is natural inclination to goodness) can be controlled and maintained by *adab* and *akhlaq*. Al-Attas defines *adab* as:

..... the discipline of body, mind and soul; the discipline that assures the recognition and acknowledgement of one’s proper place in relation to one’s physical, intellectual and spiritual capacities and potentials; the recognition and acknowledgement of the reality that knowledge and being are ordered hierarchically according to their various levels (*maratib*) and degrees (*darajat* ). Hashi<sup>78</sup> mentions that the term ‘*akhlaq*’ has two meanings. First, it refers to the science of ‘the standards of right and wrong of human conducts’. Second, ‘*akhlaq*’ also refers to good character

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<sup>77</sup> Mohamed, Y. (1995), *Fitrah and its Bearing on the Principles of Psychology*. In: The American Journal of Islamic Social Sciences, Vol. 12 No.1, p.2

<sup>78</sup> Hashi, A. A. (2011), *Islamic Ethics: An Outline of Its Principles and Scope*. In: Revelation and Science, Vol. 1 No.3, p. 123

and good human behaviour. Teaching of ‘*akhlaq*’ can be done both at the family level and school/educational institution level. Family Level From a family level, discipline (of body, mind, and soul), ethical principles, and good character can be injected in a child. This can be done from the schools and other educational institutions also. However, in comparison to educational institutions, families generally have a greater authority to decide which work the children can choose. The elderly people in the family have the responsibility to give moral education to the children. They should also take the responsibilities of their children. Family is considered as a very important social institution in Islam.

According to Hossain *et.al* Qur’an, through many verses, highlights the importance of marriage and gives enough guidelines on how to run a family in a proper manner. Family should help children to choose the job.<sup>79</sup> The family should also decide whether the child really needs to do the job or not. If the family can support the children, there might not be any need to send any child for jobs.<sup>80</sup> Employers should also take care and be cautious when employing children. They should not offer any unethical and unlawful jobs to the children. Moreover, they should not offer any job that is physically or mentally detrimental to children. They should apply the concept of ‘*rahmah*’ (mercy, compassion, kindness, and sympathy) and ‘‘*ihsan*’’ (being good and fairness) while dealing with working children. The employers should be emphasizing more on the ‘welfare’ of the children rather than ‘exploitation’.

The concept of ‘*ihsan*’ was propounded by Ali, Al-Aali, and Al-Owaihan.<sup>81</sup> They defined ‘‘*ihsan*’’ as the principal factor that shapes and reinforces one’s disposition to engage in

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<sup>79</sup> Hossain D. M and Monawer A.T.M (2016), *op. cit.* p.25

<sup>80</sup> Ibid

<sup>81</sup> Ali, A., Al-Aali, A., & Al-Owaihan, A. (2013). *Islamic Perspectives on Profit Maximization*. In: *Journal of Business Ethics*, Vol.117, p.470

what is good and beneficial to society. '*ihsan*' encourages people to go beyond what is legal and what is just a duty. '*Ihsan*' highlights that it is not enough to perform duties, it is important to go beyond duties by doing something extra for the sake of the love of Allah. According to Islam, this kind of initiative ensures a much higher reward from Allah.<sup>82</sup> Allah mentions in the Qur'an that: Indeed, to Allah belongs all that is in the heavens and on earth: so that He rewards those who do evil, according to their deeds, and He rewards those who do good, with what is best. This verse calls for following the best possible practice in all aspects of human life. Also, it also indicates that any unethical practice will result in punishment so an employer must be careful that he/she does not exploit a child for any unethical, unsuitable, improper and indecent work. Moreover, doing the best will attract rewards.<sup>83</sup>

There is no doubt that an employer is a businessman and he/she should be motivated by profit. However, Islam as a comprehensive religion focuses on both material and spiritual aspects of human life. Profit represents the material gain and earning the profit by applying '*ihsan*' (where possible), will as well ensure the spiritual gain for the employer. Due to this, in employment a child should be treated with mercy and goodness.<sup>84</sup>

Islam believes that the state can play an important role to mitigate the problem of hazardous child labour. The state should work for finding out a remedy for this. The state must investigate the reasons behind children going for hazardous child labour and such reasons should be tackled. In dealing with any kind of social problem, *Shari'ah* principles (the fundamental principles of norms and values derived from the Qur'an and the words and works of the Prophet (peace be

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<sup>82</sup> Ibid

<sup>83</sup> ibid

<sup>84</sup> Hossain D. M and Monawer A.T.M, (2016), *op. cit.* p.26

upon him)) should get enough emphasis. According to *Siddiqui*<sup>85</sup>, the objective of *shari'ah* is related to concepts such as welfare, justice, mercy, and wisdom. He also mentions that the application of *shari'ah* should be guided by the concept of *ma'ruf* and avoidance of *munkar*, meaning what is known about human relationships as good and what human nature accepts as good. The opposite is *munkar*, that which human nature instinctively loathes and rejects.<sup>86</sup> *Shari'ah* only covers the general principles. As the human life is complex, in many cases, in order to handle novel complexities, one has to go for a greater interpretation of the general principles. In these cases, '*fiqh*' is applied.<sup>87</sup> '*Fiqh*' is that mechanism which has evolved in Islamic theology and jurisprudence to determine what is good and what is bad and to generate basic tenets from the general principles. The principles and objectives remain static, no matter how the details change to meet contemporary needs. The "insight" and "comprehension" of the contemporary situation, and how that should be interpreted, is what we know as *Fiqh*. One of the maxims of Islamic law ( *Qawa'id Fiqhiyyah*) is – *Al-Darar Yuzal*, i.e., 'harm must be eliminated'. This maxim originates from a Hadith (words and works of Prophet (PBUH): 'No harm and no counter harm'.<sup>88</sup> Another Islamic legal maxim seeks to prevent any kind of unlawful matters even if that has some benefits. Islamic states should develop the laws in such a way that can prevent harm from its source. The legal issues related to child labour should be guided by these principles. Child labour should be taken care of by keeping these maxims in mind. The state should take care of these issues so that the rights of the children are upheld and any departure from that results in legal actions.

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<sup>85</sup> Siddiqui, A. (2006). *Ethics in Islam: Key Concepts and Contemporary Challenges*. In: Journal of Moral Education, Vol. 26, No.4, Pp. 423-431

<sup>86</sup> Ibid

<sup>87</sup> Ibid p.425

<sup>88</sup> Zakariyah, L., (2009), *Applications of Legal Maxims in Islamic Criminal Law with special reference to Shari `ah Law in Northern Nigeria (1999-2007)*. UK: University of Wales.

It can be seen from the discussion that the Islamic stand on child labour does not differ much from the present day views on child labour. In both cases, hazardous child labour is treated as harmful and is prohibited. However, as a religion, Islam stresses on the importance of instilling moral values (more specifically the religious values) in the children so that from the childhood, they can differentiate between good and bad as well as right and wrong. Family should play an important role in teaching them these values. Moreover, families should help them in selecting their jobs. Apart from just focusing on the legal and ethical issues, Islamic teaching also emphasises on the spiritual matters. On this note, the *issues* of mercy, goodness, kindness, and generosity assume great importance. From an Islamic point of view, it can be suggested that employer's crave for profit should *be* accompanied with spiritual blend so that so that rewards can also be generated.

Finally, a state should take the responsibility of eliminating the problems from source. A combined effort from individuals, families, employers, and state can help exterminate hazardous child labour from the society. Many Muslim countries all over the globe are suffering from severe poverty. From the discussions, it was seen that child labour is common in many Muslim countries. In this situation, it is difficult to stop child labour in these economies (this is a common feature in Northern Nigeria). Though Islam has enjoined taking the best care of the children, in many cases, poverty compels people to send their children for labour. Thus, rather than making an attempt to stop labour caution should be taken, so that children do not get physically or mentally abused and can do the work through learning. In general, whenever we think about solving problems such as hazardous child labour, we should try to look into the problems in relation to the existing laws and try to highlight the duties of the state in such respect. However, as mentioned in the beginning of this article, in Islam, both spiritual and

material developments are accorded equal importance. Individual should get himself/herself prepared to deal in the society in accordance with the Islamic teachings. Thus, addressing social problems in relation to child labour is not a duty of the state alone, individuals, families, and employers should equally perform their duties according to Islamic teaching.

From the various definitions and opinions highlighted on the issue of child labour, this work shall adopt the following definition, "any work which jeopardises or is detrimental to the health, growth, development and well-being of any persons under 18 years or may cause harm to the emotions, psychology, cognitive development, health, mentality, physically, socially and educationally of persons under the age of 18 years is child labour. "

#### **2.2.4 Meaning of Child trafficking**

The illegal recruitment, transportation, transfer, harbouring or receipt of any person under the age of 18 years especially from another country, with the intent to hold the child captive or exploit the child for labour, services or body parts.<sup>89</sup>

Child trafficking occurs when a child is transferred from his or her home to another location for purposes of exploitation, whether or not it is against the child's will.<sup>90</sup>

The Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015 prohibits all acts of human trafficking.<sup>91</sup>

#### **2.2.5 Meaning of Child Domestic worker**

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<sup>89</sup> *Black's Law Dictionary, op cit.* p.1635

<sup>90</sup> Barandan S and Barclay S.,(2012) *Fair Trade and Child Labour*, Columbian Human Rights Law Review, Vol. 43, No.1, p.6. [www.law.columbia.edu/hrlr/hrlr\\_journal/43.1/Baradaran\\_Barclay.pdf](http://www.law.columbia.edu/hrlr/hrlr_journal/43.1/Baradaran_Barclay.pdf)

<sup>91</sup> Section 13(1) Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015, No. 32 Vol. 102 of 2015



This refers to situations where domestic work is performed by children below the relevant minimum age (for light work and full-time non-hazardous work) in hazardous conditions or in slavery-like situation.<sup>92</sup> Section 28(d) of the Child Rights Act, 2003 defines it as the employment of children as domestic helps outside their homes or family environment. This research however, explains child domestic work as any domestic work done by a child under 18 years outside parental/guardian supervision especially in exchange for money or favours like better life or education.

### **2.2.6 Meaning of Slavery, forced labour and servitude**

Article 2 of the ILO Forced Labour Convention (No. 29), 1930, which has been ratified by Nigeria, defines forced or compulsory labour as: “All work or service which is exacted from a person under the menace of any penalty and for which the said person has not offered himself voluntarily.”

“Slavery” has been defined in accordance with the definition in the Slavery Convention (1927) as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”

While “slave trade” includes “all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.”

These slavery- like practices are defined in the Slavery Convention:

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<sup>92</sup> International Labour Organisation, Child Labour and Domestic work, [www.ilo.org/ipec/areas/childdomesticlabour/lang-en/index.htm](http://www.ilo.org/ipec/areas/childdomesticlabour/lang-en/index.htm). Accessed on 5/11/15 at 2.00pm

“(a) Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined;

(b) Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status;

(d) Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

### **2.3 Historical Development of Child Labour Prohibition and Prevention Laws in Nigeria**

During the beginning of the industrial revolution, children were forced to work around family farms, in factories tending crops or preparing food. They worked in industries and their conditions of work were very dangerous and often deadly. At that time, the industries preferred child labourers as they were cheap labourers and malleable workers. In 1833 and 1844, the first legislation came into being to ban child labour in the industrialised countries.<sup>93</sup>

The United Nations (UN) system concern with the rights of the child predates the UN. As early as 1924, the need to extend special care to the child was articulated in the Geneva Declaration of the Rights of the Child.<sup>94</sup> This was followed by the 1959 United Nations Declaration on the

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<sup>93</sup> Osment L., (2014) *Child Labour; the effect on child, causes and remedies to the revolving menace*, University of Lunds, Sweden, p.13

<sup>94</sup> Ladan, M.T(2009) *Introduction to National and International Legal Frameworks on Human Rights*: A lecture at the Abdulsalami Abubakar Institute for Peace and Sustainable Development (AAIPSDS) Date: - November 2-7, 2009 Venue: - Niger State College of Education, Minna, Niger State, Nigeria. p27

Rights of the Child(UNDRC) which sets out the general principles that: “the child shall not be admitted to employment before an appropriate minimum age: he shall in no case be caused or permitted to engage in any occupation or employment which will prejudice his health or education or interfere with his physical, mental or moral development”<sup>95</sup>,and the 1966 instruments – the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) which mention, albeit in a cursory manner, rights of the child.<sup>96</sup> A similar provision to Principle 9 of UNDRC was also included in the 1966 ICESCR in its Article 10(3)with the added stipulation that children and young persons should be protected from economic and social exploitation.<sup>97</sup>

The protection of children from and at work has been a basic aim of ILO since its inception. Acting on the call for such protection in the preamble to its constitution, the ILO adopted the Minimum Age (Industry) Convention 1919(No.5) at the very first session of the International Labour Conference in 1919.<sup>98</sup> This was followed by the reversed setting of different age limits for employment by another Minimum Age Convention of the ILO.<sup>99</sup> Although the call to adopt child specific protection had been renewed before the two covenants in 1959 with the adoption by the United Nations General Assembly of the Declaration of the Rights of the Child (UNGADRC),<sup>100</sup> it was not until 1989 that the Convention on the Rights of the Child (CRC) was adopted.<sup>101</sup> The CRC is founded on four important principles that underpin its application,<sup>102</sup>

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<sup>95</sup> Principle 9 of the United Nations Declaration on the Rights of the Child(UNDRC), 1983,p.130

<sup>96</sup> Article 26 Universal Declaration on Human Rights(UDHR), Articles 23 & 24 International Covenant on Civil and Political Rights (ICCPR) and Article 10 International Covenant on Economic, Social and Cultural Rights (ICESCR)

<sup>97</sup> ILO, (1997), *The Perspective*, International Labour Review, Vol.136, No.2,p.236

<sup>98</sup> *Ibid* p.234-235

<sup>99</sup> ILO Convention No.138 Minimum Age Convention, of 1973

<sup>100</sup> General Assembly Resolution 1386(XIV) of 20 November, 1959.

<sup>101</sup> Convention on the Rights of the Child, General Assembly Resolution 44/25, 44 UN General Assembly Ordinary Resolution Supp. No.49, UN Doc. A/44/736, at Article 45(c)(1989)

addresses a wide range of issues relating to children, including their rights to survival, development, protection and participation. Child labour came under the international spotlight especially the ILO in the mid-1980s with intensified efforts in the 1990s. For the first time since the industrialised world's campaign on the issue a century earlier, diplomats and economists started discussing why vast number of children working rather than being educated and what should have been done about it.<sup>103</sup> This time, the focus was on developing countries. This new attention to an old issue was largely due to worries raised by people in industrialised countries such as United Kingdom where trade unionists, politicians and campaigners for social justice voiced concern that jobs were fast disappearing as businesses switched production from the industrialised world to developing countries where labour costs were much cheaper and lower. Simultaneously, organisations in developing countries sounded the alarm when they saw children working longer and longer hours- not only producing goods for export, but also providing cheap and malleable workforce for local economy.<sup>104</sup> Their worries was further re-echoed by the activists in Eastern Europe and the former Soviet Union, who realised that the transition that started in 1989 was provoking an economic crisis which hit children particularly hard. As more attention was given to the work children were performing, so the statistics about the numbers involved became more startling. By mid 1990s, there was evidence that vast numbers of children below the minimum age of 14 were working full-time. The estimates of children between 5 and 14 years in full employment had risen from 100 million at the beginning of the 1990s to 120 million by 1996. Six years later (2002), when the information had been scrutinised more

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<sup>102</sup> These are: the best interest of the child, participation in decisions that affect them, non-discrimination and the survival and development of the child. Articles 2, 4, and 12 of the Convention on the Rights of the Child (CRC).

<sup>103</sup> Child Labour acts as a major hurdle for ensuring free and quality education for all children. Over 246 million children around the world are working instead of attending school and enjoying their childhood of which Nigeria accounts for about 6.1% (15 million) of this figure.

<sup>104</sup> [www.unicef.org.uk/Documents/publications/ecechild2\\_a4](http://www.unicef.org.uk/Documents/publications/ecechild2_a4). Accessed on 24/10/15 at 4.15pm

carefully, the total was estimated at 211 million, along with a further 141 million young people aged 15 to 17 years were also in employment.<sup>105</sup> At the beginning of the new millennium, 1 in every 12 children in the world was reckoned to be involved in work which put their health at risk or caused them serious harm. This situation prompted initiatives by government and international organisations such as UNICEF, ILO and World Bank to consider policies needed to address child labour globally and priorities for action.<sup>106</sup>

Responding to concern about this, ILO began drafting a new Convention. This involved getting international agreement on the circumstances in which children of any age should not be working, as well as identifying the steps for governments to take to eliminate what came to be called the “Worst Forms” of Child Labour. In 1999, a new international Convention was adopted at the annual ILO conference, the “Worst Forms of Child Labour” Convention also referred to as ILO Convention No.182. This came into force one year after its adoption. It identified four categories of child labour<sup>107</sup> which governments, unionists, activists and organisations all agreed it was urgent to stop child labour.

Since the adoption of ILO Convention No. 182 on the “Worst Forms of Child Labour, the phrase “Child Labour” no longer refers exclusively to children working before they are 14 or 15 years, it refers to all cases in which children are exposed to harm at work including work which deprives them of other basic rights<sup>108</sup> or which exposes them to physical or sexual abuse.

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<sup>105</sup> Ibid

<sup>106</sup> Two separate international conferences in 1997, in Amsterdam and Oslo agreed to a proposal that stopping types of child labour that caused particular harm to children should be a priority initially referred to as “intolerable” and later as the “worst forms” of child labour.

<sup>107</sup> They include: slavery and forced labour including forced recruitment for use in armed conflicts, commercial sexual exploitation including prostitution and pornography, illicit activities particularly the production or trafficking of drugs and the fourth being hazardous work

<sup>108</sup> Right to education, health, recreation and it is not in their best interest.

By June 2004, 150 countries had ratified this convention including Nigeria. Nigeria upon ratification of this convention went further to develop national policies, initiated programmes and established mechanisms for the prohibition and elimination of child labour especially its worst forms. Worthy to note that before the convention, Nigeria had legal instruments that protected the rights of the children. The 1979 Constitution of the Federal Republic of Nigeria, the Criminal Code Act<sup>109</sup> in its sections 216, 222A and 369 protects boys and girls abuse from and criminalises any form of act relating to prostitution which is one of the worst forms of child labour and the Labour Act.<sup>110</sup> Nigeria and the states in Nigeria also have other legislations promoting the rights of children and protecting them from harm apart from the Conventions Nos. 138 and 182 of the ILO. They include the following: The 1999 Constitution of the Federal Republic Nigeria as amended 2011(especially sections 14 (2) (b) <sup>111</sup>; 15 (3) (a) (b)<sup>112</sup>; 17(2) (b) (d)<sup>113</sup> ; 17(3)(f)<sup>114</sup>; 18(3)(a)(b)<sup>115</sup>; 33(1);34(1)(a)(b)(c)<sup>116</sup>;35(1)(d)<sup>117</sup>), Child's Right Act, 2003(especially its sections 2, 11,12,13,14,15,25,26,28,30 and 34<sup>118</sup>); Children and Young Persons Laws <sup>119</sup>(especially section 33(1)(6)) and Trafficking in Persons(Prohibition) Law

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<sup>109</sup> Cap C28 Laws of the Federation of Nigeria, 2004

<sup>110</sup> Sections 58-63 Labour Act of 1974(revised in 1990)

<sup>111</sup> The security and welfare of the people shall be the primary purpose of the government.

<sup>112</sup> Provision of adequate facilities and security for the comfort of the people.

<sup>113</sup> Provides that human sanctity and dignity be recognised and prohibition of exploitation of any kind.

<sup>114</sup> It is to the effect that children, young persons are protected against any exploitation whatsoever and against moral and material neglect. This covers prevention and elimination of child labour.

<sup>115</sup> This provides for free and compulsory education up to secondary level. If this is implemented, child labour will be eliminated as all children will be in school as at when due.

<sup>116</sup> Even though it did not mention children, it covers children as it protects the rights of all Nigerian people on their dignity. It leaves no room for degrading treatment, slavery or servitude, forced or compulsory labour which are common features of child labour.

<sup>117</sup> Personal liberty will be denied if it is for the purpose of a child's education or welfare.

<sup>118</sup> All these provisions gives protection and care necessary for the well-being of a child as well as prohibition from exploitation, prostitution and child labour including being used for illicit activities as defined by ILO Convention No. 182.

<sup>119</sup> Cap C10, Laws of Lagos State, 2004

Enforcement and Administration Act, 2003<sup>120</sup> (especially sections 15<sup>121</sup>; 13,14, 17,16<sup>122</sup>; 19<sup>123</sup>, 22, 23(a)(b)<sup>124</sup>, 24 and 25<sup>125</sup>). All these aforementioned sections of legislation and Conventions shall be discussed in Chapter three of this work.

## **2.4 Causes of Child Labour in Nigeria**

In order to devise strategies for eliminating and preventing Child Labour, the root causes must be examined. The following are the causes of child labour in Nigeria

### **2.4.1 Poverty and the Role of Social Protection**

Worldwide Child Labour is driven by low income and limited options.<sup>126</sup> Poverty is the main contributor to Child Labour. Poor households need the money that their children are able to earn especially since these poor households spend the major part of their income on food, the income provided by working children is critical to their survival. However, evidence shows that not all poor households have recourse to child labour.<sup>127</sup>

The reason why children venture into work instead of attending school, or leave school before completing their primary education, are that their families are poor and cannot pay the basic costs of food and housing without the participation of their children..<sup>128</sup> But the reasons families are poor vary enormously- some are global, national and some are historic. Some adult workers

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<sup>120</sup> Sections 11-15 of this Act, gives protection to children and prohibits any form of child labour especially its worst forms and criminalises such acts.

<sup>121</sup> Prohibits the use of any person under the age of 18 years for debt bondage

<sup>122</sup> Prohibits child prostitution and any form of sexual exploitation including pornography

<sup>123</sup> Prohibits the use of any person including children in forced armed conflict

<sup>124</sup> Expressly prohibits the use of under 12 years old children for forced, exploitative, injurious or hazardous labour including using them as domestic workers.

<sup>125</sup> Prohibits the use of children or anybody for slavery.

<sup>126</sup> Pegus C., *op. cit.* p.14

<sup>127</sup> Humbert F. *op. cit.* p.26

<sup>128</sup> [www.unicef.org.uk/Documents/publications/ecechild2\\_a4](http://www.unicef.org.uk/Documents/publications/ecechild2_a4). Accessed on 24/10/15 at 4:15 pm

are not paid enough to support their families, and sometimes even the wages from both parents incomes are not sufficient to keep their family housed, clothed and fed. In some instances, one parent may not be earning income either due to ill-health or lack of job.

Children in Nigeria work for a variety of reasons. The most important is poverty. Children work to ensure the survival of their families and themselves even if under paid. They are often prompted to work by their parents. The proportion of parent decision in Nigeria on child labour is about 62 per cent, while 8 per cent of children take their own decisions. A possible reason that makes parents to make their children to work in Nigeria, is because they believe they can be profitable. Children in Nigeria contribute more time to their households than they deplete as compared to their counterparts in developed countries.<sup>129</sup>

Poverty is closely related to the role of social protection. In many societies, large parts of the population are involved in the informal economy and not covered by the public provision of social security. In this situation, children serve as social insurance for periods when sickness and ageing affect the older generations in the family. In Nigeria, poverty is the greatest driver of child labour. For example, in Kano State, the introduction of school feeding accelerated a high enrolment and retention of children whom hitherto could not afford education due to poverty indices.<sup>130</sup> With more children in school, child labour is minimised. Conditional cash transfer programme by the government of Sokoto state in partnership with UNICEF ensured high school enrolment and reduced school drop-out rate in the state.

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<sup>129</sup> Elijah O.A and Okoruwa V.,(2006), *Analysis of Child Labour and School attendance in Nigeria: The present and future Implications*, A conference paper, Department of Agricultural Economics, Faculty of Agriculture and forestry, Ibadan, Oyo state, Nigeria.

<sup>130</sup> Okeke C. C and Opoola L., (2015). *What has Become of School Feeding Programme?* Daily Trust. Thursday, June 25, 2015



When families turn to child labour to increase income, they often inadvertently perpetuate the vicious cycle of poverty, depriving their children of educational opportunities that could alleviate poverty in the long run. Note that “*poverty begets child labour, begets lack of education, begets poverty and lack of fulfilment of personal aspirations of a significant contribution to the society.*”<sup>131</sup>

#### **2.4.2 Migration and Globalisation.**

Many rural families migrate to urban areas because of the rural push and urban pull factors. As a consequence of that, they are often forced to live and work in the street as they lack access to basic requirements such as food, shelter and water and these children become street workers as vendors and hawkers. Migration caused by natural disasters or armed conflicts increases children’s vulnerability and thereby makes it more probable that they will become victims of child labour. In addition, migration from the poorer rural areas to the more prosperous rural or urban areas draws children into labour market.<sup>132</sup> These children are prone to violence and become more susceptible to illegal works such as stealing, drug trafficking and prostitution, domestic work or even work in hotels and restaurants. These children live in urban poverty, unhealthy environment and poor conditions.<sup>133</sup>

Many cities in developing countries have experienced rapid urbanisation. This means that the population is increasing in cities due to immigration and natural growth. This situation has encouraged child labour in the cities. According to World Bank, child worker is a typically a sign of urban poverty.<sup>134</sup> Though the share of urban child labour is increasing steadily with rapid

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<sup>131</sup> Bardaran S and Barclay S. *op. cit.* p.15

<sup>132</sup> Humbert F. *op cit.* p.26

<sup>133</sup> Osment L. *op. cit.* p.21

<sup>134</sup> Baker Judy L., (2008), *Urban Poverty: A Global Overview*, World Bank, Washington D.C, January, 2008

urbanisation in developing countries, the participation rates of children in economic activity remain globally much higher in rural areas.<sup>135</sup> A survey<sup>136</sup> carried out found that more than three quarters of all child labour occur in rural areas where nine out of ten working children are engaged in agricultural or related activities. Urban poverty is a multidimensional phenomenon which makes people including children in these developing countries to face challenges in their daily lives. These areas are characterised by high rate of unemployment, poor sanitation, inadequate access to shelter and drinking water and increased crime rates. This gives room to use children for all sort of hazardous jobs and illicit activities to make ends meet. Children in this situation work for long hours with very low wage or no wage. Girls are usually the most vulnerable as they are typically trafficked for commercial sexual exploitation. In Nigeria, this scenario is not strange as children aged between 12 years and 18 years who have been trafficked from one town or city to another and can be seen in brothels openly.<sup>137</sup> Just like the children from rural areas in similar situations, the urban child labourer faces the challenge of lack of education, healthcare and social protection. His or her rights are equally violated.

Globalisation is another trigger for child labour in developing countries. Impoverished farmers and workers often fall victim to market forces present in a globalised economy, which create pressure to lower cost of production and require businesses to find ways to insulate themselves against dramatic fluctuations in supply and demand. Globalisation's market forces tend to distribute the wealth accumulation unequally and place the burden on certain marginalised group- "*the children*", child labour is often in high demand in the unorganised, informal sectors of the economy where profits is low. Employers who are then driven by low profit margins and

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<sup>135</sup> ILO, *Perspective, op. cit.* p.243

<sup>136</sup> In Ghana, India, Indonesia and Senegal by the International Labour Organisation.

<sup>137</sup> This researcher saw this situation in D&D hotel, Romi in Kaduna state.

the necessity to compete in the global market turn to child labour as source of cheap labour in order to lower costs and maximise profits. In recent years, many international companies moved their production abroad to Asia. These companies often indulge in hiring children as cheap labourers as they are endurable and carry out commands given by their employers even if they are abused and exploited.<sup>138</sup> The need for cheap labour will see children drop out of school and increase in child labour.

### **2.4.3 Family Size and Breakdown**

Large poor households usually have more children involved in child labour than children from smaller households and this demonstrates that family size have an effect on child labour.<sup>139</sup> Parents oblige their children to work because they are not able to respond to the demands of a large sized family.

Families break down for many reasons, leaving the household short of income. Sometimes divorce leaves one parent looking after more children than she or he can afford to feed. Divorce is sometimes brought about by domestic violence, which also directly drives children to leave home when they are still young. The death of either parent particularly the father precipitates economic disaster for many households. These situations tend to aggravate child labour as children from either a broken home or an orphan most often than not, take to street hawking, begging and other forms of child labour to make ends meet.

### **2.4.4 Slow Demographic Transition and HIV/AIDS**

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<sup>138</sup> Osment L. *op. cit.* p.22

<sup>139</sup> *Ibid* p.20

Slow demographic transition in some parts of the world contributes to a continued supply of children available for the labour market. In 1999, in the least developed countries, 49 per cent of the population were children. HIV and AIDS worsens the situation since it affects the most productive age groups of men and women the hardest. By 2001, the UN estimated that 13 million children around the world under the age of 15 had lost either or both parents to HIV/AIDS. About half become orphans before they are 10. The rate of HIV/AIDS in Nigeria increases the risk of Child Labour. The prevalence rate is 3.6% with some states reporting infection rates over 10%.<sup>140</sup> The number of children orphaned by HIV/AIDS in Nigeria is 2.23 million<sup>141</sup> of who may have taken to street and live in very difficult circumstances<sup>142</sup> and suffer from neglect and exploitation.<sup>143</sup> This creates pressure on these age groups forcing them to join the workforce. A growing number of children, who have either lost one or both parents due to HIV/AIDS, are forced to work in order to support themselves and their siblings and invariably may leave or stop schooling.

#### **2.4.5 Cheap Source of Labour.**

The relatively low wages paid to children are often a reason why employers prefer them to adult workers. Some children work unpaid, particularly as domestic workers, in condition that could be denounced as slavery if they involved adults. Employers find children more obedient and easier to control. Unlike older workers, they are unlikely to initiate protests or form trade unions etc. It is also easy for adults to intimidate children. Employers can force child workers into submission when children are dependent on them for food, lodging, and even emotional support.

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<sup>140</sup> Nigeria Demographic Health Survey (NDHS), 2013

<sup>141</sup> Federal Ministry of Women Affairs and Social Development, (2008) National Situation Assessment and Analysis survey p. 6

<sup>142</sup> Osment L. *op. cit.* p.20

<sup>143</sup> Jones N, Prelser-Marshall E, Cooke N and Akinrimisi B., (2012) *Promoting synergies between child protection and social protection in Nigeria*. p.10. [www.odi.org/resources/docs/7579.pdf](http://www.odi.org/resources/docs/7579.pdf) Re-accessed on 13/11/5 at 10.35 am.

Employers take advantage of corporal punishment of beating their child workers to submission since child beating is an acceptable means of disciplining children in most parts of the world.

The most common explanation of why employers engage child labour is the lower cost and irreplaceable skills afforded by children. Thus child labour is not irreplaceable as stated in the above argument and it is not economically sensible. Child labourers are usually paid less than adults either because they do not know their rights or because society has divested them of negotiating powers.

#### **2.4.6 Corruption and Poor Infrastructure**

According to United Nations Development Programme(UNDP),<sup>144</sup> corruption exacerbates poverty and inequality, undermines human development and stability, encourages and sustains conflict, violates human rights and erodes the democratic functioning of countries.

Corruption is one of the main reason for abuse of trust resulting in resources mismanagement. Wherever there is poverty, there is also corruption.<sup>145</sup> Corruption also hinders social and economic growth and increases poverty. This has negative effect on children's rights that deprives them of basic services like health care, education and infrastructure and diminishes their ability to escape poverty. Where there is poverty, child labour tends to abound.

#### **2.4.7 Determination of the Age of a child**

Another factor is the practical difficulty of establishing a child's actual age in countries where the infrastructure may not be in place for example, systematic birth registration. This can disadvantage children in many ways like laws enforcers are hampered because they do not have

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<sup>144</sup> UNDP(2012) *Seeing Beyond the State: Grassroots Women's Perspective on Corruption and Anti- Corruption*.

<sup>145</sup> Murphy D.,(2005). *Eliminating Child Labour through Education: The Potential for Replicating the Work of the MV Foundation in India*, Center for Development Studies, University College, Dublin.

the means to absolutely establish the ages of children especially teenagers and without appropriate documentation, young people may also be denied access to state services such as schools. Birth registration in Nigeria is poor and as such, there is no proper planning for the population including children. This paves the way to child traffickers for child labour to hide in perpetrating their act. Also, the discrepancy between minimum age for employment and the end of compulsory schooling in national legislation gives room for child labour. For instance, the Labour Act provides minimum age to be 12 years<sup>146</sup> while the age for end of compulsory schooling is 16 years according to the UBE Act. As aforementioned, there is also gender difference among household size which determines the child to go into child labour and school respectively. For example, older children often contribute more to family income and as such younger children are more likely to go to school than the older ones, where mostly boys attend schools than girls.<sup>147</sup>

#### **2.4.8 Traditional and Cultural Factors**

Another key determinant of child labour is parental, societal and governmental attitudes towards child labour resulting in poor enforcement of laws.<sup>148</sup> The rights attached to the status of childhood change according to the cultural background and perspective and differ from society to society. For instance, in the industrial revolution of Europe, child labour was perceived as legal and morally acceptable.<sup>149</sup> The percentage of ten to fourteen year old children in employment in the third quarter of the nineteenth century are comparable to those in many parts of the developing world today. In Britain, the ending of child labour was accompanied by an

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<sup>146</sup> Section 49 of the Labour Act can be technically be construed to be the minimum age limit.

<sup>147</sup> Okpukpara B.C and Odurukwe N.(2006). *Incidence and determinants of child labour in Nigeria: Implications for poverty alleviation*. A research paper: In African Economic Research Consortium, Nairobi, Kenya.

<sup>148</sup> Humert F. *op cit*. p.27

<sup>149</sup> Arpioni G. and Himes J.R., 'Foreward' : In UNICEF International Child Development Center, Cunningham H., Viazoo P.P.(eds.), *Child Labour in Historical Perspective, 1800-1985*. [www.unicef.org](http://www.unicef.org).

evaluation of childhood.<sup>150</sup> Likewise, in African culture, there exists the cultural belief that even if the work is too hard for the child, there is nothing to worry about because hard work will make the child a tougher adult. In Nigeria, this belief has gained acceptance especially among the poor rural population. Different cultures of many societies make children start work at very young age as they assume that children need to learn skills that can be good for their future. Many families in Africa want their children to help in contributing towards family income.<sup>151</sup> There is also gender bias among cultural settings which determines the child to go into child labour and school respectively. For example, boys are more likely to attend school than girls.<sup>152</sup> It is also a belief of many Nigerian societies that the girl-child should not be sent to school as sending them to school will amount to waste of resources as they will be married off in or before their puberty.

## **2.5 Forms and Types of Child Labour**

Child labourers are involved in many different forms of works, which are risky and hazardous. These children are vulnerable to physical pain and injury particularly being exposed to health hazards. The vast majority of them are in hazardous occupations like commercial agriculture, mining, manufacture, construction, bonded labour, domestic work and fishing. Environmental and occupational hazards can impact on their health and development.<sup>153</sup>

According to ILO/UNICEF, there are eight main types of exploitative child labour namely:

### **2.5.1 Hazardous Working Conditions**

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<sup>150</sup> Cummingham H., (1996), *Combating Child Labour: the British Experience*: In UNICEF, International Child Development Center, Cummingham H and Viazzo P.P.(eds), *Child Labour in Historic Perspective, 1800-1985*, pp.41-55

<sup>151</sup> Oleribe O.O., (2007) *Exploring the causes of child labour* ,: In International NGO Journal Vol.2 No.1, p.6-9

<sup>152</sup> Osment L. *op. cit.* p.20

<sup>153</sup> Osment L *op. cit.* p.16

The most common situation in which children are vulnerable is when they embark on hazardous occupations in industries. Healthy and safety environment can be related to the nature of the work (for example, whether or not the work involves essentially hazardous processes), and their exposure to hazardous substances and agents or to their exposure to poor working conditions. Chemical, physical, biological and psychological hazards are often found in the workplace. Often, too, their adverse effects are not only cumulative but magnified through their synergistic interaction. It is not easy to isolate one single source or cause of an occupational hazard. Children are susceptible to all of the dangers that are faced by adults when placed in the same situation, and survival and physical integrity are of course as important to them as to older people. However, work hazards that affect adults affect children even more strongly. Children differ biologically from adults in their anatomical, physiological, and psychological characteristics. These differences make them more susceptible to occupational hazards. The health effects can be more devastating for them, causing irreversible damage to their physical and physiological development, resulting in permanent disabilities, with serious consequences for their adult lives. For example, carrying heavy loads or being forced to adopt unnatural positions at work can permanently distort or disable growing bodies. There is evidence that children suffer more readily from chemical hazards and radiation than do adults, and that they have less resistance to disease. They are much more vulnerable to psychological and physical abuse than are adults, and suffer more devastating psychological damage from living and working in an environment in which they are denigrated or oppressed. When speaking of children, therefore, it is necessary to go beyond the relatively limited concept of “work hazard” as applied to adults, and expand it to include the developmental aspects of childhood. Because



children are still growing, they have special characteristics and needs that must be taken into consideration when defining workplace risks to them.

The effects of hazardous working conditions on children's health and development can be immense. For instance, in small-scale mining, the health of the child is endangered by deep and poorly reinforced pits, poor ventilation, excessive noise, vibrations from machines,, excessive heat or cold, awkward positions and extremely arduous work<sup>154</sup>.

To further provide examples of hazardous work, ILO have said that children are involved in manufacturing for export such as carpet weaving, soccer ball stitching and cloth production. Production processes such as leather tanning and brassware production are extremely hazardous because of the toxic products used. Incense stick production in India and Pakistan causes upper respiratory tract problems.<sup>155</sup>

In Nigeria, the commonest hazardous works children are involved in are in the agricultural sector especially in the production of manure, cassava, cocoa and tobacco, livestock herding and fishing. The children involved here are usually boys who are exposed to chemicals, insect bites and snake bites and are often faced with the dangers of wild animals in the cause of herding or farming. This is injurious to their health and development and were immediate interventions are not given like in the case of snake bite, death may easily occur. Occupational health and safety experts consider agriculture to be the most dangerous of occupations.<sup>156</sup> Children not only face

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<sup>154</sup> Humbert F. *op cit* p.19

<sup>155</sup> ILO,(1997). *A Future Without Child Labour*, p.28

<sup>156</sup> Federal Ministry of Labour and Productivity (2013), *List of Hazardous Child Labour in Nigeria*, p.5

work that is too heavy for young bodies and cuts from sharpened tools but also hazards from the use of toxic chemicals and motorised equipment without safety precautions.<sup>157</sup>

Another area children are exposed to danger in Nigeria, is in the industries especially mining and quarrying for granite and gravel, harvesting sand, artisanal gold mining and processing as well as construction. For example, in Zamfara state, where a lot of illegal mining of granite is on-going, it can be said that the environment is not safe for children who usually are the workers to be often seen at those sites of quarry. It was recently reported that workers at the site particularly children have been poisoned by chemical emissions.

Rendering services such as domestic servants, auto repair mechanics, conducting minibuses, street hawking, street begging including *almajiri* are hazardous to children as it interferes with their schooling, health and exposes them to social ills and accidents. In northern Nigeria, many families send children from rural to urban areas to live with them and receive Quranic education from Islamic teachers known as *mallams*. These children, known as *almajirai*, after receiving lessons are being forced by their teachers to beg on the streets and surrender to them the money they collect. In December 2010, the Ministerial Committee on Madrasah Education estimated that Nigeria had about 9.5 million *almajiri*.<sup>158</sup>

It should however be noted that under the Fair Labour Standards Act, the employment of workers under the age of 16 in any occupation, or the employment of those 16 to 18 years in particular hazardous occupations is an offence which is both criminal and civil in nature<sup>159</sup>.

Hazardous work is detrimental to the development of children and as such should be eliminated.

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<sup>157</sup> ILO, (1997) *Targeting the Intolerable*, Child Labour in Agriculture.

<sup>158</sup> [www.dol.gov/.../childlabour/nigeria.htm](http://www.dol.gov/.../childlabour/nigeria.htm). Accessed on 13/10/15 at 6.18 pm

<sup>159</sup> Section 203(I) US Fair Labour Standards Act, 1938 as Amended.

### 2.5.2 Domestic Service

Millions of children around the world work in households other than their own, doing cleaning, laundry, cooking and other domestic chores; caring for children; tending the garden; and running errands; amongst other tasks. These child domestic workers include children who ‘live in’ and those who live separately from their employers; those who are paid for their work, those who are not paid, and those who receive ‘in-kind’ benefits, such as food and shelter. They are virtually invisible to outsiders as they work in the privacy of people’s homes. Most of these workers are girls, though there is no accurate estimate of the number of children engaged as such due to the peculiarity of the work. They are usually referred to as “child domestic workers, maids or household helps.”

In many countries, child domestic workers begin work at the age of 12. Some start work as early as six years old. Child domestic workers are predominantly girls, although in some countries a significant number of boys are in domestic work. The ILO estimates that more girls under sixteen years work in domestic service than in any other category of child labour.<sup>160</sup>

Invisibility, isolation and dependence of domestic child labourers can be seen from the way many child domestic workers live in their employer’s home, making them highly dependent upon their employers for their basic needs. Their freedom of movement, their ability to contact their families or friends, to attend school or to access services, is often solely dependent on their employer’s wish. Their isolation makes it difficult for them to seek help or for outsiders to detect cases where child domestic workers suffer from abuse or exploitation.

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<sup>160</sup> [www.crin.org/en/library/publication/child-labour-child-domestic-workers-dawn-new-convention](http://www.crin.org/en/library/publication/child-labour-child-domestic-workers-dawn-new-convention). Accessed on 5/11/15 at 12:45noon

Children in domestic service are among the most exploited of all. Many of them work in total isolation for up to fifteen hours per day and are not regularly paid. They are often subjected to physical, emotional and sexual abuse.<sup>161</sup> In some countries children working as maids, child-minders, garden boys, and general house-helpers are a familiar sight. Child domestic work is often characterised by long working hours and a lack of free days or vacation time, and little pay. Child domestic workers often work for a fraction of the minimum wage, if they are paid at all.

Domestic work is, in fact, one of the most common forms of child employment. Its practical characteristic features are akin to slavery. A child employed in a private household virtually is imprisoned and treated as the chattel of the employer. They are invisible and difficult to reach as these jobs are not registered and are informal arrangements between parents and the employers.<sup>162</sup> Child domestic labour occurs in societies where the use of domestic assistance in the home is commonplace. Some child domestics come from very poor backgrounds and the mother is widowed or abandoned.<sup>163</sup> Their placement in a 'better home' is seen as an advantage. That they render help out around the house is seen as a natural repayment for favour, and training for a future life of domesticity. The fact that many are on duty all hours of day and night, are discriminated against in the household, and have sacrificed their own childhood for the well-being of the employer is not given any regard. This is because of the confusion between 'work as upbringing', and 'work as employment', and between patronage and exploitation. The idea of work as part of childhood training has a very long history. Since time immemorial, parents have brought up their children especially daughters to perform tasks around the house. Their help is needed in washing dishes, collecting water, rearing livestock, looking after younger children and

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<sup>161</sup> Humbert F *op cit* p.20

<sup>162</sup> Maggie B.,(1996), *Child Domestic Workers: A handbook for research and action*, Anti-slavery International Publication, p.2

<sup>163</sup> *Ibid* p.3

all the other daily activities that make the household function. Instruction in doing these things correctly is seen as a vital preparation for the child's future adulthood, marriage and parental life.<sup>164</sup> Where a family group includes a number of related couples, it is also not unusual for parents to send a child to live in another household for part of his or her upbringing. This might be because the relatives are childless or infirm or because they are better off and can help a youngster make a good start in life. The important change today is that this kind of traditional child help is becoming commercialised. Increasingly, it is not a family arrangement designed to suit the child's interests, but the outcome of a financial transaction in which the traded commodity is the child's labour. Note that when a child is placed in a household not closely related to his or her family for the purpose of giving that household the benefit of his or her labour, this is no longer 'upbringing' but 'employment'.

Today, many more children and young people work in households which are not related to their own. Parents and employers see nothing wrong with this -- the job is a favourable opportunity for the child. Very poor parents are relieved that the child will be housed and fed. They may hope that the child will be lucky -- maybe marry someone rich. After all, many go from rural areas to work in town, where life is supposed to be much better. The employer, meanwhile, may sincerely intend to look after the child and attend to his or her interests. But the actual consequences may be quite different. Child domestics -- especially where they are living in -- are often very far away from family and home. They are also under the control of adults whose first concern is not their well-being, but their contribution to the well-being of the household. The love and care all children ought to receive, together with other kinds of preparation for adult life and practice in domestic skills, is missing or cannot be guaranteed. Such children are also likely

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<sup>164</sup> *Ibid*

to be denied the chance of going to school. And if they are over-worked, neglected or abused, they have no one to turn to and may feel isolated and trapped. When this kind of traditional childhood training becomes a job, therefore, the child's development may be adversely affected.

Children's employment as domestic workers is likely to preclude fulfilment of a number of their rights. Therefore, along with the 1956 UN Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, ILO's Forced Labour Convention No.29 (1930) and Convention 138 on the Minimum Age for Admission to Employment (1973), the UN Convention on the Rights of the Child provides international legitimisation for action on behalf of child domestics.

Domestic employment is an abuse of child rights as can be seen from the provision as stated below.

The 1956 United Nations (UN) Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery specifically prohibits: "... any institution or practice whereby a child or young person under the age of 18 is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his Labour."

In analysing the situation of child domestic workers, the CRA (2003) provides a set of useful norms to determine how far their childhood is actually or potentially being abused. The rights set out in the CRA which child domestics do not, or may not, enjoy are as follows:

1. Non-discrimination, on grounds of ethnic or social origin, birth or other status (section 10); there is the fear that child domestics may not enjoy such rights as they are usually

discriminated against in terms of quality of schools attended by them and also the food served them at home.

2. To be cared for by his or her parents (section 14); Separation from their parents removes any opportunity of receiving love and care from their parents. This may further deny them their right to maintain regular contact with parents if separated from them and to be brought up by parents or guardians whose basic concern is his or her best interests (section 1).
3. Freedom of association (section 6); child domestics are usually isolated and not within the public domain and as such are prone to be denied their rights to expression and association. The fear of exposing their benefactors of the type of treatment meted out on them estops their benefactors from associating with others.
4. Rights to protection from physical or mental ill-treatment, neglect or exploitation (section 11) and conditions of living necessary for his or her development usually eludes the child domestics as they are abused physically to the point of causing grievous harms to their bodies.
5. Right to Education (section 15) may be denied the child domestics as hours to be engaged in chores are usually not regulated.
6. Rest, leisure, play and recreation (section 12) and protection from economic exploitation and from performing any work that interferes with his or her education or is harmful to his or her mental, spiritual or social development.
7. Protection from all forms of sexual exploitation and sexual abuse (section 32).
8. Protection from abduction, sale or trafficking (section 16 and 27)

In Nigeria, children are usually internally trafficked for the purpose of being used as domestic servants and externally trafficked to Equatorial Guinea for the same purpose.<sup>165</sup> It should be noted that child domestic servants in Nigeria suffer deprivations and are denied the rights enumerated above. It should also be noted that, there is dire data on child domestics in Nigeria like other parts of the world due to their invisible, inaccessible and hidden nature.

In the case of *Siliadin v. France*<sup>166</sup>, a 15 year old Togolese girl was taken to France as a domestic servant and worker in exchange for schooling. She was forced to work 7 days a week without any rest, leisure and was not given the education as promised. She had no freedom of movement as her papers (travel documents) were seized by the couple she worked for. This contravened her right to education, movement, rest and leisure.

### **2.5.3 Street Children, Child Trafficking and Commercial Sexual Exploitation of children**

Children living and working on the street are typically involved in the following activities: vending food and small consumer goods, shining shoes, washing windscreens, repairing tyres, scavenging and rag picking, begging and pottering. The hazard of their work stem from both the work itself and more from the environment, such as traffic, exhaust fumes, exposure to natural elements, insecurity, harassment and violence.<sup>167</sup> The use of children for the purpose of begging for alms, guiding beggars and hawking goods on high ways or in traffic hold-ups is dangerous and hazardous.<sup>168</sup> This exposes them to dangers and risk of losing their limbs, or even death through accidents. Children are trafficked for prostitution, for begging and for soliciting and for other types of child labour such as work on construction sites, small shops, factories and in

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<sup>165</sup> [www.dol.gov/.../childlabour/nigeria.htm](http://www.dol.gov/.../childlabour/nigeria.htm). Accessed on 13/10/15 at 6.18pm

<sup>166</sup> Application No. 73316/01 (26<sup>th</sup> July, 2005)

<sup>167</sup> Humbert F, *op. cit.* p.21

<sup>168</sup> This is a common sight at the junction leading to Television garage in Kakuri, Kaduna south LGA of Kaduna state.



domestic service. Child victims of commercial sexual exploitation suffer extreme physical, psychological and emotional abuse which has life-threatening consequences. Street children are often times used in robberies and other illicit activities.

#### **2.5.4. Child labour in Informal Economy**

The vast majority of child workers are unpaid family workers employed in small production units of the urban informal sector and the rural traditional.<sup>169</sup> Children working in the informal economy are not recognised or protected under the legal and regulatory framework. The informal economy is often linked to formal sector production. Since most child labour occurs in this sector and is beyond the reach of most formal institutions, it represents one of the principal challenges of the effective abolition of child labour.<sup>170</sup> Agricultural sector also accounts for informal economy exploitation of children as child labourers.

#### **2.5.5 Child slavery**

Slavery is a status but labour is an activity. A practice similar to slavery explicitly mentioned in the supplementary Convention on Abolition of Slavery of 1956, is bonded labour in industries such as agriculture, carpet and textiles, quarrying and brick making.<sup>171</sup> One of the most common forms of bondage is family bondage where children work to help pay off a loan incurred by his or her family. Usually, the situation is manipulated in such a way by the creditor that it is impossible to pay back the loan. Bonded child labour also exists in domestic service as earlier mentioned. Debt bondage is increasingly associated with the trafficking of children for labour

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<sup>169</sup> ILO, *Perspective op. cit.* p.243

<sup>170</sup> Humbert F *op. cit.* p.21

<sup>171</sup> ILO, *Targeting the Intolerable, Child Slavery, op. cit.* p.17

exploitation.<sup>172</sup> Rural poverty, coupled with population growth and rapid urbanization, leads some parents to place their children with agents, not only in exchange for money but also in the hope that the child will receive education or training at the point of destination. In other cases, children themselves make the decision to leave their home. The child victims, who may end up in commercial sexual exploitation, domestic work or do menial jobs, may never know the amount of the debt they are working to pay off or the terms of repayment.

In the case of *Hadijatou Mani v. Republic of Niger*<sup>173</sup> where a 12 year old was sold into slavery and was subsequently exploited sexually until she had three children for her buyer, the ECOWAS court of Justice held that there was slavery and awarded the girl the sum of CFA 10 million as compensation. This goes to show that slavery is intolerable and its one of the worst forms of child labour that must be eliminated.

### **2.5.6 Children in armed conflict**

Section 34 of the CRA prohibits the recruitment of children into the armed forces or their conscription into any militia or insurgent group. Nevertheless, each time war or insurgency breaks out, children are usually forcefully conscripted to fight. In Nigeria, children as young as 8 years are sometime recruited into ethnic-based militia organisation, criminal gangs or extremist groups like the Boko Haram insurgents. Boys are used as messengers, transporters, informants, spies, suicide bombers or bomb planters e.t.c. while girls are abducted for domestic service, sexual exploitation and also as suicide bombers.<sup>174</sup>

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<sup>172</sup> ILO, *A Future without Child Labour*, op cit. p.32

<sup>173</sup> Community Court of Justice, 27<sup>th</sup> October, 2008 Culled from the Cases on Labour by ILO

<sup>174</sup> 2014 Findings op. cit. p.2

The experiences of children forced to participate in armed conflict, particularly in Africa, led the International Labour Conference to include this practice as one of the Worst Forms of Child Labour. Although “child soldiers” comprise only a small proportion of the child population of any country in conflict, the trauma they endure is horrible. As government loses effective control over parts of its territory (e.g. as in North- East Region of Nigeria ), its scope of action against children’s involvement in armed conflict is limited.

The number of children under the age of 18 who have been coerced or induced by non-state military groups, to take up arms as child soldiers or to serve as porters, messengers, cooks and sex slaves is generally thought to be in the range of 300,000, and 120,000 of those in Africa. These children are reported to be as young as 8 years old. The part played by girls in armed conflict is important and often misunderstood. Although often portrayed only in the context of forced provision of sexual services to adult soldiers, girls have multiple roles, including that of frontline fighters.

### **2.5.7 Children in illicit activities**

In Nigeria, it was found that the predominant illicit activities children are involved in, is conscription into armed robbery gangs and armed groups.<sup>175</sup> Other forms of illicit activities are house breaking, pick-pockets and related crimes.

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<sup>175</sup> 2014 Findings, *op. cit.* p. 2

## **CHAPTER THREE**

### **EXAMINATION OF THE LEGAL FRAMEWORK FOR THE ELIMINATION AND PREVENTION OF CHILD LABOUR IN NIGERIA.**

#### **3.1 Introduction**

This chapter examines the legal framework for the elimination and prevention of child labour in Nigeria. Generally, legal framework on the subject matter are examined to determine their adequacy or effectiveness in the prohibition, prevention and elimination of the different types of child labour. Since legislation provides the basis and framework for preventive measures and punitive action, the content and scope of municipal child labour standards are examined and analysed in this chapter.

The instruments, legislation, declarations and policies preventing and prohibiting exploitative child labour shall be in addition to analysing the obligations imposed on parties by these instruments be examined to determine the extent parties are responsible preventing and eliminating child labour.

#### **3.2 Types of Child Labour**

This section juxtaposes the different types of child labour prevalent in Nigeria and legislations prohibiting same in order to bring to fore the salient issues usually overlooked or considered to be child labour. The different types of child labour also determine the punitive measures to be meted out to offenders.

### 3.2.1 Slavery-like practices and Slavery

Article 1(1) of the Slavery Convention<sup>176</sup> defines slavery and slavery-like practices as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”

Article 1(2) of the Slavery Convention<sup>177</sup> further provides that: “... all acts involved in the capture, acquisition or disposal of a person with intent to reduce him or her to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him or her; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and in general, every act or trade or transport in slaves.”

These definitions impliedly include children as they are deemed to be covered by the word ‘person’.<sup>178</sup> It therefore means that any child whose status warrants another having powers of ownership over him/her could be termed as a slave and any child who is captured, acquired and disposed-off through selling or exchanged with the intent of reducing him or her to a slave could be said to have been a victim of slave trade. This research agrees with these definitions of slavery and slave trade. Anyone (including children) who is treated in the aforementioned manner will certainly be injured physically, mentally and emotionally.

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<sup>176</sup> Slavery Convention of 1926(Later amended in 1951)

<sup>177</sup> Ibid

<sup>178</sup> Section 2 of Children and Young Persons Law of Lagos, 2004, Cap C10, Laws of Lagos State defines a child thus: ‘a child means a person under the age of 14 years...’. Also section 91 Labour Act, Cap.L1 Laws of the Federation(LFN), 2004

However, on further examination of these definitions, it can be said that the use of ‘intent’ is not sufficient to make it either an offence or a crime as criminal law requires the establishment of both ‘*actus rea*’ and ‘*mens rea*’ to make an act a crime or offence.<sup>179</sup>

The definition of slavery is shrouded in controversy as there are differences of opinion about which practices should be categorised as slavery and thus designated for elimination. The elements of ownership and the destruction of the judicial personality of the victim were central to this definition of slavery. Traditional slavery coming from the definition of the Convention was referred to as “chattel slavery” on the grounds that the owners of such slaves were able to treat them as if they were possessions, like livestock or furniture, and to sell or transfer them to others.<sup>180</sup> Though this form of slavery may have disappeared as a legitimate system of labour, it may still exist clandestinely in the form of forced labour or debt bondage. It should be noted that the Slavery Convention covers all forms of slavery and not only chattel slavery. Although the Slavery Convention did not specifically mention child labour, certain forms of child labour like domestic enslavement were meant to be included in the definition of slavery in the Convention.

Section 17(2)(b) of the 1999 Constitution of the Federal Republic of Nigeria<sup>181</sup> provides that the sanctity of human person shall be recognised and human dignity maintained. This can be said to technically imply that the *norm* of Nigeria does not tolerate slavery in any form. Section 34(1)(b) of the Constitution<sup>182</sup> also expressly provides that ‘no person shall be held in slavery or servitude.’ The Constitution however did not define the word ‘slavery or servitude.’ This

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<sup>179</sup> Sections 9, 138 Evidence Act 2011

<sup>180</sup> UN Sub-Commission on the Promotion and Protection of Human Rights, *Contemporary Forms of Slavery*, E/CN.4/Sub.2/2000/3, paragraph 18

<sup>181</sup> Federal Republic of Nigeria Constitution 2011(as amended)

<sup>182</sup> Ibid

omission could also be explored in furthering slavery or slave-like practices and holding children in servitude in Nigeria.

Section 11(d) of the Child Rights Act, 2003 is to the effect that every child is entitled to respect for dignity of person and no child shall be held in ‘slavery or servitude’ by anybody or authority.<sup>183</sup> These words have not been defined nor described which could lead to manipulations by adults. For instance, a child whose punishment is solitary confinement cannot be said to be held in servitude as the word has not been defined nor described. Such a child however could be said to have had his or her right to movement<sup>184</sup> contravened. It should be noted that servitude simply means the state of being a slave or completely subject to someone more powerful. A child in solitary confinement is usually held by one more powerful than he/she is and as such could be likened to servitude.

Section 30(2)(b) of the Child’s Rights’ Act, 2003 (CRA)<sup>185</sup> expressly prohibits the use of children as slaves or in practices similar to slavery such as sale or trafficking of the child, debt bondage or serfdom... but provides no sanction for its contravention.

Equally, section 24 of TIPPEAA, 2015<sup>186</sup> technically prohibits debt bondage which is a form of modern slavery for any worker under the age of 18 years. Even though the term ‘debt bondage or child for slavery or slave-like practice’ was not expressly mentioned, it could be implied here as debt bondage is seen as modern form of slavery.

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<sup>183</sup> This provision is similar to section 11(d) of Nasarawa State Child’s Right Law, 2005 No. 4 of 2006

<sup>184</sup> Section 9(1) Nasarawa State Child’s Right Law 2005, No. 4 of 2006

<sup>185</sup> Nasarawa State Child’s Rights Law 2005, No. 4 of 2006 is *impari materia* with this provision.

<sup>186</sup> Trafficking in Persons (Prohibition) Enforcement and Administrative Act, 2015. No.4 of 2015

The Nigerian Labour Act<sup>187</sup> is silent on the issue of slavery or slavery-like practices. Some of its provision if not properly construed, could give rise to slavery or slavery-like practices. For instance, section 49(1)(2) of the Labour Act permits an orphan or any child above 12 years but below 16 years to be signed up for apprenticeship including being engaged as a domestic help. The Act has not provided for the standards and conditions for engagement. For an orphan who might not be in good terms with his guardian, such guardian could sign him or her up in perpetuity. Where this occurs, it could be likened to slavery or servitude. Here, the consent of the apprentice is not sought and could be ignored.

The Penal Code<sup>188</sup> is to the effect that ‘whoever imports, exports, removes, buys, sells, disposes, traffics or deals in any person as a slave, or accepts, receives or detains against his or her will any person as a slave’ such a person shall be punished with imprisonment for a term of fourteen years and shall also be liable to fine. This provision on slavery and attending punishment is sufficient but inadequate to serve as deterrent to perpetrators of such ‘inhumanity to humanity’ treatment. Such treatment in the opinion of this research should attract a life penalty.

### **3.2.2 Forced, compulsory and exploitative child labour**

This is another type of child labour. this could be in the form of sexually exploited children, child hawkers, beggars, street children and children that are economically exploited by using them for pornography and pornographic performances.

Section 34(1)(c) of the 1999 constitution provides that’ *Every individual is entitled to respect for the dignity of person and accordingly no person shall be required to perform forced or compulsory labour.*’

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<sup>187</sup> Cap L1 Laws of the Federation, 2004

<sup>188</sup> Section 279 Kano State Penal Code Law No.10 of 1990



Any child who is engaged in forced or compulsory labour technically contravenes section 262 Penal Code<sup>189</sup> which has similar provisions as 221(b) of the Sharia Penal Code of Zamfara State.<sup>190</sup> The 1999 Constitution in its section 42 lends support to children's right to education and protection against exploitation.

Section 22 of the TiPPEAA<sup>191</sup> prohibits the recruitment, transportation, harbouring of, receiving, hiring and use of persons including children for forced labour either within or outside Nigeria. To further serve as deterrent to possible offenders, it made provision to the effect that 'any person who permits any place or premises to be used for the purpose of forced labour commits an offence and is liable on conviction to a minimum term of 5 years and a fine of not less than N1,000,000.00. This research sees this provision as a good deterrent to would be offenders as it did not give an option for penalty to be served.

The case of *AGF v Uche Odiechi*<sup>192</sup> brings to fore, the application of section 22 (b) of the TiPPEAA, 2015 as the accused was sentenced to six (6) years imprisonment without an option of fine.

Furthermore, section 28(1)(a) of the CRA<sup>193</sup> is to the effect that 'no child shall be subjected to any forced or exploitative labour. By this, no child should be forced to do any forced labour like working long hours under unfavourable weather conditions that could be injurious to his or her health. The wordings of section 28(1)(b)<sup>194</sup> can be said to permit child work as it allows a child to be employed to work in any capacity and can also be engaged by family members on light

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<sup>189</sup> Kano State Laws No. 10 of 1990

<sup>190</sup> Sharia Penal Code Law No.10 of 2000

<sup>191</sup> Trafficking in Persons (Prohibition) Enforcement and Administration Act, No. 4 of 2015

<sup>192</sup> Unreported case: FHC/S/15c/2015. Judgement was delivered on 14/5/15

<sup>193</sup> Nasarawa State Child's Right Law , 2005, No.4 of 2006 is similar to Section 28(1)(a) of the Child's Right Act, 2003

<sup>194</sup> *Is in pari materia* with section 59(1)(a)labour Act, Cap.L1, Laws of the Federation, 2004

work of agricultural, horticultural or domestic nature. This provision just like section 59(1)(a) of the Labour Act, is devoid of specifying the age of engagement and the number of hours a child is to be engaged as stated above and in what conditions should the light work be done. Even if a child does light work on the farm or at home for the whole day, it will not be seen as a problem not minding the fact that the child is entitled to rest, leisure and to engage in play, sports and recreational activities<sup>195</sup> for optimal development. Light work not defined in either the CRA or Labour Act, can be said to be a lacuna. This omission can be explored for the exploitation of children even by family members. Jide Ogusakin in his paper<sup>196</sup> asked the following questions with regards to light work:

1. Who finds out the nature of work a child is engaged in or is doing?
2. What determines light work or not?
3. Who sets the limits or draws the line?

This is the research position having examined this provision<sup>197</sup> of the law. These questions clearly show the gaps in this provision and could be said to be ambiguous and leading to mischief. However, recommendations on how these questions should be answered would be provided in Chapter 6 of this research.

Section 73 of the Labour Act, prohibits forced labour. It states that any person who requires another or permits another to perform forced labour contrary to section 34(1)(c) of the 1999 constitution commits an offence shall be liable on conviction to a fine not exceeding N1,000 or prison term not exceeding 2 years or both. The intention of this provision of the Labour Act is to

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<sup>195</sup> Section 12(1), Nasarawa State Child's Right Law, 2005, No. 4 of 2006

<sup>196</sup> (2015), *A Legal Prognosis of Child Labour under the Nigerian Child Right Act*, International Affairs and Global Strategy (ISSN 2224-8951), vol.30, p.33

<sup>197</sup> Section 28(1)(b) Child's Right Act, 2003 similar to section 28(1)(b)Nasarawa State Child's Right Law 2005, No.4 of 2006

discourage or stop forced labour. This intention is laudable. However, is the penalty proscribed sufficient and adequate to serve as deterrent? To this research, the penalty has made a caricature of the intent of this provision.

The Penal Code in section 280,<sup>198</sup> makes it unlawful for anyone to compel another to labour against his or her will. Where such occurs, it attracts a 1 year prison term, a fine or both. The law here, did not specify the amount to be paid as fine. This makes the provision fluid and easy for manipulation. The question this research is asking with regards to the above Penal code provision is that ‘is the punishment of 1 year with an option of fine sufficient?’ And also, ‘is there lawful compulsory labour for children?’ The answer to the question is that the sanction provided in the Penal Code is not sufficient especially as it give an option of imprisonment or fine without stating the amount to be paid as fine. This provision gives the magistrates under the Penal Code discretionary powers and such discretionary powers could easily be abused. To buttress the abuse of discretionary power by a magistarte, is the unreported case of *Federal Republic of Nigeria v. Hassana Ibrahim*<sup>199</sup> where the accused was charged with procuring 25 children from Kwara State for the purpose of forced labour in Kano State. In the words of the defence counsel, the accused is married with kids between the ages of 3 and 5 and has suffered psychologically. The court, after “due consideration” of her past clear record, family responsibility and plea of counsel awarded a fine of N10, 000 or a year Imprisonment in default.

This decision, actually makes a mockery of child protection from forced and exploitative labour. In the opinion of the court, there was justification for the procurement of those 25 under aged children for forced labour. For as long as the accused had family responsibility, she could force

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<sup>198</sup> Kano State Laws No. 10 of 1990

<sup>199</sup> Suit No. FHC/K/CR/35/08, (Unreported) 7<sup>th</sup> March, 2008

25 children to work for her as labourers. It is difficult then to see the rationale and logic behind this judgment. What has being married and having children aged 3-5 years got to do with forced labour which was the case under consideration? Why will the accused require the services of 25 children in her household which is not large? Is this not a case of manipulating the provisions of the laws with regards to the penalty which is grossly inadequate as earlier posited by this research? What is clear here is that, it spells doom for the child and provides cover for the now inveterate practice of child labour.

Also A *faux pas* occurred in the unreported case of *Attorney General of the Federation v Folashade Bankole*<sup>200</sup> in which the 1<sup>st</sup> accused who was charged under section 22(1)(a)(d) of the Traffic in Persons Act, 2003 indulged in recruiting a 12 year old girl as a house-help and paid for her services to a third party (Rukayat Isiaka a Beninoise) who collects money for services of the victim. The accused pleaded guilty and his counsel pleaded for leniency because “the convict was hypertensive and was receiving treatment. Besides, she was a first time offender”. Curiously, the court capitulated and awarded on the basis of the spurious argument a fine of N80,000.00 based on ill health.

This is a miscarriage of justice as state of health has never been an excuse to a criminal charge. This decision makes a mockery of child protection from forced and exploitative labour. It is difficult then to see the rationale and logic behind this judgment. What is clear here is that, it spells doom for the child and provides cover for the now inveterate practice of child labour. Also in the case of *AGF v Asuquo Etim Jimmy*<sup>201</sup>, the accused who was charged under section 22(1)(a)(b) TiPPEAA 2015 for requiring 2 under aged boys for forced labour was sentenced to

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<sup>200</sup> Unreported case: FHC/IB/65C/2011

<sup>201</sup> Unreported case: FHC/UY/20C/15. Judgment was delivered on 20/5/15

12 months imprisonment with an option of N50,000.00 fine. This judgement is an abuse of discretionary power and a clear contradiction of the Act as the mentioned section does not give an option of fine.<sup>202</sup>

### **3.2.2.1 Sexually exploited children, child prostitution or children used in pornography**

Section 17 (3)(f) of the 1999 Constitution is to the effect that children and young persons are protected against exploitation whatsoever and against moral and material neglect. The word 'whatsoever' could be taken to mean that the section generalises and covers all forms of exploitation including sexual exploitation which is a form of forced or compulsory labour.

Furthermore, section 32 of the CRA 2003, prohibits sexual exploitation of children and in its sub-section 2 provides for 14 years imprisonment term if such a person is convicted. This is laudable as it does not give room for a fine or exercise of discretionary powers of the court.

Section 16 of TIPPEAA 2015 also prohibits child prostitution and other forms of sexual exploitation. It makes procurement or recruitment of a child for prostitution and other forms of sexual exploitation an offence and anyone found guilty and convicted of this is liable to imprisonment for not less than 7 years and a fine of N1,000,000.00. This provision can be said to be all encompassing as it includes persons who knowingly permit their place of abode to be used or has knowledge of the aforementioned act. This research totally agrees and aligns itself to this penalty. This penalty is considered stringent enough to serve as deterrence to would-be offenders.

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<sup>202</sup> Even if conviction was to be secured under section 22 of TIP, 2003, the above sentence contradicts the provision of the law which is to the effect that of five years imprisonment or N100,000 fine.

The case of *AGF v Ifeoma Jennifer Umeh & 2 ors*<sup>203</sup> further buttress the application of this sanction as the 1<sup>st</sup> and 2<sup>nd</sup> accused were sentenced to 7 years imprisonment and the 3<sup>rd</sup> accused to 5 years imprisonment without an option of fine. In the instance case, the accused persons were charged for deceitfully inducing 3 girls for sexual exploitation. Also the case of *AGF v Joy Obi & 2 ors.*<sup>204</sup>

Section 17 of the TiPPEAA prohibits the use of children for pornography or pornographic performances and the attending penalty just like the one provided in section 16, is sufficient.

### **3.2.2.2 Street children, child hawkers and child beggars**

A street child according to section 277 of the CRA 2003, is a child who, though not homeless, is on the streets engaged in begging for alms, hawking and other criminal activities which are detrimental to the well-being of the child. These children in this category are usually exposed to danger, abuse, exploitation, crimes and are deprived of education and also at risk of not developing properly.

Section 30(2) CRA, 2003<sup>205</sup> provides that no child shall be used for the purpose of begging for alms, guiding beggars, prostitution, or for any unlawful or immoral purpose. It went further to state that the use of children for hawking of goods or services on the street, offices, brothels or highways is prohibited. Street begging, hawking of goods, guiding beggars exposes the child to the risk of engaging in social ills like stealing, prostitution, becoming touts and endangers their lives and health. On the highways, they stand the risk of being run over by fast moving vehicles which most often than not leads to either death or grievous bodily injury. This act further

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<sup>203</sup> Unreported case: FHC/AB/78c/13. Judgement delivered on 19/3/15

<sup>204</sup> Unreported case: FHC/KN/CR/35/2016. Judgement delivered 08/02/16

<sup>205</sup> Section 30(2) Nasarawa State Child's Right Law 2005, No. 4 of 2006

deprives them of attending school and contravenes section 30(2)(d) of the CRA<sup>206</sup> and the Universal Basic Education Act of 2004 that makes education up to junior secondary compulsory and free. The act of street begging, hawking or guiding beggars is a grievous hurt(as defined in the Penal Code)<sup>207</sup> as it endangers the lives of the children involved and as such contravenes section 242 of the penal code.

The Penal Code in its provisions prohibits any form of cruelty to children<sup>208</sup> and makes such act a crime and could be punished with either 3 years imprisonment term or a fine or both as the case may be. The provision of the law however did not define or clarify the meaning of what constitute cruelty to children. It could however be implied to include forced and exploitative labour. The Penal Code further makes child abduction for the purpose of sexual exploitation an offence.<sup>209</sup> Kano state Sharia Penal Code like Zamfara state Sharia Penal Code prohibits cruelty to children in the form of exploitative labour, sexual exploitation and trafficking especially the girl-child. The penalty however, is not stringent in the opinion of this research. It also lives room for manipulation as earlier seen in *FRN v Hassana Ibrahim (supra)*.

### **3.2.2.3 Children in Armed Conflict**

Section 34 of the CRA, 2003<sup>210</sup> prohibits the recruitment of children into the armed forces and also prohibits their direct usage in military operations or hostilities.

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<sup>206</sup> Section 30(2)(d) Nasarawa State Child's Right Law 2005, No. 4 of 2006

<sup>207</sup> Section 241(g) Penal Code Laws of Kano State No.10 of 1990

<sup>208</sup> Section 238 Penal Code Laws of Kano State No.10 of 1990

<sup>209</sup> Section 275 Penal Code Laws of Kano State No.10 of 1990

<sup>210</sup> Section 34, Nasarawa State Child's Right Law 2005, No.4 of 2006

Prohibition of the use of children in armed conflict situation is a good move as there is the need to protect children in humanitarian situations especially armed conflict and hostilities. It also provides for adequate care for children affected by armed conflict or hostile situation.

The degree of protection does not however go beyond on the existing rules as for instance, section 34 of the CRA fails to protect children effectively against dangers of armed conflict.

For instance, in Nigeria, Children are conscripted into the Civilian JTF to fight against insurgents. The insurgents on the other hand, use children as bomb carriers which they detonate and help to further fight against the Nigerian public forces. If this is the case, can it then be said that the use of children in carrying and detonating bombs by the insurgents is lawful and allowed as they(children in this case) are not directly taking part in the fight..

Section 19 of TiPPEAA prohibits the use of trafficked children for armed conflicts and makes such act an offence. This offence attracts a minimum of 7 years imprisonment term and a fine of not less than N1,000,000.00. There is no option of fine. This research agrees with this sanction rammed on perpetrators and possible offenders.

The Labour Act which regulates child labour issues is silent on recruitment of children into the armed forces or being used in armed conflicts. This in itself is a big omission as where the CRA is not in existence, that state government or people could use this for mischief by recruiting children into their militia. these children are seen attempting to control traffics. This is risky on the highways as a vehicle could easily run them over.

The government however, has the responsibility of helping children to recover from exploitation, neglect or abuse particularly their physical and psychological recovery and return and reintegrate them into the communities they come.



#### 3.2.2.4 Child domestic workers or labourers

“Nothing has come as close to slavery or slave trading as the practice of engaging children and young persons as domestic help or labourers. The situation in the cities and metropolis where everyone is a bread winner has been blamed for the practice. Many wives are as busy as their husbands and only few agree to remain as house wives. This means only very little can be achieved in the home front in terms of management, chores and procurements. Many have attempted to solve their problems in this direction by pushing the burden to domestic servants who in most cases are children of financially disabled parents looking for succour. The children are procured through agents who are “entitled” to every penny due the child. The child victim is in turn entitled only to the food he eats, the clothes he wears and the mat on which he sleeps. Many of these children work long hours and are not able to go to school. Some of these are brutalized and abused physically and sexually.”<sup>211</sup>

The Child’s Rights Act, 2003 in providing for the prohibition of children being used as child domestics states in its section 28 (1) (b)(d)<sup>212</sup> that no child shall be employed as a domestic help outside his own home or family environment. This provision is similar to the Labour Act<sup>213</sup> which states that ‘no child shall be employed or work in any capacity except where he is employed by a member of his family on light work of agricultural, horticultural or *domestic* character approved by the Minister’.

These provisions from their wordings give room for children to be employed and used as child domestic helps in their own homes and within their family environment. It can further be said that it gives room for parents to abandon their responsibilities or manipulating the children to

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<sup>211</sup> Jide O., op.cit., p.33

<sup>212</sup> Similar to Nasarawa State Child’s Right Law 2005, No.4 of 2006

<sup>213</sup> Section 59(1)(a) Labour Act CapL1 Laws of the Federation, 2004

carry out chores meant for adults which if not checkmated could be injurious to their health, morals, development and well-being.

The introduction of getting approval from the Minister by the Labour Act is neither a panacea or seen as obstacles as most family members engage children in work without this approval.

The Act further proscribes punishment of a fine of fifty thousand naira or five year imprisonment term for any offender under this section. To this research, this punishment is insufficient and giving an option of a fine, leaves room for manipulation of this provision. It is not stiff enough to serve as deterrent to offenders. It should further be noted that the section on corporate offenders<sup>214</sup> is grossly inadequate to deter offenders.

Section 23(1) of the TiPPEAA states that ‘Any person who –

- a. Employs, requires, recruits, transports, harbours, receives or hires out a child under the age of 12 years as a domestic worker, commits an offence and is liable on conviction to imprisonment for a minimum term of 6 months and not exceeding 7 years.

Section 23(2) (a) further provides that notwithstanding the above punishment prescribed, a convicted person shall in addition to the above punishment be liable to a further 2 years imprisonment term where the child is denied payment or reasonable compensation for services rendered.

From the foregoing, can it be said that it is right to give out a child above 12 years but below 18 years of age for domestic work or labour? The answer is that it is not right no matter the age as it is an infringement of their right to education, rest, leisure and it could lead to improper

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<sup>214</sup> Section 28(4) Child’s Rights Act, 2003

development as they ought to, as most times domestic workers are the first to wake up, last to sleep, eat the crumbs if any and never get a break or holiday and work for very long hours. The punishment of imprisonment for a minimum of 6 months and maximum of 7 years gives room for manipulation as the offender may likely get a less jail term even if he commits this offence. The fact that where the child is denied emoluments attracts another 2 years of imprisonment term is not a panacea to the issue in question and neither does it serve as a stiff measure to deter would be offenders.

In the Unreported case of *Attorney General of the Federation v. Ummi Nurrudeen*,<sup>215</sup> the accused employed Habib Andrew, an 11 year old as a domestic house-help outside her hometown. The accused pleaded guilty and his counsel pleaded for leniency because “the convict was a full time housewife with 4 children all of whom are minors”. She was also said to be hypertensive and was receiving treatment. Besides, she was a first time offender.

Curiously, the court capitulated and awarded on the basis of the spurious argument a fine of N20,000 or 1 year imprisonment in lieu.

Similarly, in the unreported case of *AGF V Monica Okokon*<sup>216</sup>, the accused who was charged for deceitful inducement and employment of a child as domestic help outside his home was convicted and sentenced to 2 years imprisonment with an option of N30,000.00 on count 1 and 6 months imprisonment with an option of fine of N20,000.00 on count 2.

The aforementioned cases, buttress the position of this research which is that penalty is not stringent enough to deter would be offenders and also could lead to abuse of discretionary powers conferred on judges.

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<sup>215</sup> (Unreported) Suit No. FHC/K/CR/102/08 Delivered on 13<sup>th</sup> May, 2008

<sup>216</sup> Unreported case: HU/33c/2013, State High Court 4, Uyo. Judgment was delivered on 19/06/13

It has been observed by this research that most child domestic workers or labourers do not have the time for education, rest or leisure. This is a contravention of the rights as the CRA has stated categorically that a child shall have right to free, compulsory and universal basic education<sup>217</sup> and shall not be used for any purpose that deprives the child the opportunity to attend and remain in school as provided under the Compulsory, Free Universal Basic Education Law 2001.<sup>218</sup> Where this sections are contravened by parents or guardians failing in their duties by not utilising the free, compulsory and universal basic education, the law provides that such shall be liable to on first conviction to reprimand and made to do community service; on second conviction, to a fine of two thousand naira or one month imprisonment or both terms combine; subsequent convictions attracts five thousand naira or two months imprisonment or both. This punishments are so trivial as to serve as deterrent to erring parent or guardian. If the law attaches importance to the issue of child's education and sees education as a tool for curbing child labour, this punishments proscribed can be said by this research to be grossly inadequate.

Section 15 of the CRA is to the effect that

1. State and parents recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity.
2. The government shall in particular:
  - (a) Make primary education compulsory and available free to all;
  - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and

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<sup>217</sup> Section 15 Nasarawa State Child's Right Law 2005, No.4 of 2006

<sup>218</sup> Section 30(2)(d) Nasarawa State Child's Right Law 2005, No. 4 of 2006

take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

3. the government shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the CRA.

The government shall also take measures to encourage regular school attendance and to reduce drop-out rates. The intent for the inclusion of this provision is to use education as a mitigating factor to child labour including child domestic workers. A child that is in school, will not likely to be engaged in domestic work during school hours and days.

This provision is relevant to fighting child exploitation especially the interest of the child domestic worker. Every initiative has to ensure, it is in children's best interests, and that the views of children, particularly those who are more mature, must be sought and taken into account in deciding what initiatives, programmes and interventions are suitable to them.

Note that the linking of the concept of compulsory schooling and the minimum age<sup>219</sup> for child work is important since education is an important tool for combating child labour. This makes it

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<sup>219</sup> Article 2(3) Minimum Age Convention, 1973( No.138)

impossible for children to be legally employed whilst under a legal obligation to attend school. Additionally, if schooling were not to end before children were legally entitled to work, there might be an enforced period of idleness, particularly in states where only the minimum level of education is available.<sup>220</sup> The minimum age does not only apply to employment but also to any type of work performed by children.<sup>221</sup>

Section 12 of the CRA recognizes and it is concerned about the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts. This right is often violated by employers of child domestic labourers or workers. They are the first to wake and the last to sleep. The employers of child domestics do not see the need for these children to enjoy or have such rights.

### **3.2.2.5 Children in illicit activities**

Illicit activities like the use of children for peddling drugs is included in the definition of what constitute ‘worst forms of child labour’ according to Article 3 of Convention No. 182 which reads thus:

*For the purposes of this Convention, the term the worst forms of child labour comprises:*

*(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;*

It should be noted that the word ‘illicit’ has replaced the word ‘illegal’ to show consistency with the wording of the relevant UN drug treaties<sup>222</sup> and the CRC,<sup>223</sup> which refers to the prevention of

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<sup>220</sup> Bueren Van, *op. cit.* p.266

<sup>221</sup> Article 3(1)(2) Minimum Age Convention, 1973(No.138)

<sup>222</sup> The Single Convention on Narcotic Drugs of 1961(amended by 1972 protocol); Convention on Psychotropic Substance of 1971 and Un Convention against Illicit Traffic in Narcotic Drug and Psychotropic Substance of 1988

the ‘use of children in illicit production and trafficking’ of the narcotic and other prohibited drugs.

Section 30(2)(f) CRA 2003<sup>224</sup> prohibits the use of children for procuring or being involved any activity in the production or trafficking or illegal drugs and any other activity relating to illicit drugs in Nigeria.

Section 25 of the CRA 2003 states that no person shall expose or involve a child in the use of narcotic drugs and psychotropic substance or expose or involve a child in the production or trafficking or drugs or psychotropic substance. In sub section 2, it states that any person who contravenes this provision commits an offence and is liable to imprisonment for life if convicted.

This provision is explicit enough but what if the child is neither used to produce nor traffic the drugs or substance but is used to getting information with regards to operations of law enforcement agents operations? What if the child is used to lure people into the use of the drugs and substance, does this provision adequately take care of the situation? From the examination of the above provision, the answer to the above posed question is no and in the circumstance, the provision of the law could be said to be inadequate.

### **3.3 Child trafficking**

Most often than not children are trafficked for the purpose of child labour and ILO Convention No. 182 in its definition of worst forms of child labour includes child trafficking as a form of child labour. It did not describe nor define what child trafficking is.

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<sup>223</sup> Article 33 UNCRC, 1989

<sup>224</sup> Child’s Rights Act, 2003 Cap C50 Laws of the Federation, 2004

The provision talked only on the sales and trafficking of children, what about the buying and harbouring of the sold and trafficked children, as ‘there cannot be a sale without a buy.’

Section 13(1) of the TiPPEAA, 2015 is to the effect that ‘all acts of human trafficking is prohibited in Nigeria.’ Section 13(2) of the same Act further states that ‘any person who recruits, transports, transfers, harbours or receives another person by means of –(c) giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation of that person commits an offence and is liable on conviction to imprisonment for a term of not less than 2 years and a fine not less than N250,000.00. Although this provision makes trafficking an offence, the penalties proscribed is grossly inadequate for the offence in question as it bothers on human dignity, self-esteem and if committed, is very dehumanising. The sanction is not stringent to deter would be offenders in the opinion of this research.

Furthermore, in view of the fact that trafficking in persons involves the violation of fundamental human rights, the Constitution of the Federal Republic of Nigeria, 1999 that guarantee these fundamental rights in its Chapter IV (fundamental rights) and Chapter XI spells out the fundamental objectives and directive principles of state policy protects the rights of its citizens including children from trafficking.

Human trafficking is against the right to freedom of movement and dignity of human beings, thus unacceptable under the Constitution. The Constitution however, is technically silent on the issue of child trafficking which is one of the worst forms of child labour. This is a gross lacuna in the *grund norm* which is supreme and expected to protect all citizen including children. Caution is being made here that the Constitution though silent, technically provides for protection



against child trafficking looking at the wordings and combined effects of sections 34, 35 and 41 of the 1999 Constitution that is right to respect for the dignity of the person including children, personal liberty and movement respectively.

Furthermore, the combined effect of sections 9(right to freedom of movement), 11(right to dignity of the child) and 27(prohibition of abduction, removal and transfer of a child from parents and lawful location) of the CRA<sup>225</sup> can technically be taken to provide for protection of children against trafficking even though these provision did not mention trafficking categorically. The penalty proscribed in section 27(2)<sup>226</sup> for unlawful removal of a child to the term of 10 years, 15 years and 20 years respectively pending on the location (taken out of the local government area, taken out of state with intention to return later and taken out of state without the intention to ever return respectively) in which the offence was committed is to this research a good stringent measure to discourage Child Labour.

### **3.4 Hazardous child labour or working condition**

Section 203(1) of the Fair Labour Standard Act of 1904 sees “Oppressive Child Labour” to mean a condition of employment under which:

1. any employee under the age of sixteen years is employed by an employer (other than a parent or a person standing in place of a parent employing his own child or a child in his custody under the age of sixteen years in an occupation other than manufacturing or mining or an occupation found by the Secretary of Labour to be particularly hazardous for the employment of children between the ages of sixteen and eighteen years or detrimental to their health or well-being) in any occupation, or

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<sup>225</sup> Child's Right Act, 2003

<sup>226</sup> Ibid

2. any employee between the ages of sixteen and eighteen years is employed by an employer in any occupation which the Secretary of Labour shall find and by order declare to be particularly hazardous for the employment of children between such ages or detrimental to their health or well-being; but oppressive child labour shall not be deemed to exist by virtue of the employment in any occupation of any person with respect to whom the employer shall have on file an unexpired certificate issued and held pursuant to regulations of the Secretary of Labour certifying that such person is above the oppressive child-labour age. The Secretary of Labour shall provide by regulation or by order that the employment of employees between the ages of fourteen and sixteen years in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labour if and to the extent that the Secretary of Labour determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.

The term ‘oppressive child labour’ is what is today described as hazardous work or labour.

The Minimum Age Convention is based on the principle that children should not start work before reaching a minimum age of employment. In 1973, a general Minimum Age Convention (ILO Convention No. 138) was adopted to apply to every type of employment and every country that is a member of the ILO. Each country that ratifies this Convention commits itself “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 or work to a level consistent with the fullest physical and mental development of young persons”.<sup>227</sup> Thus, the treaty was not intended as a static instrument establishing a fixed minimum standard but as a dynamic treaty

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<sup>227</sup> Article 1, Minimum Age Convention of 1973

encouraging progressive improvement. The Preamble to this Convention refers to the ‘total abolition of child labour’.<sup>228</sup> The objective of the total abolition of child labour could be understood as aiming at abolishing any form of child work or labour. However, the many exceptions and reservations of the Minimum Age Convention concerning the prohibition of child work reflect the distinction between tolerable child work and exploitative child labour contained in the Convention. The Convention explicitly distinguishes between concept of hazardous labour and light work. According to Smolin, states parties are required to engage in a progressive raising of minimum ages, the ultimate definition of prohibited child labour is specifically left open to expansion.<sup>229</sup> Hence, it can be argued that the goal of the total abolition of child labour simply refers to universal ratification and effective implementation of the standards of the ILO Minimum Age Conventions.<sup>230</sup>

The Minimum Age Convention was introduced to prevent the exploitation of child labour by setting minimum ages. The basic principle of Convention No. 138 is the fixing of a minimum age for admission to employment or work. But rather than fixing one minimum age, it is more appropriate to speak of various minimum ages depending on the type of employment or work. It is the interaction of the child’s age with the type and conditions of work that determines the boundaries of child labour to be abolished.<sup>231</sup>

The Convention says that the minimum age for employment should “not be less than 15 years or less than the age for compulsory schooling” but allows developing countries that have insufficiently developed economy and educational facilities to opt for a minimum age of 14 on a

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<sup>228</sup> Humbert F., op. cit. p.88

<sup>229</sup> Smolin D. M., (1999), *Conflict and Ideology in the International Campaign against Child Labour*, In Hofstra Labour and Employment Law Journal, vol.16, p.383-451, p. 415

<sup>230</sup> Ibid., p. 395

<sup>231</sup> Humbert F., op cit. p.89

temporary basis.<sup>232</sup> This provision is intended as a transitional measure to enable developing states to accede to the Convention.<sup>233</sup> Some countries make 16 their minimum age. The Minimum Age Convention has a special provision allowing children aged 13 and 14 to be employed in “light work” (or aged 12 and 13 in countries where 14 is the minimum age for full-time employment). Associated provisions explain that such children are only supposed to work in limited circumstances: the government has to specify which types of work are permitted as “light work” and the hours and conditions involved. The Convention also prohibits young people under 18 from being involved in dangerous work without training. Article 3(1) of Convention No. 138 sets a higher minimum age of eighteen for hazardous work, ‘which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons’. The word ‘likely’ indicates that it is not only the work per se that may jeopardise the health, safety or morals of young persons but also the circumstances in which they are carried out.

The fact that there is a minimum age provision for light work means that the use of children below this age irrespective of the employment or work is an intolerable child labour, household chores, working in family undertakings and work undertaken as part of education are excluded from minimum age legislation.

Certain types of hazardous work are prohibited for all young people below 18, such as work which is “beyond their physical or psychological capacity”, involves their exposure to toxins and substances that might affect their health, and involves a risk of accidents, which young people might not recognise or try to avoid.

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<sup>232</sup> Article 2(4), Minimum Age Convention of 1973

<sup>233</sup> Humbert F., op. cit. p.89

The Minimum Age Convention No. 138 represents a significant change in the ILO approach to child labour by creating a general instrument applicable to all forms of work and employment instead of limiting it to specific sectors.

The Minimum Age Convention despite its flexibility is complex as seen from the comprehensive regulatory regime introduced by the Convention.

Section 59(2)(3)(4)(5) of the Nigerian Labour Act is *in pari materia* with the provisions of Minimum Age Convention, 1973(No. 138). It has same principles governing and regulating the age to which a child should be admitted to employment or labour. It tried to ensure that children should do age appropriate work and employment and out rightly prohibits hazardous employment or work for children irrespective of their age. It however, added a clause in its provisions to the effect that approval of an authorised labour officer is required where a young person under the age of 16 years is not reasonably possible to return each day to the place of residence of his parents or guardians.<sup>234</sup>

Section 13 of the CRA is to the effect that government recognizes the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. They are to strive to ensure that no child is deprived of his or her right of access to such health care services and shall also take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

This provision guarantees this right to health and health services. This then follows that hazardous work or labour which tends to jeopardise the health of the child is an aberration. Also

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<sup>234</sup> Section 59(4)(a) Labour Act, Cap 11 Laws of the Federation, 2004

from the foregoing, it can be said that even though the intent of this provision is achievable, it should be noted that words like 'endeavour to' make this provisions fluid and ambiguous.

Although Nigeria has programs that target mitigating the impact of child labour, the scope of these programs is insufficient to fully address the extent of the problem. There is no programs to specifically address children engaged in agriculture, commercial sexual exploitation, domestic work, forced labour, illicit activities and armed conflict.<sup>235</sup>

Convention No.182 focuses on hazardous and the unconditional worst forms of child labour.

In determining the types of work referred to under Article 3(d) of the Convention, and in identifying where they exist, consideration should be given inter alia, to:

- a. Work which exposes children to physical, psychological or sexual abuse;
- b. Work underground, underwater, at dangerous heights or in confined spaces;
- c. Work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;
- d. Work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

For the types of work referred to above especially paragraph 'c' and 'd' of the Convention, national laws or regulations or the competent authority could after consultation with workers' and employers' organisations concerned, authorise employment or work as from the age of 16 on condition of health provided safety and morals of the children concerned are fully protected, and that the children have received adequate specific instruction or vocational training in the relevant branch of activity.

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<sup>235</sup> ILAB (2016), *2015 Findings...*, op. cit p. 8

In contrast to the Minimum Age Convention, Convention No. 182 does not contain any exceptions as to the branches of economic activity.<sup>236</sup> In this sense, the scope of Convention No. 182 is broader as it does not contain automatic exclusion for training situations or artistic performances similar to Article 6 and 8 of Convention No. 138. Adequate training or full protection can be qualified as a circumstance in which the work is carried out.<sup>237</sup> Furthermore, Convention No. 182 did not provide for separate provision authorising certain work from the age of sixteen provided that there is the required protection and training. This is due to the fact that under this circumstance, the work is not hazardous anymore.<sup>238</sup>

In contrast to Convention No. 138, Convention No. 182 does not prohibit light work under the age of thirteen or twelve as is the case in developing countries. It also does not prohibit work that interferes with compulsory education.

Section 23(1) of TiPPEAA is to the effect that if anyone “employs, requires, recruits, transports, harbours, receives or hires out a child to do any work that is exploitative, injurious or hazardous to the physical, social and psychological development of the child, commits an offence and is liable on conviction to imprisonment for a minimum term of 2 years but not exceeding 7 years without an option of fine.”

The penalty for the offence under TiPPEAA is fluid as the language gives room for manipulations and allows for less penalty enforcement. Offenders who are wealthy even found guilty could get away with less imprisonment term. This penalty on the other hand can be said to be stiff even though with the aforementioned gap as it gives no room or option for fine.

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<sup>236</sup> *Ibid* p. 98

<sup>237</sup> *Ibid*

<sup>238</sup> *Ibid*

Section 28(1)(c)<sup>239</sup> is to the effect that no child shall be required in any case to lift, carry or move anything so heavy as to be likely to adversely affect the physical, mental, spiritual, moral or social development. These sections provide protection against what the ILO Convention No. 182<sup>240</sup> describes as hazardous labour. It should however be noted that it is not only carrying, moving or lifting heavy things that could adversely affect the physical, mental, spiritual, moral or social development. Where the environment is not conducive, it could also cause hazard to the psyche of the child.

Section 59(1)(b) of the Labour Act<sup>241</sup> states that no child shall be required in any case to lift, carry or move anything so heavy as to be likely to injure his physical development. This is similar to the provision of section 28(1)(c) of the CRA. The Labour Act<sup>242</sup> however went further to state that no young person<sup>243</sup> shall be employed in any environment which is injurious to his health, dangerous or immoral. The Act in stating and describing what constitute such environment that could be injurious however contradicted itself in section 59(4)(a)(b) by giving such exceptions of getting approval from authorised labour officer or if the work has a written contract.

### **3.5 Challenges for the Legal Regime**

The following are the challenges identified under the legal regime that makes the fight to curb child labour almost a futility.

#### **3.5.1 Effects of multiplicity of laws**

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<sup>239</sup> Nasarawa State Child's right Law 2005, No. 4 of 2006

<sup>240</sup> Article 3 (d) Convention 182 ILO Worst Forms of Child Labour

<sup>241</sup> Cap L1, Laws of the Federation, 2004

<sup>242</sup> Section 59(6) Labour Act, Cap L1 laws of the Federation, 2004

<sup>243</sup> Section 91 of the Labour Act defines a young person to mean a person under the age of eighteen years. This definition is similar to the definition of a child by section 277 of the Child' Right Act, 2003



Disparities due to multiplicity of laws including its sanctions and ambiguity as well as inconsistencies in its language are deficiencies contributing to the prevalence of child labour.

There are disparities in the law as can be observed from the provision on age definition, minimum age for employment and for hazardous work for children as enshrined in the Labour Act and the CRA 2003 therefore making it difficult on what age should be applicable in determining child labour for elimination. Section 277 of the CRA 2003, defines a child to be ‘a person under the age of eighteen years’. The CRA 2003 in section 28 (1)(a)(b) clearly states that ‘no child shall be subjected to any forced or exploitative labour or be employed to work in any capacity except where he is employed by a member of his family on light work. The Labour Act on the other hand in its section 91 defines a child to be ‘a young person under the age of twelve years. This means that going by the provision of the CRA 2003, anyone under the age of eighteen years should not be employed except for light work within the family or vocational training in a technical school. Labour Act however, provides that it should be anyone below the age of 12 years. These provisions on the ages as thus stipulated, gives room for manipulation as citing any of the laws would be deemed to be correct.

There are too many sanctions as there are many laws on the prohibition of child labour in Nigeria. For instance, the Labour Act in section 73 proscribes a fine of N 1,000 or 2 years imprisonment terms on convictions for forced labour. Section 28(3) of the CRA 2003 on the other hand, provides N50,000 fine or 5 years imprisonment or both for individuals and N 250,000 for corporate bodies that contravene its provision on child labour. Furthermore, section 22(b) of TiPPEAA, 2015 provides 5 years imprisonment and a fine not less than N1,000,000 for forced labour convictions involving children. The Penal Code of Kano state in its section 280 on the other hand provides for 1 year imprisonment or fine which is at the discretion of the court.

On child labour arising from domestic work, section 23(b) of TiPPEAA 2015 provides for minimum of 6 months and not exceeding 7 years while for hazardous jobs, it is 2 years but not exceeding 7 years. this is discretionary and could be used mischievously as earlier posited in this work in the case of *AGF v Folashade Bankole (supra)*. The Labour Act is silent on sanctions for the contravention of its provisions on child labour like slavery and armed conflict. The CRA like the Labour Act is also silent on the contravention of its provisions on slavery, hawking, pornography and use of children in armed conflict.

Again, these relevant laws (especially CRA 2003 and Labour Act) are inconsistent and contradictory. Section 59<sup>244</sup> provides that “no young person shall be employed in any work which is injurious to his/her health or which is dangerous or immoral”. A young person is defined in section 91 of the Labour Act as ‘ a person under the age of eighteen years’. The Act further provides that “no child under the Age of 16 years shall be employed in circumstances in which it is not reasonably possible for him to return each day to the place of residence of his parents or guardians”. The section forbids a child of less than 16 years from working underground or on machines. It further forbids young persons from working for a longer period than four hours in one day. It places additional restrictions on the employment of a child or young person on a ship or any vessel and it prohibits the night employment of young persons but permit those that are 16 years to be employed for night duties as stated in its section 60. From the foregoing, the language of the Labour Act itself is contradictory and inconsistent. Furthermore, on the other hand, the Child’s Rights Act, 2003, restricts children under the age of 18 from any work aside from light work for family members, while the Labour Act applies the same light work restriction only to children under the age of 14. The Labour Act forbids the employment of

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<sup>244</sup> Section 59(6) Labour Act, Cap L1 Laws of the Federation of Nigeria, 2004.

persons under the age of 18 in work that is dangerous to their health, safety, or morals. As stated above, the Labour Act allows children to participate in certain types of dangerous work by setting different age thresholds for various activities.<sup>245</sup> Further inconsistency can be seen from section 29 of the CRA 2003 which stipulates that provisions of the Labour Act on young persons shall apply to children under this Act. The same Act had earlier provided for prohibition of child labour but going by its section 29, it seems that framers of the Act, are inconsistent.

It should be noted that whilst almost all countries have enacted laws providing for minimum age, they often exclude sectors such as agriculture, domestic service, family undertakings and the informal sector where many children are employed.<sup>246</sup> This provides loopholes for child labour exploitation as seen in the List of Hazardous Child Labour in Nigeria.<sup>247</sup> The list of Hazardous Child Labour portrays the agricultural sector and domestic undertakings as areas where child labour occurs and therefore the need to provide minimum age for such sectors.

Furthermore, section 23 (1)(a) of TIPPEAA 2015 provides that any person who employs, requires, recruits, transports, harbours, receives or hires out a child under the age of 12 years as a domestic worker commits an offence. Going by the definition of a child in this research, restricting the age to only 12 years for domestic workers is inconsistent. This is so because children between 12 years but under 18 years can be employed as domestic worker. This age limit is below the one set by the Labour Act and the CRA 2003. This language is ambiguous and it gives room to the discretionary powers of judges which could easily be abused.

### **3.5.2 Jurisdiction of the NICN**

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<sup>245</sup> Section 59(2)(3)(4)(5) Labour Act, Cap L1 Laws of the Federation of Nigeria, 2004

<sup>246</sup> Section 59(1) and proviso to section 59(2) Labour Act Cap L1 Laws of the Federation of Nigeria, 2004

<sup>247</sup> Federal Ministry of Labour and Productivity, (2013) National Plan of Action For the Elimination of Child Labour -2013- 2017, Yaliam Press Ltd, Abuja

While the Constitution in its section 254C (1) of the 3<sup>rd</sup> Alteration to the 1999 Constitution (as amended 2011), gave exclusive jurisdiction to NICN on issues of child labour, section 36 of the TiPPEAA, 2015 gives jurisdiction to High Courts for all cases to be prosecuted under it. This is a contradiction of section 1(1)-(3) of the 1999 Constitution of the Federal Republic of Nigeria (as Amended) which is to the effect that any law inconsistent with the provisions of the Constitution is null and void to the extent of its inconsistencies. Furthermore, this will pose as a challenge as any judgment obtained from the High Court by virtue of section 36 of TiPPEAA 2015 will not stand on appeal if contested as High Courts lack jurisdiction on Child Labour issues.

### **3.5.3 Effect of non- domestication of international laws, treaties, covenants and conventions**

By virtue of section 254 C (2) of the 3<sup>rd</sup> Alteration to the 1999 Constitution (as amended 2011), all international conventions and covenants regulating, preventing and prohibiting child labour but yet to be domesticated shall be deemed to be so domesticated. For instance, Nigeria has ratified the Optional Protocol to the Convention on the Rights of the Child on the Involvement of children in armed conflict as well as the Convention concerning the Prohibition and immediate action for the elimination of the Worst Forms of Child Labour but yet to domesticate them. If any issue arise as a result of these aforementioned Conventions, the NICN shall adjudicate on them by virtue of the above referenced section 254C(2).

### **3.5.4 Effectiveness and efficiency of the National Plan of Action for the elimination of Child Labour**

The National Plan of Action for the Elimination of Child Labour in Nigeria 2013-2017<sup>248</sup> is a policy document and plan that seeks to eliminate child labour in Nigeria. This plan even though has good intent the following are some of the challenges hindering its efficiency and effectiveness before the elapsing of its lifespan.

- i. Non passage and implementation of the CRA by some states makes the implementation of the Plan difficult.
- ii. Inadequate synergy among law enforcement agencies in the fight against child labour.<sup>249</sup>
- iii. Inadequate institutional capacities such as man power and logistics to fight against child labour and related issues.<sup>250</sup>
- iv. Duplication of efforts due to absence of National Policy, Action Plan and Operational Plans for implementation and coordination of response on child labour.
- v. Absence of reliable Labour Market Information System(LMIS) for evidence-based decision making.
- vi. Non linkage of child labour intervention mechanism with governance at the Local Government Area (LGA) and community levels.
- vii. Absence of coordination mechanism at the LGA and community levels
- viii. Insufficient information sharing/availability between coordinating entities, donors agencies, implementing partners and the vulnerable groups underserved.
- ix. Limited involvement of private sector and the informal sector of the economy in current efforts to eliminate child labour in the country and these sectors are of strategic importance to achieving this lofty goal.

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<sup>248</sup> Ibid

<sup>249</sup> Ibid p.3

<sup>250</sup> Ibid

- x. Absence of budget line for child labour interventions by MDAs, subsuming child labour activities under other units or department where they are often treated as secondary issues to their core mandates as seen from Budget Appropriation Bill of 2016<sup>251</sup> and 2017.<sup>252</sup>
- xi. Inadequate information/ enlightenment programme on child labour as child labour issues are often viewed (even by some stakeholders) more as a global issue than a national responsibility.
- xii. Resistance to child labour eradication due to cultural and religious barriers/misinterpretation and the need to match educational production with skilled need, employment market and employability.

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<sup>251</sup> Budget Office of the Federal Ministry of Finance (2017) 2016 Appropriation Bill, Federal Government of Nigeria. Pp. 367, 673, 1077, 1084 and 1085

<sup>252</sup> Budget Office of the Federal Ministry of Finance (2018) 2017 Appropriation Bill, Federal Government of Nigeria. Pp 800, 801 and 1017

## **CHAPTER FOUR**

### **THE INSTITUTIONAL FRAMEWORK FOR THE ELIMINATION AND PREVENTION OF CHILD LABOUR IN NIGERIA**

#### **4.1 Introduction**

This chapter analysed the operations and workings of national institutions that promote the protection of children's rights and prevents child labour in Nigeria. It analysed the laws establishing these institutions, their powers and enforcement mechanisms as well as the effectiveness of the interventions in the elimination and prevention of child labour in Nigeria. Institutions examined are National Agency for the Prohibition of Trafficking in Persons and other Related Matters(NAPTIP), the National Industrial Court of Nigeria(NICN), Family Court(FC), the Nigeria Police Force, the Nigerian Immigration Service(NIS), Federal Ministry of Labour and Employment(FMLE), Federal Ministry of Women Affairs and Social Development(FMWASD) and Federal Ministry of Justice(FMoJ). The programmes and policies on prevention and elimination of child labour was examined to bring out gaps, challenges and also to recommend ways of resolving the gaps identified.

#### **4.2 National Institutions**

There are some institutions saddled with the responsibility of preventing and eliminating child labour in Nigeria. These institutions have statutory backing as are some, being creation of the Act of the National Assembly. Their mandates, roles, functions and structures shall be examined to bring to fore efforts undertaken to combat child labour. The laws establishing them shall also be analysed further to understand why child labour is still a menace in Nigeria despite having the requisite structures and systems.

#### **4.2.1 National Agency for the Prohibition of Trafficking In Persons**

The National Agency for Prohibition of Traffic in Persons and Other Related offences (NAPTIP) was established by the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003<sup>253</sup> and came into force on the 14th of July 2003 as a reaction and efforts of Nigeria government to address the menace and to fight the scourge of child labour and human trafficking in Nigeria and in fulfilment of her international duty under the United Nations convention on human trafficking protocol against transnational organized crime. The establishment of NAPTIP was part of the efforts of the Nigeria Government to coordinate all rules and regulations on trafficking in persons and related offences as well as strengthen and enhance effective legal means for international cooperation in criminal matters and to investigate and prosecute traffickers, which is a bold step towards addressing the scourge that all forms of exploitation such as sexual abuse, labour exploitation and child labour in Nigeria be prevented or eliminated. It commenced operations on 26<sup>th</sup> August, 2003 with a vision of “ hands-on commitment to suppress and eliminate the scourge of trafficking in persons and child labour in Nigeria ... and with a mission to fully prevent all forms of human degradation and exploitation through the coordinated use of the nation’s crime prevention and law enforcement resources.”<sup>254</sup>

##### **4.2.1.1 Structure of National Agency for the Prohibition of Trafficking in Persons and other Related Matters (NAPTIP)**

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<sup>253</sup> Section 1 of Trafficking in Persons (Prohibition) Law, Enforcement and Administration Act, 2003 now section 2 of the Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015

<sup>254</sup> National Agency for the Prohibition of Traffic in Persons and other related matters (NAPTIP), (2015) *2013/2014 Annual Report*, NAPTIP, Abuja, p.xii



The Agency currently has eight (8) zonal commands: Lagos, Kano, Benin, Uyo, Enugu, Sokoto, Maiduguri and Makurdi Commands with the headquarters at the Federal Capital Territory Abuja, Nigeria and they are majorly financed by the government of Nigeria and through donations from local and international organisations.

In order to carry out this mandate, the following departments were created within NAPTIP in accordance with section 11 of TIPPEAA, 2015 namely: Administration, Investigation and Monitoring, Counselling and Rehabilitation, Public Enlightenment, Finance and Account, Research and Programme Development, Training and Manpower Development and Legal Prosecution.<sup>255</sup> This structure however is limited as NAPTIP is not present in all the 36 states but only in eight states and the FCT. This could in itself, slow down administration of justice and adjudication of child labour cases. It could also lead to none diligent prosecution of cases due to distance and insufficient man power. Trafficking of persons is both internal and external and as such there is the need to have NAPTIP presence in the 36 states as opposed to the current structure.

#### **4.2.1.2 The mandate of National Agency for the Prohibition of Trafficking in Persons and other Related Matters (NAPTIP)**

Section 5 of TIPPEAA 2015 empowers NAPTIP to perform the following functions: to coordinate all laws and regulations on traffic in persons and related offences; to ensure the enforcement and due administration of the Act that established it; to undertake the duties to improve the success of elimination of human trafficking; to fortify and increase effectual legal means for international joint operation in criminal issues on human trafficking; to control

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<sup>255</sup> This is formerly section 8(1) of Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003

international activities of trafficking in person; with Section 5 (e) and (m) (ii) of TiPPEAA 2015 specifically providing for investigation and prosecution of all cases of trafficking in persons, including forced labour, child labour, forced prostitution, exploitative labour and other forms of exploitation such as slavery and slavery-like practices, bonded labour, removal of organs, illegal smuggling of migrants, sale or purchase of persons.

Furthermore, section 12 of TiPPEAA, 2015 provides for the functions of the different departments as well as the following strategies in the operations of NAPTIP for effective prevention and elimination of child labour and human trafficking in Nigeria.

Based on the above provisions, the role or functions of NAPTIP can be categorised into the following four headings:

#### **4.2.1.2.1 Prevention of child labour**

The prevention of any every crime is the most important as *prevention is better than cure*. The investigation and monitoring department is responsible for prevention and detection of offences. This it does in collaboration with other government agencies like the Nigerian Immigration Service (NIS) in charge of entry and exist of persons in Nigeria. A total of 4,620 cases on human trafficking including child labour has been reported to NAPTIP from inception to December 2016. In 2016 alone, NAPTIP reported 721 cases of human trafficking out of which 389 cases (that is 54% were investigated successfully while 332 were still under investigation as at December, 2016. The most reported cases were alleged offences of exportation for prostitution and sexual exploitation which had 195 cases, closely followed by child domestic workers and inflicting grievous harm with 188 while there is the emerging issue of buying and selling of

human beings for any purpose with a total of 46 cases.<sup>256</sup> In 2015, a government official (soldier) was investigated for allegedly violating child labour laws (forced labour).<sup>257</sup> In addition to investigating and detecting child labour issues, NAPTIP in its prevention strategy uses the Public Enlightenment Department to sensitise and educate the public on the dangers of child labour and human trafficking. Public education, sensitisation campaigns and awareness creation is a preventive mechanism for human trafficking and child labour. In 2016, NAPTIP conducted awareness-raising events at select primary and secondary schools in six states known for a high prevalence of human trafficking. More than 10,000 students learned about human trafficking including child labour issues.<sup>258</sup> Most of its enlightenment campaigns were done through the electronic media. This tends to exclude the rural dwellers that do not have access to any electronic device. Another limitation with the sensitisation meetings and workshops is that, its participants are drawn from the urban areas and from well positioned individuals like the traditional rulers and directors of ministries and schools.<sup>259</sup> In as much as these target audiences are needed, the perpetrators of this crime are usually not targeted. Rural dwellers and parents in rural communities are not adequately reached. These are usually the contributors to the menace due to ignorance and the ease with which they are deceived into believing greener pastures and better living conditions for their children or wards, exist beyond our shores.

#### **4.2.1.2.2 Protection of victims of child labour**

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<sup>256</sup> Research and Programme Development Department, (2017), *2016 Data Analysis*, National Agency for the Prohibition of Traffic in Persons and other related matters (NAPTIP), p.2

<sup>257</sup> US Department of Labour Bureau of International Labour Affairs (2016), *2015 Findings on Worst Forms of Child Labour in Nigeria*. p.6. [www.dol.gov/.../childlabour/nigeria.html](http://www.dol.gov/.../childlabour/nigeria.html). Accessed on 18/17/15 at 5:20pm

<sup>258</sup> Ibid p.8

<sup>259</sup> National Agency for the Prohibition of Traffic in Persons and other related matters (NAPTIP), (2015) *2013/2014 Annual Report*, NAPTIP, Abuja, Pp.13-58

The second strategic pillar employed by the Agency in the fight against human trafficking, child labour and other related offences is protection. Protection involves an intricate process of activities geared towards the success of the rescue, rehabilitation and re-integration of victims into society. This includes reception, identification, sheltering, counselling, family tracing, return and repatriation, integration, empowerment, follow-up and after-care.<sup>260</sup> Protection involves successful rehabilitation of and integration of victims into their families and the society. The counselling and rehabilitation department of NAPTIP is responsible for counselling, after care rehabilitation and social re-integration. After counselling, the victim's family is traced; the victim is empowered and made ready to be integrated into his or her family and the society. This departments overall aim is welfare of victims including facilitating access to legal aid services where need be. In 2016, the Agency rescued 389 victims out of the 1,017 rescued by the combined efforts of all relevant agencies of trafficked cases including child labour victims. Nigerians that were rescued were Seven Hundred and Sixty Nine (769) while the others were nationals from other countries. Out of the 1,017 rescued victims, 481 were aged 0-11 years. From this statistics, it can be said that child labour had the second highest number of rescued victims. In 2015, the Agency rescued a total of Eight Hundred and Ninety Four (894) victims of human trafficking. Child labour had the highest number of rescued victims with a total number of Two Hundred and Eight (208). A total of Ten Thousand Four Hundred and Seventy (10,470) victims of human trafficking have been rescued and rehabilitated by the Agency since inception till December, 2016.<sup>261</sup>

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<sup>260</sup> Ibid p.59

<sup>261</sup> Research & Programme Development Department (2014) *2013 Data Analysis*, National Agency for the Prohibition of Trafficking In Persons and other Related Matters (NAPTIP), Abuja, p.11

Edo State had the highest number of indigenes rescued as victims of human trafficking with two hundred and thirty three (233) in the period under review.

Despite these tremendous efforts, more is still to be achieved as the Agency currently operates only Nine (9) shelters in Abuja and its zonal offices. These shelters have capacity to cater for only 313 victims at a time.<sup>262</sup> From the current statistic of 1,017 victims rescued, it can be inferred that the shelters are easily be over-stretched, over whelmed and control of inmates under their care very tasking. The number of counsellors and time for counselling is inadequate due to the number of victims to be reached. There is also inadequate office accommodation for officers to discharge their duties efficiently and effectively. A few skill acquisition activities and vocational training are available in the shelters.<sup>263</sup> This limits victims to make do with what is available and not what they require to be self-reliant. These vocations even though necessary, it does not have ICT component and this could be a disadvantage to the victims as they may not have the opportunity to acquire the required skills to fit into the 21<sup>st</sup> century Nigeria.

#### **4.2.1.2.3 Prosecution and punishment of offenders and perpetrators of child labour**

Prosecution is one of the major mandates of the Agency and a veritable means of curbing the menace of human trafficking and child labour. Prosecution entails the compelling of traffickers to face the law and also confiscate the assets of convicted traffickers. Prosecution involves investigation, monitoring of cross-border movements, arraignment of offenders and diligent prosecution of all cases of child labour and human trafficking in Law courts. The legal and prosecution department is responsible for this.

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<sup>262</sup> US Department of Labour Bureau of International Labour Affairs (2016), *2015 Findings on Worst Forms of child labour in Nigeria*. p.7

<sup>263</sup> The vocational training available are:- fashion design, catering, hair dressing, bead making, knitting and hat making. Also National Agency for the Prohibition of Traffic in Persons and other related matters (NAPTIP), (2015), *2013/2014 Annual Report*, NAPTIP, Abuja, p.78

In view of this statutory function, during the reporting period, the Government initiated an investigation against a Nigerian soldier who was accused of exploiting a child in forced labour. NAPTIP investigated and prosecuted individuals involved in operating a human trafficking network that trafficked girls to Dubai for commercial sexual exploitation.<sup>264</sup>

In 2016, NAPTIP secured 25 convictions with 31 convicts (16 persons were convicted for recruiting under 18 years for prostitution and facilitating foreign travel for prostitution). This is a 38.9% increase over what was obtained in 2015 and a 34.8% increase in the number of convicts compared to 2015. This bring the total convictions from inception till December 2016 to two hundred and sixteen (216) with three hundred and eleven (311) convicts. It should however be noted that in 2014, 700 cases of human trafficking and other related matters were reported out of which 495 cases were investigated while 51 cases were still under investigation. 29 cases of the 700 were referred to appropriate agencies as they did not fall within the mandate of the Agency.<sup>265</sup> The reported cases of Traffic in Persons (TIP) centred mainly on child labour and sexual exploitation.<sup>266</sup> External trafficking out of Nigeria for sexual exploitation had the highest number of cases reported to the Agency in the year under review.

#### **4.2.1.2.4 Partnership to combat child labour**

Another role of the Agency is building and fostering partnership for the prevention and elimination of child labour and human trafficking. It is important to note that trafficking is a trans-national organised crime that requires synergy, cooperation and collaboration among agencies, stakeholders and countries. In line with this, the Agency entered into a bilateral and

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<sup>264</sup> Bureau of International Labour Affairs, (2016) *2015 Findings on Child Labour*, p.6. [www.dol.gov](http://www.dol.gov). Accessed on 18/7/17 at 5.20pm

<sup>265</sup> National Agency for the Prohibition of Traffic in Persons and other related matters (NAPTIP), (2015) *2013/2014 Annual Report*, NAPTIP, Abuja, p.81

<sup>266</sup> Ibid

multi-lateral agreement with source, transit and destination countries as well as UN Agencies. NAPTIP does all of the above in partnership with international and local agencies, non-governmental organizations, media organizations within the country and abroad. The agency is in partnership with both local and international organisation such as United Nations Office on Drugs and Crime (UNODC), International Organisation for Immigrants (IOM), The United Nations Children's Fund (UNICEF), International Labour Organisation (ILO), United State Agency for International Development (USAID), United Nations Interregional Crime and Justice Research Institute (UNICJRI).

The Agency collaborated with International Organisation for Migration (IOM), countries embassies and NGO for repatriation of victims of child labour. In 2015, NAPTIP, in collaboration with international organizations, provided training on investigation and reportage of human trafficking cases and victim identification including child labour to 341 NAPTIP officials, Nigerian Immigration Service Officers, Nigeria Police officers, and media practitioners.

#### **4.2.1.2.5 Research, monitoring and evaluation**

Another role of the Agency is research, monitoring and evaluation of child labour and human trafficking. The research and programme development department is responsible for researching into factors causing and promoting internal and external trafficking in persons including child labour as well as provision of available records, data and statistics on trafficking and child labour. It is also responsible for initiating and developing programmes aimed at addressing the problem of trafficking including child labour.

#### **4.2.2 Federal Ministry of Labour and Employment (FMLE)**

The Federal Ministry of Labour and Employment (FMLE) which was formerly known as Federal Ministry of Labour and Productivity (FMLP) is one of the oldest Ministries in Nigeria. It began as a Department of Labour in the then Colonial office in 1932 and developed into a full-fledged Ministry in 1952. The Ministry is established under item 34, Second Schedule of the Exclusive List, 1999 Constitution of the Federal Republic of Nigeria as amended. **The ministry envisions the** facilitation and promotion of peaceful, productive and harmonious industrial relations, safe and decent working environment and enhanced social security coverage for all Nigerians while creating an enabling environment for growth and sustainable development through best practices in labour and has developed policies such as National Policy on Employment, National Policy on Productivity, National Policy on Occupational Safety, Health and Welfare, National Policy on HIV/AIDS at work, National Policy on Labour Migration, National Policy on Child Labour, Guideline on labour Contracting and Outsourcing in the oil and gas industry, Guidelines on Skills Development and Training, Other Guidelines, Codes Of Practice And Regulations, National Policy on Occupational Safety and Health. The Federal Ministry of Labour and Employment is responsible for enforcing legal provisions regarding working conditions and protection of workers and there is a department in the Ministry in charge of this, with a unit dealing with child labour.

#### **4.2.2.1 Structure of Federal Ministry of Labour and Employment**

The Ministry is structured into six (6) zonal labour offices, nine Departments consisting of six Professional and three Service Departments. It operates 36 State Labour Offices and the FCT, 23 District Labour Offices and has a Labour Desk Office in Geneva, Switzerland. Recently nine (9) Labour Desk were approved for line Ministries, Department and Agencies. In addition, it oversees five (5) parastatals and relates with several national and international bodies and organizations. Furthermore, **it has the following departments for effective and efficient regulation and coordination of labour issues and concerns. They are:** Inspectorate,



Employment and wages, Trade Unions Services and Industrial Relations, Productivity Measurement and standards, Social Security, Skills Development and Certification, Policy Analysis Research and Statistics, Human Resources, Finance and Accounts, Special Duties, General Services, Reform Coordination and Service Improvement.

**The zonal offices are located as follows:-**South West –Lagos, South East – Enugu, South-South – Port-Harcourt, North-East – Bauchi, North-West – Kaduna, North- Central – Makurdi. Its parastatals include:- National Directorate of Employment (NDE), National Productivity Centre (NPC), Michael Imoudu National Institute for Labour Studies (MINILS), Nigeria Social Insurance Trust Fund (NSITF), and Industrial Arbitration Panel (IAP).

#### **4.2.2.2 Role of the Federal Ministry of Labour and Employment**

It is saddled with the responsibility of developing and promoting productive employment policies and programmes for employment generation and actualization of the National Action Plan on Employment Creation and the Local Employment Content initiatives of the Federal Government. It also stimulates and enhances national productivity consciousness, rewards excellence and promotes national competitiveness. It ensures skills development, upgrading, certification, placement and empowerment of artisans, tradesmen and applicants in various areas of national needs while providing Social Security Coverage, Welfare and Employee's Compensation to the nation's workforce, Labour Protection Services, supervision, enforcement, Education, as well as promotion of Social Justice, Ratification, Implementation and Review of National Labour Laws and Policies including collective bargained agreements, Trade Unions Education and Training, International Labour Diplomacy, Promotion of Occupational Safety and Health, Administration of the Factories Act.

**Legal Framework for Labour Administration as facilitated by the ministry are:-** the 1999 Constitution of the Federal Republic of Nigeria, as amended, Labour Act, Cap L1, Laws of the Federation of Nigeria (LFN), 2004, Trade Unions Act, Cap T14, LFN, 2004, Trade Unions (Amended) Act, 2005, Trade Disputes Act, Cap T8, LFN, 2004, Trade Disputes (Essential Services) Act, Cap T9, LFN, 2004, National Minimum Wage Act, 2010, Employment Compensation Act, 2010, Wages Board and Industrial Council Act, 2004, Other subsidiary Legislations, Regulations, Codes of Practice, Public Service Rules, Circulars and Notices, ILO Conventions, Recommendations and Protocols, Nigeria Factories Act.

The minister is the chairman of the National Steering Committee for the Elimination of Child labour that ensures the enforcement of national child labour laws. Labour inspectors are deployed across 36 state labour offices and the Federal Capital Territory, including Abuja, and are responsible for investigating all labour law violations, including those related to child labour.<sup>267</sup> In 2015, FMLE employed 258 factory inspectors and 402 labour officers, a decrease of 222 inspectors from 2013-2014 period. Evidence indicates that the number of inspectors is inadequate to deal with the wide-scale problem of child labour. the ILO recommends that it should be 1 inspector to 15,000workers in industrialising economies and as such, Nigeria ought to employ 3,830 inspectors for adequate enforcement of the laws.<sup>268</sup> In April 2014, 93 FMLE labour inspectors participated in child labour inspection workshops to develop monitoring and reporting tools after which they have not been able to effectively utilise the skills acquired due to lack of provision of computer and other necessary data capturing tools. FMLE provided 3 hours of training on child labour to new labour inspectors- this time is grossly adequate to transfer

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<sup>267</sup> US Department of Labour Bureau of International Labour Affairs (2015), *2014 Findings on Worst Forms of Child Labour in Nigeria*, p.10. [www.dol.gov/.../childlabour/nigeria.html](http://www.dol.gov/.../childlabour/nigeria.html). Accessed on 13/10/15 at 6:18pm

<sup>268</sup> US Department of Labour Bureau of International Labour Affairs (2016), *2015 Findings on Worst Forms of Child Labour in Nigeria*, p.5

requisite knowledge.<sup>269</sup> In 2011, FMLE collected data from state governments on the prevalence of child labour, but the data was not made public. Information on the number of child labour law inspections, violations, and citations issued during the reporting period (2011) is not available as at 2016.<sup>270</sup> The data available on child labour is from international agencies and organisations that try to prevent and eliminate child labour. Inspections can be unannounced, are conducted through site visits, and tend to focus on large businesses such as factories. FMLE typically sends letters of caution to employers, encouraging them to resolve violations, and then conducts follow-up inspections. It is unclear whether this system sufficiently encourages compliance with labour laws. Note that most child labour occur in the informal sector and is not regulated neither is it within the public domain for intervention. The Labour Inspectorate director can also halt employer operations, but information is not available as to whether this occurred during the period of 2015. There are no labour inspectors available to conduct inspections on seafaring vessels as required by the law. This is so as the Labour Act states that children aged 15 and older may work on-board these vessels,<sup>271</sup> children are unprotected by the country's enforcement framework. There is no mechanism to enforce existing protections for street children. FMLE refers cases of children gravely in danger to the National Agency for the Prohibition of Traffic in Persons and other Related Matters (NAPTIP); however, there is no established referral mechanism between FMLE and social welfare services.<sup>272</sup> Furthermore, the FMLE reported that

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<sup>269</sup> US Department of Labour Bureau of International Labour Affairs (2015), *2014 Findings on Worst Forms of child labour in Nigeria*, p.10

<sup>270</sup> US Department of Labour Bureau of International Labour Affairs (2016), *2015 Findings on Worst Forms of Child Labour in Nigeria*, p.8

<sup>271</sup> Section 61 Labour Act, Cap L1, LFN 2004

<sup>272</sup> US Department of Labour Bureau of International Labour Affairs (2015), *2014 Findings on Worst Forms of child labour in Nigeria*, p.10. [www.dol.gov/.../childlabour/nigeria.html](http://www.dol.gov/.../childlabour/nigeria.html). Accessed on 13/10/15 at 6:18pm

the National Steering Committee (NSC) on Child Labour did not meet regularly in 2015 due to funding constraints.<sup>273</sup>

It should however be noted that section 78 of the Labour Act states that in addition to other powers conferred on labour officers, an authorized labour officer may for the purpose of ensuring the enforcement of the Act, enter and inspect certain premises including labour encampments, farms, hospital buildings, factories etc. Private homes are however not included and many people who are trafficked internally end up as domestic workers in such private homes. Since labour inspectors have the power to do whatever is needful to ensure the proper implementation of the Act, it is implied that they have the power to prosecute offenders, and this covers issues of child labour and forced labour. It does not however cover cases of domestic work as this is in the informal sector. The problem is that there are few labour inspectors, and they need to be trained so that they can be more effective in the execution of their mandate.

Inspections are conducted only in the formal business sector where there are few occurrences of forced and child labour. The biggest challenge of the Ministry is lack of adequate number of trained staff, and equipment needed to carry out the assignment. Because of this, inspections are not carried out regularly and have not deterred violations. Besides, inspections are not conducted specifically to check violators of child labour, and there is no recent recorded child labour inspection that resulted in fines, penalties or convictions. There is therefore need to strengthen the inspection and child labour units of the Ministry of labour, employ and train staff to carry out their functions effectively. Section 23 of the Act prohibits recruitment by intermediaries except

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<sup>273</sup> US Department of Labour Bureau of International Labour Affairs (2016), *2015 Findings on Worst Forms of Child Labour in Nigeria*, p.8

those under permit or license. Licenses granted by the Minister are valid for twelve months and are subject to renewal.

#### **4.2.3 Federal Ministry of Women Affairs & Social Development**

NAPTIP and the Federal Ministry of Women's Affairs and Social Development (FMWASD) collaborate and coordinate social services for trafficked children and repatriation to their families. FMWASD was created consequent upon the response to the United Nations agreement to establish Institutional Mechanisms for the advancement of Women and Women matters. It is a product of efforts established through a Decree in 1989 giving rise to the National Commission for Women. This however was the initiative of the wife of the then Head of State late (Dr) Mrs Maryam Babaginda. The Commission though recognized as a Government Institution, its activities were rather ad-hoc with no specific and adequate budgetary allocation. The wife of the Head of State then dictated the pace of activities in the Commission with the creation of her Better life Programme for Rural Women.

In 1995, the Commission for Women was upgraded to a full-fledged Ministry of Women Affairs and Social Development, which meant that Nigeria had achieved one of the critical areas of concern of the Beijing Platform for Action which is the establishment of a mechanism for addressing issues of women and promoting their rights. The activities of the Ministry, again was largely influenced by the dictates of the wife of the Head of State at that time, Mrs Maryam Sani Abacha who came up with her pet project:- the Family Support and Economic Advancement Programme(FEAP). Indeed, like the Women Commission, resource allocation in the form of

budgetary provision was very meagre, barely enough to pay the Salary of staff. Intervention by the First Lady's programmes were basically welfarist in nature, targeting Women for their immediate needs without tackling the age-long problem of lack of integration of gender awareness and competence into mainstream development planning. This arrangement brought a lot of Institution credibility gap, which negatively affected the Ministry in many ways. For instance, when the Commission was upgraded to a Ministry Status, it was not really at par with other Ministries and therefore lacking the requisite institutional identity and resource base. Other problems were lack of adequate budget allocations and a recognized technical cadre. The net effect of this credibility gap has been that the FMWASD is not viewed as an equal government outfit with other Ministries making its gender mainstreaming and child development work even more difficult to pursue.<sup>274</sup>

In line with Government's repositioning and reform agenda for better service delivery in the country, FMWASD came up with a clearer vision and mission statement as follows:

"To help build a Nigerian Society that guarantees equal access to social, economic and wealth creation opportunities to all, irrespective of gender, places premium on protection of the child, the aged and persons with disabilities; focuses attention of key operators in both private and public sectors on mainstreaming the concerns of these groups of people in national development process" and a mission "To serve as the national vehicle to bring about speedy and healthy development of Nigerian Women, Children, the socially disadvantaged and physically challenged, and the main-streaming of their rights and privileges in national development process."<sup>275</sup>

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<sup>274</sup> [www.womenaffairs.gov.ng/index.php](http://www.womenaffairs.gov.ng/index.php)

<sup>275</sup> Ibid

#### **4.2.3.1 Mandate of the Federal Ministry of Women Affairs & Social Development**

The broad mandate of the Ministry is to advise government on gender and children issues, issues affecting Persons with Disabilities and the Aged; initiate policy guidelines and lead the process of gender equality and mainstreaming at both the national and international levels”.

##### **a. Gender Mainstreaming**

This is one of the most important mandates of the Ministry particularly if gender equality and equity issues as have been severally emphasized by Mr President, as well as being part of the fundamental requirements of all member nations of the global community are to be achieved. Yet, gender as a concept is still equated with “Women issues” therefore the added development value of shift to a gender approach is far from clearly being understood by both women and men alike. Given this background, the Ministry’s gender mainstreaming mandate has been difficult to carry out, essentially, lacking the requisite policy and institutional support.

##### **b. Social Welfare**

The mandate of caring for the neglected and less privileged members of our society with particular emphasis on rehabilitation of Persons with Disabilities (PWDs) including children rest on the Ministry. She caters for the elderly, the destitute, the socially maltreated street children etc. The Ministry also plan programmes and initiate policies in line with acceptable United Nations Convention on eth Welfare and Development of People Living with Disabilities

##### **c. Rehabilitation**

The role of Rehabilitation Department is to create an enabling environment which will enable person with disabilities overcome their physical, intellectual, sensory disabilities and social barriers as to ensure their effective participation and sustainable mainstreaming to the socio-economic and political developmental process of the nation

**d. Child Development**

The Ministry is responsible for providing an enabling environment for the total wellbeing and development of the Nigerian child and the realization of his/her full potential through policy formulation, advocacy, coordination and monitoring within the context of relevant national and international instrument and commitment e.g. The United Nations Convention on the Rights of the Child (UNCRC), MDGs etc

**e. Policy Advisory**

This is to provide direction for Government at all times and at all levels in terms of gender mainstreaming and children's welfare. This would mean staff of the Ministry, having a solid grounding in gender concepts and analysis as well as a firm understanding of the principles and concepts to be able to bring up relevant and implementable policies for Government to adopt in line with signed International, regional or sub-regional conventions, Treaties, Protocol and charters

**f. Co-ordination**

The Ministry, being the highest National Institutional Machinery for the advancement of women and children, plays a vital role of bringing together and coordinating activities of the gender constituencies in the country including, States Ministries of Women Affairs, women and children



focused Non-Governmental Organizations, International Development partners and all other stakeholders. This role involves establishing a gender agenda with a view of reaching a consensus by all stakeholders on a road map for action. To adequately drive this, there is an urgent need for institutional strengthening of the Ministry.

**g. Knowledge Management**

This is an area that is increasingly assuming greater significance in development practice. For the Ministry of Women Affairs, this is a new role that is essential for effectively carrying out its advisory role especially in the face of the current global trends in developmental paradigm. Indeed its capacity to deliver policy advice that is credible and dependable on a sound knowledge base, particularly in the area of gender and development, requires specialized expertise. The Ministry must adopt special strategies to professionalize and train its staff in key areas of social development, development planning, and modern management/administration.<sup>276</sup> Advocating for eliminating child labour would be based on the data available and knowledge management.

**4.2.3.2 Functions of the Federal Ministry of Women Affairs & Social Development**

The basic functions of the Ministry of Women Affairs and Social Development are as follows:

- a. Promoting the general welfare of Women, children and enhancing their ability to realize their full potentials in various fields of human endeavours.

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<sup>276</sup>Ibid

- b. Providing an enabling environment that will ensure the maximum and holistic development of the potentials of the Nigerian child towards national development and nation building including preventing child labour.
- c. Promoting a multi-sectoral programme synergy for the realization and enhancement of the survival, development, protection and participation rights of children in Nigeria with particular reference to the achievement of set targets enumerated in the Child's Right Act 2003 (CRA), the National Economic Empowerment and Development Strategies and Sustainable Development Goals(SDGs).
- d. Embarking on awareness creation and formulation of policies and legislation on survival, development, protection and participatory rights of Women and Children in Nigeria.
- e. Taking steps that support the elimination of all social culture practices that discriminates against or are detrimental to the overall development of Women and girls.
- f. Supporting the work of relevant non-governmental organizations (NGOs) and civil society organizations (CSOs) working for the realization of Women and Children's right.
- g. Advocating for the passage and enforcement of laws that protect and project the interest of the Ministry's target groups particularly the Child's Rights Act 2003.
- h. Coordination of Inter-Governmental and Inter-State social welfare activities and rehabilitation of trafficked persons including child labourers, alcoholics, drug addicts, cult members and school drop outs etc.

- i. Training of professional social workers and the organization and coordination of training facilities for government and non-governmental social welfare agencies.<sup>277</sup>

On the above enumerated functions, issues of child labour is implied. It should however be noted that the Ministry is slighted over burdened with all this roles and invariably, the poor discharge of its duties and responsibilities. Issues of children especially child labour would be subsumed into women issues due to the aforementioned gap.

FMWASD current policy thrust revolves around the followings:

- a. Advocacy, sensitization and public enlightenment on Nigeria; adoption and implementation of international convention on Treaties and Protocols.
- b. Facilitating the enactment of legislation and implementation of National Social welfare programmes including child protection.
- c. Conception and Execution of Projects that will promote women and children's wellbeing.
- d. Development of existing Institutions (e.g. Nigerian farm craft centre in Lagos, school of Social Works Emene, Braille centres and libraries.)

#### **4.2.3.3 Programmes and Projects of the Federal Ministry of Women Affairs & Social Development**

The Ministry since its inception has strived to live up to its expectations by embarking upon a lot of advocacy, public enlightenment, sensitization and even some Projects to meet the yearnings and aspirations of its mandate groups. **The ministries efforts on child labour can be seen from**

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<sup>277</sup>Ibid

**its collaborative efforts with NAPTIP on the rehabilitation of child labourers and family tracing and re-integration into communities.**

Federal Ministry of Women Affairs and Social Development (FMWASD) had as well fulfilled the requirement of all UN conventions, Treaties and Protocols or the charters of other Regional and Sub-Regional bodies like the AU and ECOWAS by promoting policies and laws designed to advance the course of Women and Children and this include:

1. The National Gender Policy and its Strategic Implementation framework and plan to enhance Women Empowerment, Gender Equality and Mainstreaming. This policy is in existence and ought to be reviewed whereby issues of child labour would be mainstreamed as gender affects children too.
2. UN Convention on Rights of the Child to promote the protection and participation and the Nigerian Child domesticated as Child's Rights Act, 2003.<sup>278</sup>
3. The National Children's Policy
4. The Nigerian Priority Agenda (NPA) for Vulnerable Children 2013-2020
5. The National Standard of Practice for Orphans Vulnerable Children (SoP)
6. The National Situation Assessment And Analysis On Orphans And Vulnerable Children (NSAA:2008)
7. National Monitoring and Evaluation Plan on Orphans and Vulnerable Children in Nigeria
8. National Directory of OVC NGOs in Nigeria

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<sup>278</sup> Ibid

#### 9. Advocacy Guide and Facilitators Manual for Promoting Children's Rights in Nigeria.

The Child Development Department is one of the programme Department FMWASD with a mission to provide an enabling environment that will ensure the maximum and holistic development of the potential of the Nigerian Child through well-articulated policies, project and programmes that would enhance the quality of his/her life towards national development and nation building and a mandate of **being** responsible for the total well-being and development of the Nigerian child. It is to give visibility to all children in terms of protection, coordinate activities, monitor progress and promote a comprehensive and integrated agenda for the realization of children's rights. The child in this case refers to any child under the ages of 18 years in line with the United Nation Convention on the Rights of the Child (CRC), child Rights' Act, 2003 and the Constitution of the Federal Republic of Nigeria. In response to the above, the Divisions ensures that policies reflect rights-based, gender-sensitive and pro-poor approaches that target the children especially the vulnerable ones. The protection and participation division of the child development department with support from UNICNEF and Save the Children International have ensured the establishment of Children's parliament at the national level with participants drawn from the 36 states and the FCT.

The issue of child labour on the other hand is domiciled with the Social Development Department. This in itself, is confusing the roles of the two aforementioned departments. The alignment of roles and responsibility with regards to child labour will douse tension and reduce conflict of responsibility. Child labour issue is not getting the required attention due to this situation.

Despite having statutory mandate to protect children in Nigeria and all these legislations and policies, child labour is still in existence in Nigeria and it is not near elimination. This is so as a result of poor funding by government of the implementation of these laws as well as insufficient funding for activities of the ministry that will prevent and eliminate child labour. This research also observed that there is the problem of over dependence of the ministry on donors for the execution of their activities. Most of the policies and documents developed and printed was done with support from UNICEF and USAID. There is insufficient commitment on the part of the ministry staff and the constant transfer of personnel also affect pushing the issues of children including child labour to the front burner. The children's parliament was not functioning for four years (2012-2016) due to non-availability of funds and conduct of credible elections into the parliament by the ministry. Children issues have been overshadowed by women, rehabilitation and social development issues. This can be seen from the projects and programmes carried out by the ministry and also due to the metamorphosis of the ministry that initially had the focus of women and their matters at heart. The Beijing Conference further buttresses this assertion.

The projects and programmes of the ministry from the foregoing does not have a direct reflection on child labour prevention and elimination. Child labour is beyond right popularisation and promotion. There is need to focus on eliminating child labour which is an abuse and violation of children's rights.

#### **4.2.4 Federal Ministry of Justice**

The Federal Ministry of Justice (FMOJ) has always been one of the traditional institutions for the administration of the country since the introduction of pax Britannica (British Law) in the late 19th and early 20th Century as a consequence of colonialism. This role became more enhanced

following the amalgamation of the Northern and Southern Protectorates in 1914. The Attorney-General (AG) of the Federation and Minister of Justice heads the ministry and is the Chief Law Officer of the Federation (by virtue of section 150 of the 1999 Constitution). The present AG of the Federation and Minister of Justice is Mr. Abubakar Malami, SAN, (CFR) and is the twenty second (22nd) indigenous AG.

#### **4.2.4.1 Mandate of Federal Ministry of Justice**

FMoJ has the mandate to maintain the highest standards of professionalism and loyalty to the ideals of fairness and justice and the sustenance of a healthy relationship between all arms and tiers of Government. It has the vision to make justice accessible to all consistent with the ideals of democracy and the rule of law with the ultimate to reposition the Ministry at the centre of government activity by developing core competences in the following broad areas: constitutional cases, advisory services, commercial negotiation, human rights protection, legal aid, mediation, legislative drafting, property management, Information Technology, litigation, as well as in emerging fields such as environmental law and public-private partnerships (PPPs). It simply means that the ministry has the implied mandate to ensure child labour victims get justice and be protected from child labour perpetrators.

#### **4.2.4.2 Functions of Federal Ministry of Justice**

The Ministry is to perform the following functions:-

- i. Prosecution of offenders on behalf of the State including child labour offenders;
- ii. Conduct of civil cases for and against the Government;
- iii. Drafting of laws and legal instruments;

iv. Protection of Citizens rights e.t.c.<sup>279</sup>

It has several departments among which is the Citizens' Rights Department. This became operational in November 2005, with its primary function of protecting the rights of citizens including children, thereby affording them access to justice and thereby achieving democracy and justice. This department has a mission to give quality services through quick disposal of cases by employing Alternative Dispute Resolution (ADR) mechanisms. Creating a platform for venting Advisory, Arbitration, Mediation, Conciliation, Reconciliation and addressing grievances in a less formal setting than the law courts. This would be more child friendly in handling child labour cases.

This department is responsible for children and youths issues including child labour matters. The use of ADR is a welcome development but looking at the criminal nature of child labour, it is inappropriate for it to be solely used in child labour offences. The department works with other human rights actors like the Judiciary, FMWASD, National Human Rights Commission (NHRC), the media and Non-governmental organisations and donors.

Another department is the Civil Litigation and Public Law Department which is a core-department of the Ministry and key to issues of children that has been operative since the inception of the FMoJ. The department by its schedule is positioned as an image maker of the Ministry, as officers of the department are often in the Courts regularly, on behalf of the Attorney-General of the Federation. Prior to 2004, it covered all its cases throughout the Federation from a central point. The headquarters is Abuja with thirteen Zonal Offices located in

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<sup>279</sup> Ibid



Maiduguri, Jos, Enugu, Lagos, Port Harcourt, Kano, Benin, Akure, Yola, Sokoto, Owerri, Makurdi and Lokoja.<sup>280</sup>

The vision of the civil litigation department is to render professional quality service through effective and efficient representation of all stakeholders' interest in the dispensation of justice and a mission to ensure fair and equitable dispensation of justice in the federation of Nigeria. The non-delivery of services by these departments will likely impact on the public. For instance, foreigners may seize the opportunity of non- performance by these departments to flout immigration laws of this country and also promote child trafficking for child labour purposes.

Further, there may be flagrant breaches of constitutional provisions by states of the Federation and individual bearing in mind that one of the Attorney- General's responsibilities is the assertion of public rights. This is one of the engine rooms of the Federal Ministry of Justice.

Having reviewed the mandate, role and functions of the FMoJ, it can be said that the FMoJ does not implement programmes directly but tend to draw up legislations and policies on children issues for the government. It equally ratifies and signs international treaties on behalf of the government without having any enforcement mechanism to ensure such ratified treaties are implemented. The FMoJ sits on the National Child's Rights Implementation committee but has no specific desk assigned to child labour issues and invariably does not consider it to be of great importance to get the deserved attention.

#### **4.2.5. The Courts**

The 1999 Constitution of the Federal Republic of Nigeria (with Amendments 2011) and the CRA, 2003 provides for specialised courts to handle and adjudicate on child labour issues and

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<sup>280</sup> Ibid

violations. Here two (2) courts shall be discussed namely: the National Industrial Court of Nigeria (NICN) and the Family Courts (FC).

#### **4.2.5.1 National Industrial Court of Nigeria (NICN)**

The National Industrial Court of Nigeria (NICN) is a court of superior records established by the Constitution of the Federal Republic of Nigeria.

##### **4.2.5.1.1 Background of the National Industrial Court of Nigeria (NICN)**

The general industrial unrest and disharmony that characterized the industrial sector soon after the civil war and the fear of its possible socio-political as well as the economic effect on the nation, among others, precipitated the need for special formal mechanisms for settlement of labour disputes outside the regular court system with their attendant delay in dispute resolution in Nigeria. It was thought that a special system with a court dedicated to handling trade dispute matters would provide an effective and efficient mechanism for handling trade dispute matters. The response to this was the promulgation of the Trade Dispute Decree No. 7 of 1976 which later became the Trade Dispute Act (TDA) 1976 (as amended). The TDA in its part II provides for the establishment of the National Industrial Court (NICN),<sup>281</sup> the aim among others, was to provide for, encourage and promote specific settlement of labour disputes in place of strife. The NICN was conferred with jurisdiction and power with respect to settlement of trade disputes, the interpretation of collective agreements and matters connected therewith.<sup>282</sup> The NICN was the final arbiter in the hierarchy of the institutional mechanisms provided under the TDA for

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<sup>281</sup> Section 20(1) Trade Dispute Act, LFN 2004

<sup>282</sup> Ibid

settlement of trade disputes. Since the establishment of the NICN, it has to some extent, contributed to the maintenance of industrial peace as well as impacted greatly on industrial relations practice in Nigeria.

It is however, now a superior court of record and with exclusive jurisdiction with respect to labour and industrial relations matters.<sup>283</sup>

#### **4.2.5.1.2 Jurisdiction of National Industrial Court of Nigeria (NICN)**

Jurisdiction is a fundamental requirement and bedrock of any judicial proceedings. Accordingly, the *Black's Law Dictionary* defines 'jurisdiction' as "government's general power to exercise authority over all persons and things within its territory". Within the context of judicial proceedings, 'jurisdiction' has been defined to mean 'a court's power to decide a case or issue a decree'. It follows that before a court of law entertains any matter brought before it for adjudication, it must ensure that it possesses the jurisdiction to sit over the matter, failing which no matter how well the proceedings is conducted amount to nullity.

Procedurally, jurisdiction of court does not exist in vacuum. For this reason, court's authority or jurisdiction is a product of constitution or other specific statutes. No court of law can assume jurisdiction without being statutorily empowered to do so. In Nigeria, the jurisdiction of the NICN is a product of several enactments. For instance, before the enactment of the NICN Act, 2006 and the Constitution of the Federal Republic of Nigeria (Third Alteration) Amendment Act, 2010. Although, the NICN is still a court of coordinate jurisdiction with other superior courts of record in its sphere of authority like the Federal High Court, the State High Court and the High

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<sup>283</sup> Section 6 The 1999 Constitution of the Federal Republic of Nigeria(Third Alteration) Act, 2010

Court of Federal Capital Territory, Abuja. However, by virtue of section 254C (1), its jurisdiction is exclusive to it and cannot be concurrently exercised or shared among the other High Courts in the same pedestal of authority or power.

Reason for this assertion is found in the definition of the phrase ‘exclusive jurisdiction’ in the *Black’s Law Dictionary*, where it is defined to mean ‘a court’s power to adjudicate an action or class of actions to the exclusion of all other courts’. Premised on the foregoing, the need to give such status to the NICN was laid in the case of *National Union of Electricity Employer & Other v. Bureau of Public Enterprises*,<sup>284</sup> which prompted the third alteration to pitch-fork the NICN into courts of records. This case was the impulsion to the 3<sup>rd</sup> Alteration of the 1999 Constitution as it triggered the concatenation of the efforts that led to the promulgation of the 3<sup>rd</sup> Alteration to remedy the situation of giving exclusive jurisdiction to the NICN as well as making it a court of superior records thereby placing its jurisdiction at par with the Federal High Court, State High Court and the High Court of the Federal Capital Territory.

Based on the 3<sup>rd</sup> alteration amendment of the 1999 Constitution, the court has exclusive jurisdiction in civil causes and matters relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker and matter incidental thereto or connected therewith. The court also has exclusive jurisdiction in civil matters relating to, connected with or arising from Factories Act, Trade Disputes Act, Trade Unions Act, Workmen’s Compensations Act or any other Act or Law relating to labour, employment, industrial relations, workplace or any other enactment replacing the Acts or Laws.<sup>285</sup> Appeals also lie from the Court to the Court of Appeal as contained in Chapter IV of the constitution of

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<sup>284</sup> (2010) 7 NWLR (Pt. 194) 538

<sup>285</sup> Ibid

the Federal Republic of Nigeria, 1999. The National Industrial Court consists of the President of the Court and not less than twelve Judges. Presently the National Industrial Court is manned by the President and nine other Judges.

#### **4.2.5.1.3 Jurisdiction of the NICN with regards to child labour**

Section 254C of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 provides as follows:

Notwithstanding the provisions of Section 251, 257, 272 and anything contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the National Industrial Court of Nigeria (NICN) shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters- ...

- i.) Connected with or related to child labour, child abuse, human trafficking or any matter connected therewith or related thereto;

(5) The National Industrial Court shall have and exercise jurisdiction and powers in criminal causes and matters arising from any cause or matter of which jurisdiction is conferred on the National Industrial Court by this section or any Act of the National Assembly or any other law.

(6) Notwithstanding anything to the contrary in this constitution, appeal shall lie from the decision of the National Industrial Court from matters in sub-section 5 of this section to the Court of Appeal. Section 254D- (1) provides further thus: For the purpose of exercising any jurisdiction conferred upon it by this Constitution or as may be conferred by an Act of the National Assembly, the National Industrial Court shall have all the powers of a High Court.

By virtue of the above provisions, the NICN is conferred with original and appellate jurisdictions as far as child labour issues and matters related thereto are concerned.

The effect of section 254C (1) of the Constitution (Third Alteration) Amendment Act, 2010 is that the present jurisdiction of NICN is exclusive to it and cannot be shared with other courts. It also follows that any decision other than that of the NICN on child labour issues is null and void based on the provisions of section 1(1)-(3) of the 1999 Constitution of the Federal Republic of Nigeria (as amended in 2011) which is to the effect that any inconsistent law with the provisions of the Constitution is null and void.

However, it should be noted that the opening paragraph of section 254C (1) which state that *‘National Industrial Court of Nigeria shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters’*, on its face value confers on the NICN with jurisdiction to adjudicate only in civil causes and matters connected to or related to child labour. However, a closer look at the main provisions of the section reveal that the NICN has jurisdiction to entertain criminal causes and matters arising from child labour or matters related thereto.

As stated earlier, jurisdiction is the life-wire to judicial proceedings, hence, any provision relating to court’s jurisdiction should be free from ambiguity and confusion. It is unethical for the Nigeria Law Makers to lump together the civil and criminal jurisdictions of the NICN without any clear demarcation. The best thing to do is to demarcate the two jurisdictions under separate headings.

As at today, the provisions of section 254C (1) of the Constitution (Third Alteration) Amendment Act, 2010 govern the civil and criminal jurisdictions of the NICN on child labour, child abuse and human trafficking and matters related thereto in Nigeria. Within this context, NICN has original and appellate jurisdictions in all matters listed in section 254 C (1).

Furthermore, section 254 C(2), notwithstanding anything to the contrary in this constitution, the NICN shall have the jurisdiction and power to deal with any matter connected with or pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified relating to Labour, employment, workplace, industrial relations or matters connected therewith.

The above provision is *impair material* with the provisions of section 254C (1) paragraphs (f) and (h) and section 7 (6) of the NICN Act, 2006. With these provisions, it is observed that NICN can now compete favourably with its foreign counterpart in terms of wide power to deal with bilateral agreements between Nigeria and Foreign Countries on labour and industrial relations matters. Central to this, are labour relations within the realm of the International Labour Organisation (ILO) conventions and agendas to which Nigeria is signatory. The non-domesticated international agreements have the force of law to be applied in Nigeria in view of the jurisdiction of the NICN to recognise International Conventions even if not domesticated. This is so as the 3<sup>rd</sup> alteration followed through all legislative process to give it legitimacy and can be construed to be intended to create an exception that National Assembly must domesticate all treaties.

Furthermore, these provisions further give impetus to the NICN to promote and protect international labour standards and best practices in labour and industrial relations. However, there is a stipulation within the provision of section 7 (6) of the NICN Act 2006, which states that what amount to good or international best practice in labour or industrial relations shall be a question of fact. This stipulation, as it were, will involve the calling of evidence in order to determine what is the best practice in labour and industrial relations and this can lead to delay and subjective standard on the part of the person urging the court to invoke the section. To solve this problem, Honourable Justice Babatunde Adeniran Adejumo, the President of NICN has

suggested that this provision obviously will permit the court to borrow from foreign jurisdiction in tandem with the present global village system. This approach, if adopted, will save the time of the court from the divergence views of litigants and their counsel on what is supposed to be the best practice in labour or industrial relations.

Furthermore, the effect of the above provision is that whether states pass into law the CRA or not, the NICN have jurisdiction in such states to entertain child labour issues by virtue of this provision as for the exercise of judicial powers of the NICN, the international conventions, protocol and treaties are deemed domesticated. It follows then to state that the non-domestication of the CRA as CRL by states is of no consequence with regards to child labour, child abuse and human trafficking. All agencies are therefore obligated to bring issues of child labour to the NICN irrespective of where it occurred.

#### **4.2.5.1.3. Powers of the court**

It is a specialised court of record. Furthermore, section 254 D confers powers of the High Court on the NICN for the purpose of exercising its jurisdiction. The section further empowers the National Assembly to confer additional powers on the NICN as it deems fit.

#### **4.2.5.1.4. Appeals from the National Industrial Court of Nigeria**

Section 254C(6) of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 provides as follows:

1. An Appeal shall lie from the decision of the National Industrial Court Nigeria as of right to the Court of Appeal on questions of fundamental rights as contained in Chapter IV of this Constitution as it relates to matters upon which the National Industrial Court of Nigeria has jurisdiction.



2. An Appeal shall only lie from the decision of the National Industrial Court of Nigeria to the Court of Appeal as may be prescribed by an Act of the National Assembly:

Provided that where an Act or Law prescribes that an appeal shall lie from the decisions of the National Industrial Court of Nigeria to the Court of Appeal, such Appeal shall be with the leave of the Court of Appeal.

1. Without prejudice to the provisions of Section 254C (5) of this Act, the decision of the Court of Appeal in respect of any Appeal arising from any civil jurisdiction of the National Industrial Court of Nigeria shall be final.

Hitherto to the Supreme Court's decision in *Skye Bank Plc v Victor Anaemem Iwu*<sup>286</sup>, child labour issue of civil nature if determined by the NICN, is final while appeals on criminal issue lie to the Court of Appeal. The aforementioned case however, has put the issue of finality of the NICN to rest as it summarises by saying that though the law was so framed as such, it is not intended to create two (2) Supreme Courts in Nigeria.

#### **4.2.5.1.5. Operations of the National Industrial Court of Nigeria**

The Court combines the rule of law applicable in conventional law courts with flexibility, expediency, reliability and affordability often associated with specialised courts.

The Judges of the Court have considerable knowledge and experience in the law and practice of industrial relations and employment conditions in Nigeria and in all civil matters, the Court is bound by the Evidence Act. In exercising its criminal jurisdiction, the Court applies the Criminal Code, Penal Code, Criminal Procedure Act, Criminal Procedure Code and Evidence Act in the

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<sup>286</sup> Unreported (30<sup>th</sup> June, 2017). [www.lawyard.ng/wp-content/uploads/2017/07](http://www.lawyard.ng/wp-content/uploads/2017/07)

determination of criminal matters brought before it. Procedure before the Court is regulated by the Constitution of the Federal Republic of Nigeria 1999 (as amended) National Industrial Court Act, 2006 and the National Industrial Court Rules, 2007, the Trades Disputes Act, 1990 (as Amended). The provisions of the TIPPEAA 2015 should also be applied by NICN especially in child labour issues.

From the foregoing, it can be said that being a creation of the Constitution, its decisions takes precedence over any other decisions on child labour issues. It should be noted that conferring on it the same status as the High Court gives it enormous powers which if not checkmated could be abused. Currently, the NICN is not available in all the states of the Federation; this could lead to slow dispensation of justice on child labour matters. Note that justice delayed is justice denied.

#### **4.2.5.2 Legal Status of Family Courts**

Section 149 of the CRA,2003 provides that there shall be established for each state of the Federation and FCT a court to be known as Family Court (FC) for the purposes of hearing and determining matters related to children. The court is to be constituted at the High Court and Magistrate Courts (MC) respectively.<sup>287</sup> The court shall have unlimited jurisdiction to hear and determine- any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim in respect of a child is in issue; and 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.<sup>288</sup>

The FC at the High Court level shall have powers to deal with all matters relating to the enforcement of the rights of the child as set out in the CRA, 2003 on the application for redress

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<sup>287</sup> Section 150 Child Rights' Act, 2003

<sup>288</sup> Section 151 Child Rights' Act, 2003

by a child who alleges that a right has been, is being or is likely to be infringed in respect of him and deals with all offences punishable with death or terms of imprisonment for a term of ten years and above or a claim of fifty thousand naira and above.<sup>289</sup> The FC at the Magistrate level on the other hand has powers to try offences and deal with all matters not specifically assigned to the court at the High Court level under section 152 of the CRA.<sup>290</sup>

As earlier posited, the 1999 Constitution in Section 254C of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 provides as follows:

*Notwithstanding the provisions of Section 251<sup>291</sup>, 257<sup>292</sup>, 272<sup>293</sup> and anything contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the National Industrial Court of Nigeria shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters- ... i.) Connected with or related to child labour, child abuse, human trafficking or any matter connected therewith or related thereto;*

Looking at the above provision, it can be said that it is the NICN that has the exclusive rights to hear and determine matters of child labour. However in practice, child labour cases are usually instituted, prosecuted and determined in the Federal or State High Courts as seen from the cases instituted by NAPTIP in recent time (2012-2016).<sup>294</sup> One can easily deduce from the above that either the NAPTIP officials are ignorant of the provisions of the Constitution or they are

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<sup>289</sup> Section 152(4)(a)(b)(c) Child Rights' Act, 2003

<sup>290</sup> Section 153(4) Child Rights' Act, 2003

<sup>291</sup> Jurisdiction of Federal High Courts

<sup>292</sup> Jurisdiction of High Court of FCT

<sup>293</sup> Jurisdiction of State High Courts

<sup>294</sup> For example in 2012 AGF v Bola Olaniyi & 1 or FHC/IB/59C/2013 Fed. High Court, Ibadan; AGF v Nafisa Abdullahi FHC/KN/CR/101/2014 Federal High Court, Kano; AGF v Apisu Abdullahi FHC/J/33C/2015 Fed. High Court, Jos; AGF v Joy Obi FHC/KN/CR/35/2016 Fed. High Court Kano state.

flagrantly contravening the provisions of the law. Whichever the case, the Judges of those courts ought to have re-directed the matters to the appropriate courts reason being that they lack jurisdiction on the matter. Also, most states are yet to establish FC for the purpose of adjudicating on child related issues. This in itself is a lacuna. 12 states out of the 36 states are yet to pass the CRA into Child Rights' Law. The law which forms the basis for action is not in place and this brings about stagnation to enforcing the rights of the child that is violated as a result of child labour if the CRA is to be used as the yardstick for measurement. This lacuna however, can be said to have been taken care of by section 254 c (2) of the Constitution which states that” Notwithstanding anything to the contrary in this constitution, the NICN shall have the jurisdiction and power to deal with any matter connected with or pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified relating to Labour, employment, workplace, industrial relations or matters connected therewith”.

Furthermore, any child labour decision from High Courts designated as Family Courts if contested on appeal will be set aside for lack of jurisdiction *abinitio*.

#### **4.2.6 Nigeria Police Force**

Section 214 (1) of the 1999 Nigerian constitution provides that: There shall be a police force for Nigeria, which shall be known as the Nigeria Police Force (NPF), and subject to the provisions of this section no other police force shall be established for the Federation or any part thereof. The Nigeria Police Force (NPF) is designated by Section 194 of the Constitution as the national police with exclusive jurisdiction throughout the country. The NPF performs conventional police functions and is responsible for internal security generally, for supporting the prison,

immigration, and customs services and for performing military duties within or outside Nigeria as directed.

#### **4.2.6.1 Mandate of the Nigeria Police Force**

The mandate of the police concerning human trafficking includes investigating, apprehending and prosecuting traffickers as well as enlightenment of the public about the phenomenon. The NPF, which had been handling the problem of human trafficking before the establishment of NAPTIP in 2004, established specialized Anti-Human Trafficking Units (AHTU) at headquarters and Juvenile Welfare Centres in twelve States of the Federation.<sup>295</sup> In the past, the AHTU has handled 120 cases of human trafficking, virtually all the victims being women or girls below the age of 12 years.<sup>296</sup> The majority of the cases currently handled by the State police concern young adults, whereas few cases of child trafficking are being handled at the Federal level. Over 200 victims, mostly children have so far been handed over to Benin Republic.<sup>297</sup> In 2016, the NPF rescued 67 victims of human trafficking including child labour victims.<sup>298</sup>

Furthermore, the police usually assist in receiving deported victims on their arrival in Nigeria, after which they are screened and documented. Victims are also provided temporary shelter, although such facilities are limited. The United States and Italian governments offer technical assistance to the police on identified areas of urgent need. The Police worked with the

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<sup>295</sup> [Nigeria Police Force. www.npf.gov.ng](http://www.npf.gov.ng). Accessed on 13/10/16 at 11.53am

<sup>296</sup> *Ibid*

<sup>297</sup> *Ibid*

<sup>298</sup> Research & Programme Development Department (2017), *2016 Data Analysis*, National Agency for the Prohibition of Trafficking In Persons and other Related Matters (NAPTIP), Abuja, p.22

International Organization on Migration (IOM) to develop a training programme to build the capacity of the police in handling the victims.<sup>299</sup>

The constraints encountered by the police in carrying out its mandate in this area include the complicity of parents and guardians in the trafficking of their minor children and the need for trained psychologists within the force. Some victims do not view themselves as having been exploited. Indeed, they prefer to consider their situation as one of empowerment as they had the opportunity to earn. As stated earlier, it is difficult to get people to testify as witnesses due to fear of reprisals. The biggest challenge that the police face, however, is lack of funds.

The CRA provides that a specialised unit of the force to be designated as Specialised Children Police Unit be established for the purpose of dealing and handling issues of children, preventing and controlling child offences, investigation of child offences and apprehension of child offenders. Members of the unit shall be continually trained and instructed for the purpose of carrying out their functions dutifully.<sup>300</sup> Enforce all laws prohibiting forced child labour and commercial sexual exploitation. Support FMLE and collaborate with NAPTIP on trafficking enforcement.<sup>301</sup> The Nigeria Police Force (NPF) does not receive training on state laws and may not have knowledge of state laws that protect children from the worst forms of child labour within a specific state. This limits the capacity of the NPF to enforce the laws protecting children from the worst forms of child labour.<sup>302</sup> This is so as the NPF is a federal formation answerable only to the federal government.

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<sup>299</sup> *Ibid*

<sup>300</sup> Section 207 Child Rights' Act, 2003

<sup>301</sup> US Department of Labour Bureau of International Labour Affairs (2015), *2014 Findings on Worst Forms of Child Labour in Nigeria*, p.10. [www.dol.gov/.../childlabour/nigeria.html](http://www.dol.gov/.../childlabour/nigeria.html). Accessed on 13/10/15 at 6:18pm

<sup>302</sup> *Ibid*

Section 4 of the Police Act is to the effect that the police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within or outside Nigeria as may be required of them by, or under the authority of this or any other Act. Section 23 of the Police Act Subject to the provisions of sections 174 and 211 of the Constitution of the Federal Republic of Nigeria 1999 (which relate to the power of the Attorney-General of the Federation and of a State to institute and undertake, take over and continue or discontinue criminal proceedings against any person before any court of law in Nigeria), any police officer may conduct in person all prosecutions before any court, whether or not the information or complaint is laid in his name.

There is a recent constitution of a special task squad by the Inspector General of the Police known as Anti-human Trafficking and Child Labour. This unit works in collaboration with other para-military establishments, NAPTIP, Line ministries and NGOs to combat child labour in Nigeria. Being a relatively new creation, much is expected from them. Hitherto by this creation, the NPF have been engaged in rescuing trafficked children for child labour and have referred same to NAPTIP for prosecution and rehabilitation.

#### **4.2.7 Nigerian Immigration Service**

The Nigerian Immigration Service (NIS) has decried the reactivation of slavery and slave trade through human trafficking and child labour with international networks where Nigerians have been traffickers and victims as well. As a result of the high frequency of trafficking in persons and child labour, the service said the practice has caused the stigmatisation of Nigerians in world view and has become a huge embarrassment to the nation. This has contributed immensely the

review of the 1963 Act whereby NIS powers and scope has been broadened with the introduction of the establishment of the Directorate of Migration.<sup>303</sup>

Section 1 of the 2015 Act provides that the NIS is to be responsible for *inter alia*: the control of persons entering or leaving Nigeria; issuance of travel documents including Nigerian passports to bona fide Nigerians within and outside Nigeria; issuance of residence permits to foreigners; and border surveillance and control. Consequently, the Act formally establishes the NIS as the sole body responsible for the regulation of immigration matters in the country and has appointed a single authority in the position of the Comptroller General of Immigration (CGI) as the head of the NIS charged with the day to day administration of the Act and through whom all matters relating to immigration, passports, visas and residence permits are to be routed.

Section bothering on migration has been expanded to prohibit the smuggling of any child out the country for the purpose of child labour.<sup>304</sup> There is a unit created in NIS called Anti-Human Trafficking and Child Labour. This unit was established to curb frivolous international adoption which is the new guise for trafficking children for the purpose of child labour. They are therefore empowered to scrutinise documents relating to adoption before issuance of e-passport. This it has used to ensure that children are not trafficked out for exploitative labour purposes.

NIS collaborates with NAPTIP to enforce laws against trafficking in children.<sup>305</sup>

The porous nature of Nigeria boarder makes it difficult for the control of immigrants and migrants. This influx could be used as a cover for trafficking children for child labour. NIS does not have the required staff and equipment to secure these boarders. This in itself is a good

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<sup>303</sup> Section 61, Immigration Service Act, No. 8 of 2015

<sup>304</sup> Section 64 Immigration Service Act, No.8 of 2015

<sup>305</sup> US Department of Labour Bureau of International Labour Affairs (2015), *2014 Findings on Worst Forms of Child Labour in Nigeria*, p.10. [www.dol.gov/.../childlabour/nigeria.html](http://www.dol.gov/.../childlabour/nigeria.html). Accessed on 13/10/15 at 6:18pm



festering ground for child labour through child trafficking. In 2016, NIS helped to rescue two hundred and ninety five (295) human trafficking victims including child labour victims.<sup>306</sup>

The Nigerian Immigration Service (NIS) works with NAPTIP and other law enforcement agencies in the prevention of human trafficking and child labour. The Service is concerned with the issuing of travel documents and controlling the country's borders. In 2003, the Nigerian Immigration Service created anti-trafficking units to help tackle the problem of trafficking in women and children, following the increasing number of cases of human trafficking involving Nigerians. The first three such units were established in Edo, Kano and Ogun States as these have been identified as sources/routes for trafficking. The Italian government provided some technical aid, including vehicles, equipment and materials to assist NIS in the human trafficking control programme. Several cases have been investigated since the creation of the units but they are not working at full capacity.

The following are the various constraints highlights affecting the services of NIS:

1. Inadequate sensitisation of relevant officers on the end results of trafficking;
2. Lack of capacity to detect victims and barons;
3. Inadequate training in the treatment of victims and barons;
4. Inadequate training in the detection of forged documents;
5. Inadequate data collection, improper documentation and lack of logistics (i.e. communication equipment, cameras, etc);
6. Victims do not report their exploiters to the police;
7. Lack of technical expertise due to inadequate training of field personnel;

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<sup>306</sup> Research & Programme Development Department (2017) *2016 Data Analysis*, National Agency for the Prohibition of Trafficking In Persons and other Related Matters (NAPTIP), Abuja, p.22

8. Constraints in inter-agency relations between Police and the Immigration Service.
9. The need to train officers to detect and apprehend traffickers/barons with the support of the police was also pointed out.

### **4.3 Challenges of Institutional and Enforcement Mechanism**

The institutions as earlier posited are faced with challenges that inadvertently makes the mandate unrealisable and unrealistic and further make their interventions and activities ineffective and inefficient. These challenges are as follows:

#### **4.3.1 Conflict of Courts' Jurisdiction**

Multiplicity of laws and the federal structure has brought about the challenge inherent to conflicts of courts. NAPTIP just like the NHRC and FMOJ is faced with the conflict of where to institute an action on child labour. This is borne out of the fact that prior to the enactment of section 254C of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 which gives exclusive jurisdiction of both criminal and civil nature to the National Industrial Court of Nigeria (NICN), the High Courts had jurisdiction by virtue of section 36 of the TiPPEAA 2015, and the Family Courts were saddled with the responsibility of adjudicating on children's issues as stipulated in the Child's Rights Act (CRA), 2003. NAPTIP however in their zonal commands institute child labour actions in Federal High Courts (FHC) or State High Courts (HC) just like the NHRC and FMOJ as the case may be. This is evident from all the cases

that have been prosecuted till date by these institutions. The coming of the CRA 2003 and the enactment of section 254C (Third Alteration) calls for a great concern as this would lead to judicial mischief. The mischief implied here relates in prosecutors instituting actions in courts they are friendly with. It could also result to Judges giving conflicting judgments on the same issues as may be instituted before them at the same time to prevent or pervert justice. This alteration confers on the NICN powers of the HC. This will lead to duplication of efforts and bring about confusion in the legal system.

It should be noted however, that the NICN combines the rule of law applicable in conventional law courts with flexibility, expediency, reliability and affordability often associated with specialised courts. This in itself is a plus as it tends to give both conventional law courts status and specialised courts status to the NICN.

However in practice, child labour cases are usually instituted, prosecuted and determined in the Federal or State High Courts as seen from the cases instituted by NAPTIP in recent time (2012-2016).<sup>307</sup> One can easily deduce from the above that either the NAPTIP officials are ignorant of the provisions of the Constitution or they are flagrantly contravening the provisions of the law. Whichever the case, the Judges of those courts ought to have re-directed the matters to the appropriate courts reason being that they lack jurisdiction on the matter.

Section 149 of the CRA 2003 provides that the establishment of Family Courts (either at the HC or Magistrate Court) for the purposes of hearing and determining matters relating to children..<sup>308</sup>

The court shall have unlimited jurisdiction to hear and determine any civil or criminal

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<sup>307</sup> For example in 2012 AGF v Bola Olaniyi & 1 or FHC/IB/59C/2013 Fed. High Court, Ibadan; AGF v Nafisa Abdullahi FHC/KN/CR/101/2014 Federal High Court, Kano; AGF v Apisu Abdullahi FHC/J/33C/2015 Fed. High Court, Jos; AGF v Joy Obi FHC/KN/CR/35/2016 Fed. High Court Kano state.

<sup>308</sup> Section 150 Child's Rights Act, 2003 Cap C50 Laws of the Federation, 2004

proceedings in relation to children issues as stipulated in the CRA.<sup>309</sup> From the foregoing, the CRA empowers family courts only to entertain issues bothering on child rights including violation of their right to education, rest, leisure, health and development as perpetrated by child labour. The NHRC on the other hand, views issues of child labour from two perspective of human rights violation wherefore it institute such actions in the High Court while if of any other nature other than the violation of human rights initiates same in the NICN. FMOJ institute child labour in the FHC and FCT High Court. In the view of this research, the fact that the NICN has the powers of a High Court, it can enforce fundamental human rights and is the proper court for child labour and related matters. Anything contrary to this is a contravention of the 1999 Constitution which gives exclusive rights both civil and criminal cases on child labour to the NICN.

#### **4.3.2 Attitude of judges**

The penal provisions enshrined in the CRA 2003 and TIPPEAA 2015, tend to give judge discretionary powers. This discretionary powers is not standardise and could easily be abused. For instance, the penalty as entrenched in section 23 (1) of TIPPEAA 2015 for employing or hiring a child under 12 years for domestic work is minimum 6 months but not exceeding 7 years while the CRA 2003 in section 28 provides for Fifty thousand Naira (N50,000.00) and or 5 years imprisonment term for child labour offenders. This language is inadequate as it gives room to the discretionary powers of judges which could easily be abused. The judge may decide to give the minimum term at his discretion even if justice is not served. Also the attitude of some judges leads to slow judicial process and dispensation of justice as some judges delay prosecution process and judgements. In the case of *Attorney General of the Federation (AGF) vs Folashade*

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<sup>309</sup> Section 151 Child's Rights Act, 2003 Cap C50 Laws of the Federation, 2004

*Bankole Olufunke (supra)*, there was abuse of discretionary powers by the judge who as well as the judgement been given two years after commencement of the case. This abuse of discretionary powers and slow process would have aided miscarriage of justice *as justice delayed is like justice denied*. This attitude exhibited by judges either abuse of discretionary powers or slow dispensation of justice, limits the role of institutions like NAPTIP and FMOJ in prosecuting their matters diligently as it discourages them as well as waste the time they would have used to pursue other matters in the courts.

#### **4.3.3 Poor budgetary appropriation**

The institutions and its staff are confronted with lack of adequate funds to hire personnel and purchase equipment to conduct surveillance across borders and sustain proactive investigations due to poor budgetary appropriation. Inadequate funding limits the ability of institutions to print the legislations and other necessary document that would effectively impact on their work. For instance, in 2016 the FMLE, NAPTIP, FMWASD, NIS and NHRC had no budgetary allocation for tackling the issue of child labour.<sup>310</sup> There is shortage of staff in most institutions needed to fight to curb child labour incidence. The financial allocation from the Government to most institutions for their annual budgets is not enough thereby limiting the total number of employed manpower (specialists in social service in particular) and denies the institutions the opportunity to access to adequate information on the phenomenon of child labour. Moreover, the lack of adequate fund has hampered most of the work in child labour because the means of information

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<sup>310</sup> Budget Office of the Federal Ministry of Finance (2017) 2016 Appropriation Bill, Federal Government of Nigeria. [www.budgetoffice.gov.ng/pdfs/2016/2016 Appropriation bill.pdf](http://www.budgetoffice.gov.ng/pdfs/2016/2016%20Appropriation%20bill.pdf)

dissemination is limited. That is, the institutions have no adequate funding to gather relevant information on sponsors, perpetrators, movement of victims, and other information from the general public as well as from neighbouring countries.

SERVICE PROVIDERS	ALLOCATIONS
FMLE	22,987,368
FMWASD	1,500,000
NHRC	3,001,452
NIS	No Allocation

Based on the above table, legal services, in 2017 had the FMLE, NAPTIP, FMWASD, NHRC and NIS had N22,987, 368; N 1,500,000; N3,001,452; no allocation respectively to provide legal services including child labour. This scenario paints a picture of lack of sincerity on the part of government to tackle child labour as there is no specific line for it under the legal services. Lack of the funds to build a central database has also hampered investigations and prosecutions especially in NAPTIP. The lack of adequate funds has limited the ability of NAPTIP and FMWASD to provide adequate care for the victims while they are still in custody and it has also prevented these institutions from organizing meaningful and sustainable rehabilitation programmes for the victims. Furthermore, the FMLE reported that the National Steering Committee on Child Labour (NSCCL) did not meet in 2014 and 2015 due to funding constraints.<sup>311</sup> This has led to over dependence on donors. Child labour interventions and programmes are largely donor driven in Nigeria. In 2017 however, N120, 654, 950 was

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<sup>311</sup> Ibid

appropriated<sup>312</sup> for child labour implementation by the FMLE. This is a good effort even though it is inadequate looking at the enormous need associated with tackling child labour. This could be seen from the ILO-IPEC programme and even surveys being conducted on child labour. the National Plan of Action for the elimination of child labour and other similar documents were developed with funding from USDOL and ILO. This in itself does not promote ownership of programmes and interventions. The only NSCCL meeting held since inauguration was funded by UNICEF and ILO. This over dependency makes the country susceptible to manipulation and taken out actions which may not be culturally sensitive.

#### **4.3.4 Socio-cultural ties and religious barriers**

Nigerians uphold family ties in high esteem and this can either be the nuclear or extended family ties. Therefore, a family (Main Family) can decide to strengthen a family tie with another family (Host Family) by allowing their child to live with the other family. The economic condition of the other family determines the fate of the innocent child. If the host family is not financially buoyant enough, the child could be subjected to child labour as a domestic worker. Unfortunately, the main family in most cases may not be aware of the condition of the child, and even in cases when there is awareness about the situation of the child, family tie is given consideration above the child's appalling situation. This unhealthy traditional feeling makes it impossible for relevant agencies officials to discern the crime of child labour in persons since the families involve agree to the child's inhuman living with the host family.<sup>313</sup> The concept of fostering in family traditional relationship in Nigeria is very strong and could easily be abused. Children who are fostered by poor host could be used for child labour. Also families lend each

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<sup>312</sup> Budget Office of the Federal Ministry of Finance, (2018) 2017 Appropriation Bill, Federal Government of Nigeria, p.467. [www.budgetoffice.gov.ng/pdfs/2017](http://www.budgetoffice.gov.ng/pdfs/2017) Appropriation Bill. Accessed on 20/03/18 at 2.36pm

<sup>313</sup> *Ibid*

other money without any written documentation. Children are sometimes used as collateral and in case the parents are unable to pay, the children who are collateral would work as directed till when the work could equal the money lent by the parents. This is called pawning or debt bondage.<sup>314</sup> This practice made it difficult for NAPTIP officials as the parents are unwilling to divulge what transpired between the families, and the children are also completely unaware of the transaction between both families. Victims are made to pay off debt by working for a debtor in various forms. This practice is common in Northern Nigerian, and the secrecy involved has made it almost impossible for NAPTIP officials to intervene, thus, traditional relationships has proven to be a considerable challenge to NAPTIP operations. There is usually low reporting of cases due to threat by offenders to victims and their families. This fear prevents others who may be suffering same fate from coming up to report. The fear of voodoo is the main factor contributing to unsupportive attitude of the victims and families. Child labour perpetrators can go to any length in order to be protected from prosecution by seeking protection using “African Magic”.<sup>315</sup> Rescued victims are reluctant to help in the investigations as they are usually unwilling to give out information that could lead to the arrest of the perpetrators of child labour.

Also, there is the unwillingness to give evidence against perpetrators because many of them are their close relatives or family friends. This can lead to frustration in the investigation and prosecution.<sup>316</sup>

In Northern Nigeria, for example, the Qadirriyah and Tijjaniyyah Muslim sects in sub-Saharan Africa experience parents sending their male children far away out of home called ‘Almajiris’ for religious and training purposes for years. The children are obliged to live with the Islamic cleric,

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<sup>314</sup> *Ibid*

<sup>315</sup> NAPTIP Annual Report 2013/2014 *op.cit* p.115

<sup>316</sup> *Ibid*



however, these clerics are not paid for feeding and basic up-keep of the children hence the children are subjected to various forms of child labour activities approved and at times profited from by the clerics. Usually, the children are made to beg on the streets, used as child labours as directed by the clerics and they are mostly used as cannon folders to ignite incessant brutal unrests in the region.<sup>317</sup>

#### **4.3.5 Inadequate staffing and capacity**

The institutions are faced with inadequacy of personnel and where they do exist, they do not have requisite capacity to deliver. For instance, the staff interacted with in NIS were all newly designated to the unit and were yet to be trained. If such are confronted with child labour issues, they may not be able to tackle it. Furthermore, the FMLE stated that there are no labour inspectors available to conduct inspections on seafaring vessels as required by the law. This is so as the Labour Act states that children aged 15 and older may work on-board these vessels<sup>318</sup>, children are unprotected by the country's enforcement framework.

In 2015, FMLE employed 258 factory inspectors and 402 labour officers. Evidence indicates that the number of inspectors is inadequate to deal with the wide-scale problem of child labour.<sup>319</sup> In April 2014, 93 FMLE labour inspectors participated in child labour inspection workshops to develop monitoring and reporting tools after which they have not been able to effectively utilise the skills acquired due to lack of provision of computer and other necessary data capturing tools.

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<sup>317</sup> *Ibid* p.32

<sup>318</sup> Section 61 Labour Act, Cap L1, LFN 2004

<sup>319</sup> 2015 Findings..., p.8

FMLE provided 3 hours of training on child labour to new labour inspectors- this time is grossly adequate to impart requisite knowledge.

NAPTIP on the other have inadequate social workers (counsellors) in the rehabilitation centres. The number of children in the shelter out numbers the available counsellor thereby making the child labour survivors not to have adequate counselling and care and this could give room for a relapse especially if the child was abused and traumatised in the course of child labour.

#### **4.3.6 Conflict of interest among stakeholders**

There is conflict of interest and lack of cooperation among the various stakeholders saddled with the responsibility of combating child labour in Nigeria. This is borne out of the fact that there is no clear delineation of roles and overlapping functions being performed by them. This in turn leads to poor coordination and referral mechanism especially between NAPTIP and other agencies like FMLE even where the latter have children in dire need of NAPTIP services<sup>320</sup>. Although NAPTIP coordinates the National Referral Mechanism to provide rehabilitation and other social services to trafficked children including child labour, this research did not find a referral mechanism for children found in other worst forms of child labour, including armed conflict. This research found that Government armed forces arrested and detained boys as young as age 9 for suspected alliance with Boko Haram. Additionally, the military arrested girls as young as age 13 who were married to senior Boko Haram members.<sup>321</sup>

#### **4.3.7 Accessibility and availability of services**

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<sup>320</sup> US Department of Labour Bureau of International Labour Affairs (2015), 2014 Findings on Worst Forms of Child Labour in Nigeria. [www.dol.gov/.../childlabour/nigeria.html](http://www.dol.gov/.../childlabour/nigeria.html). Accessed on 13/10/15 at 6:18 pm. p.5

<sup>321</sup> *Ibid*

Services needed to alleviate the pains of child labour victims are not easily available and accessible. For instance, NAPTIP has only nine (9) shelters which is grossly inadequate to cater for the needs of children been rescued on daily basis. The NICN which is the statutory court and has exclusive jurisdiction on child labour issues by virtue of the provision of the constitution is not easily accessible due to the number currently in existence. NAPTIP been the lead agency responsible for child labour issues have only eight zonal offices and the FCT which makes it difficult for users of their services to be discouraged or frustrated.

#### **4.3.8 Inadequate Data on Child Labour**

Most government agencies in the fight to prevent child labour do not have adequate data to help make informed decisions that would reduce child labour. Most of the data reported on child labour in Nigeria including the current data on child labour is by USDOL, UNICNEF and ILO and this was last updated in 2015. Furthermore, NAPTIP that is the primary agency responsible for child labour issue does not have a central data system that contains all the information needed for full prosecution and dispensation of their duties. There are no periodic updates as at when due as far as data collection is concerned. The lack of data is also as result of no research being carried out by the institutions like NAPTIP. They rely only on reported cases and referrals by other agencies like Nigeria Immigration Service, Nigeria Police, Nigeria Security and Civil Defence Corps, Nigeria Drug Law Enforcement Agency, Army and Joint Task Force.<sup>322</sup>

From the foregoing, it can be seen that the institutions are weak and there is no adequate enforcement mechanism in place to prevent and eliminate child labour in Nigeria.

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<sup>322</sup> NAPTIP Annual Report 2013/2014 *op.cit* p.115

## **CHAPTER FIVE**

### **DATA PRESENTATION AND ANALYSIS ON EMPIRICAL RESEARCH ON THE EXAMINATION OF THE LEGAL AND INSTITUTIONAL FRAMEWORK ON CHILD LABOUR**

#### **5.1 Introduction**

Child labour is a fundamental multidimensional development concern. It cuts across economic, social, religious, cultural and regional divides. In the process, human dignity and human (child's) rights are compromised. Realistically, children in Nigeria have not been effectively shielded from this menace. This is attributable to several factors, such as poverty, ignorance, unemployment, absence of social security support for the vulnerable, misinterpretation of cultural and religious beliefs and weak institutional and legal framework. These causes have led to several challenges of the enforcement of the legal framework and institutional mechanism for eliminating and preventing child labour in Nigeria.

#### **5.2 Research Design**

This research employed mainly the qualitative research design by using key informant interview guide. This type of research is carried out when better understanding of experiences, beliefs, values, intangibles things, actions and inactions is desired. As opposed to quantitative method that is highly statistical, qualitative method of gathering information focuses on describing a phenomenon in a deep, comprehensive data. This was done by administering interviews using open ended questions for key informants. Here, key relevant persons are interviewed to bring about the advantage of getting an indepth of their experiences, interests, opinions and reasons

that would not come to fore when surveyed with pre-determined questions like the use of questionnaires in a quantitative method.

### **5.3 Area of the Study**

The research is based on some selected government institutions saddled with the responsibility of prevention and elimination of child labour in Nigeria. A total of six (6) institutions were visited

### **5.4 Participants in the Study**

Participants in this study are directors, assistant directors who doubled as desk officers on child labour, principal officers and other staff who have wealth of experience on the subject matter drawn from relevant institutions. A total of 15 participants were interviewed from six (6) institutions. The institutions visited include: National Agency for the Prohibition of Trafficking in Persons & Other Related Matters (NAPTIP), Nigeria Immigration Service (NIS), Federal Ministry of Justice (FMoJ), Federal Ministry of Labour and Employment (FMLE), Federal Ministry of Women Affairs and Social Development (FMWASD) and National Human Rights Commission (NHRC).

### **5.5 Method of Data Collection**

The primary means of data collection was used. Oral interview/interaction was had with relevant stakeholders ranging from Directors to Principal Officers in-charge of child labour prevention and elimination in the various institutions. This qualitative research design is a descriptive, non-numerical way of research as it cannot be measured in a conventional sense as obtained in a laboratory or in quantitative research designs. It investigates the way people react, reason, view and perceive the issue which is the subject of discussion.

### **5.5.1 Institution visited**

To better understand the issues militating against the elimination and prevention of child labour in Nigeria, the researcher conducted visit to some government institutions saddled with the responsibility of fighting the menace of child labour. The researcher interacted with the relevant desk officers on child labour in the said institutions. These institutions include:

#### **5.5.1.1 National Agency for the Prohibition of Trafficking in Persons and Other Related Matters (NAPTIP)**

The following departments were visited and interacted with namely: Legal and prosecution, Rehabilitation and Rescue, Research and Monitoring & Evaluation.

The officers interacted with posited that NAPTIP defines a child as a young boy or girl under the age of 18 years and stated that the admission age to informal labour or employment is 13 -15 years while that of formal labour requirement is 18 years. The Law establishing NAPTIP, the Traffic in Persons (Prohibition) Enforcement and Administration Act, (TIPPEAA) 2015 further states that the age for admission to informal labour is 12 years while formal labour is 18 years. This age of 12 years does not tally with the age of completion of education/training due to poverty level of parents as opined by the officers interacted with. The researcher inquired if the laws and policies defined or described child labour and hazardous work, the response was in the affirmative as according to them, the TIPPEAA 2015 clearly defines child labour and hazardous labour.

On whether they are aware of any legislation abolishing and regulating child labour issues, the response was yes and they listed TIPPEAA 2015, CRA 2003, the 1999 Constitution of the Federal Republic of Nigeria and Labour Act. Further questions as to whether there are exemptions in the laws, the purpose was yes with regards to children being engaged in vocational training as such is not seen as child labour but acquisition of skills.

The researcher further inquired whether the laws identified vulnerable groups and types of work likely to harm the health, safety and morals of children especially the girl-child, the answer was in the affirmative. They also stated that the TIPPEAA 2015 discouraged the various types of child labour ranging from street hawking, house helps, children used in armed conflict and for illicit activities etc. The issue of light work is restricted to the family or home front in the area of agriculture, horticulture and domestic work. Light work is also permitted if it is vocational skills which is education inclined.

On penalties for violations of provisions of law on child labour, they answered by stating that the laws are followed and penal provisions are enforceable as NAPTIP tries to follow all laws as much as possible especially the TIPPEAA 2015 sanctions and punishment as it is the most current law with stiffer punishment for child labour offenders. Punishments are prescribed for all offenders irrespective of who you are. On how stringent these punishments are, the response was that it was a good start and if properly followed, will serve as deterrent to other offenders. For instance, the jail term is 7 years without an option of fine in some instances. The penalties are determined based on the gravity of the offence. They however pointed out that, family ties makes it difficult for enforcement and so the need to remove the distinction of family ties. There is the need to treat all perpetrators equally equals irrespective of who they are.

With regards to enforcement of these laws and the available mechanisms if satisfactory, the response was a 'Yes' as NAPTIP has enforcement officers comprising of surveillance, intelligence and inspection officers who go round to schools and job searching institutions or companies to check for children involved in child labour. This is usually done in the formal sector while sensitisation is carried out in the informal sectors to discourage child labour. The labour inspection mandate focuses more on the organised labour sector than the informal sector where most of the child labour occurs.

Having recognised the menace of child labour and the laws defining such, the researcher asked if NAPTIP had strategies being deployed to curb the menace. The response was that parents are being encouraged to send their children to school and also stepping up their sensitisation campaigns on effect of child labour. To this effect, they have zonal offices to effectively and efficiently discharge their duties and carry out proper campaigns and sensitisation of the populace. Their zonal command offices namely: Enugu, Lagos, Benin, Kano, Sokoto, Uyo, Maiduguri and Makurdi covers states within that zone and is a strategy deployed to make their presence felt and make their work easily accessible.

The Nigeria federal structure has impeded the intervention that would eliminate and prevent child labour. For instance, NAPTIP is not allowed to prosecute under state laws. It has impeded the progress made so far by not giving autonomy to either the federal or state to legislate on child labour issues. The structure has further led to multiplicity of laws as states are at liberty to make their own laws with regards to children including issues of child labour.

Furthermore, the courts required to listen to children issues at the state level according to the CRA, 2003 are the Family Courts. These courts are not available in most states of the Federation



(12 states are yet to pass the CRA into Child Right Laws and even states that have passed are yet to constitute their Family Courts) and so makes Child labour issue determination difficult or unattended to. The National Industrial Court of Nigeria on the other hand has exclusive jurisdiction on child labour issues based on the Amended 1999 Constitution of Nigeria but this court is also not easily accessible as they are not present in all the states of the Federation.

Overlapping functions of agencies empowered to curb the menace has also contributed immensely to frustrating the bid to fight child labour. This is due to the power struggle between affected agencies, redundancy of other agencies especially FMLE who ought to be the driver in the driving seat to fight child labour in Nigeria and no proper coordination synergy among these agencies. Poor funding for programmes and rehabilitation is another major constraint in preventing and eliminating child labour.

The researcher further asked if there was conflict or tension between statutory law and customary/religious laws and the answer was that people lay claims to culture that encourages child labour. For instance, sending children to relatives as house helps in exchange for better life and educational development. ‘Under the old NAPTIP law, people were not happy with our work’<sup>323</sup> as this serves as an impediment to would be family helpers who were afraid of falling foul of the law under child labour issues. Another area of possible tension is in the area of ‘almajiri’ practice predominant in the North. Almajiranci is seen as having both religious and cultural connotation- here children are sent to acquire Islamic education from Malams but they are usually not properly provided for by the families and the Malams may not have the resources to cater for the vast number in their care and so resort to sending them out either as beggars or to their farms under unfavourable conditions in order to make ends meet.

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<sup>323</sup> Obi Agusio- Asst. Director, Legal Department, NAPTIP interacted with on 28<sup>th</sup> September, 2016 at 1.30 pm

The economic recession, low income earnings and increased poverty further serve as promoters to child labour, as some parents tend to depend on the income from their children's labour. Children engaged in such labour activities like street hawking and trading tend to face the challenge of task force harassment especially in the FCT, they also stand the risk of being hit by a moving vehicle which could cause them grievous bodily injury and in extreme cases, death.

The researcher went on to ask question with regards to the institutional framework, their mandate and how effective do they carry out their functions and roles. On this, they listed the following institutions as appropriate institutions for curbing child labour. They include: Federal Ministry of Labour and Employment (FMLE), Federal Ministry of Women Affairs and Social Development (FMWASD), Nigeria Immigration Service (NIS), Nigeria Police Force (NPF), National Human Rights Commission (NHRC) and Nigeria Security and Civil Defence Corps (NSCDC). They collaborate with all these agencies and some international agencies like International Labour Organisation (ILO), International Organisation for Migration (IOM), United Nations Office on Drugs and Crime (UNODC) and United Nations Children Fund (UNICEF) as the case may be. For instance, they collaborate with FMWASD in the rehabilitation and family tracing of child labourers.

The mandate, roles and functions of NAPTIP as derived from sections 5, 11 and 12 of TIPPEAA 2015 respectively includes elimination and prevention of child labour which is an off-shoot of child trafficking as well as rescue and rehabilitation of child labourers. They prosecute offenders and ensure justice is done to every child labourer.

NAPTIP has carried out activities like training other collaborators and partners in the fight against child labour and human trafficking, conducting research on child labour and related

matters with support from ILO and in collaboration with FMLE, provided protection and assistance to victims<sup>324</sup> through rehabilitation and vocational training as well as start-up capital for such trainings as child labourers are seen as survivors and not victims.

Their roles and activities would have been more effective and time-bound if not for the following constraints namely:

- a. Inadequate and poor Funding: Finance is the major constraints and it is responsible for poor logistics in the fight against Child Labour. For instance, acquiring law reports that would have facilitated the discharge of their duties has not been forth coming and when it does come, not as at when due as a result of scarcity of funds due to poor budgetary allocation and release by Government. Also poor budgetary allocation and late release of fund contributes to slow dispensation of their duties in combating child labour.
- b. Delay in court proceedings aid the witnesses to lose patience and thus frustrate the matter. Where there is family reunion, pressure to drop the matter in order to protect the identity of the child and offender mounts. This is as a result of socio-cultural ties and background usually between the offender and the victim's family.
- c. Refusal to give evidence or assist in the cause due to the fear of Voodoo that had been administered prior to the child being taken away from the parents/guardians for labour purposes. This had led to the arrest of a native doctor to give evidence especially to prove the taking of oath. Believing in the efficacy of the voodoo instils fear and pains on the victims and thereby leading to victims or their families refusing to give evidence or

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<sup>324</sup> Victims should be replaced with the word 'survivor' which connotes a positive outlook to circumstances and issues

cooperate with prosecutors and therefore frustrating the matter. There is a death threats to parents of Child Labourers who wish to give evidence in court by offenders

- d. Clash of interest with other partners due to over lapping functions; insufficient trained manpower; absence of officers at the border post and inability to carry arms for protection against traffickers
- e. In some instances, parents are part of the conspiracy theory to promote Child Labour while some go to the extent of selling their properties to send their wards into Child Labour in foreign lands in the belief of seeking and getting greener pastures and better life thereby improving the family's income and well-being.
- f. Defence lawyers frustrating the trial through frivolous applications and claims as well as interlocutory injunctions, adjournments and appeals- especially 'No case Submission' motions.
- g. Once conviction is obtained, the legal unit's role comes to an end and it is now left for the court to enforce its ruling and judgment as the case may be. This is a challenge as judgment enforcement if not carried out, will thwart all the efforts put in by NAPTIP to secure such convictions and it makes the offenders see NAPTIP as a 'toothless bull dog.'
- h. NGOs now complicate child labour as most now purport to carryout adoption both internally and internationally but it is only a guise for child trafficking for labour.
- i. According to them, there are no steps to get to house helps rescue and this is based on leadership strategy.

In carrying out its mandate and based on the referral mechanism document in place, NAPTIP ensures that there is proper referral as well as facilitate coordination as much as possible. This it does by engaging in the under listed activities:

1. Where the case is not related or falls under the mandate of NAPTIP, such matters are referred to the appropriate agency for instance, there is referral to shelters of NGOs for rehabilitation (where the NAPTIP shelters are full) and to Legal Aid Council for civil litigation and damages claims.
2. Police also refer cases within the mandate of NAPTIP to them from time to time and as the case may be.
3. There is anti-trafficking and child labour units created in the Nigeria Police Force (NPF), Nigeria Immigration Service (NIS) and Nigerian Security and Civil Defence Corps (NSCDC) to help curb the menace and increase inter-governmental agency collaboration for eliminating Child Labour in Nigeria.

On institution of matters of child labour, they affirmed that any court of records (that is the High Courts at the Federal and state levels) can handle Child Labour issues but mostly Federal High Court do due to the old law establishing the Agency. Enugu and Akwa Ibom however, now use the National Industrial Court of Nigeria (NICN). There is an appeal<sup>325</sup> but it is not common as it is dependent on decision of the lower court and also on the nature of the offence and duration of cause and cost of appeal.

#### **5.5.1.2. Federal Ministry of Labour and Employment (formerly Productivity) – Child Labour Unit**

The researcher visited the child labour desk officer of the FMLE for the purpose of getting first-hand information on the mandate of the Ministry on the subject matter as well as understands the issues impeding the prevention and elimination of child labour. The desk officer was useful as in

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<sup>325</sup> In recent times, the only Child Labour case that went on appeal is *Blessing Toyin Omokuwajo V FRN* (2013)9 NWLR pt 1359 pg 300

addition to various responses provided, gave the researcher a copy of the National Policy for the Elimination of Child Labour in Nigeria (2013-2017) and the List of Hazardous Child Labour in Nigeria.

The desk officer interacted with defined a child as a young boy or girl under the age of 18 years. On further inquiry of age of admission to employment, the officer stated that admission age to informal labour or employment is 12 -15 years while that of formal requirement is 18 years based on the provisions of the Labour Act. She went on to say that there is progression of age of admission to employment as stated in the Labour Act. This age of 12 years does not coincide with the age for completion of education as stipulated in the UBE Act, 2004 which is 15 years.

The researcher then asked whether they are aware of any laws/policies in existence to prevent, regulate or eliminate child labour. To this, the response was in the affirmative. Legislations on child development issues in respect of Child rights, education, trafficking in persons (including Children), labour etc are enshrined in these laws and policies namely- national legislations/policies: Labour Act, Sections 33, 34, 35 of the 1999 Constitution, TIPPEA Act 2015, Violence Against Persons Prohibition (VAPP) Act 2015, Universal Basic education (UBE) Act (2004) and the international instruments to include: UN Convention 138, 182 protocol 190& 191, and the United Nations Convention on the Rights of a Child (UNCRC) 1989.

Furthermore, there is also a National Plan of Action for the Elimination of Child Labour in Nigeria (2013-2017) with the goal of ensuring the full implementation of the National Policy on the Elimination of Child Labour in Nigeria. This Plan of Action identified gaps in the policy, legal and enforcement framework, gaps in the institutional arrangement in terms of human & financial resources, networking and coordination mechanism, gaps in awareness creation and

mass mobilisation as well as gaps in treatment of child labour victims. Based on these identified gaps, strategies for bridging those gaps were proffered in the Plan of Action.

On restrictions and exemptions, the response was that the Labour Act in section 59(1) exempts employment by a family member on light work of agriculture, horticulture or domestic character approved by the Minister. Section 59(6)(7) of the Labour Act, provides for the prevention of hazardous work and worst forms of child labour. Another exemption is with regards to child work in technical schools and similar institutions provided the work is approved and supervised by the Ministry of Education.

These laws and policies define child labour and hazardous labour. Sections 59, 60 and 61 of the Labour Act and section 28 of the Child's Rights Act, 2003 give credence to this question on definition of child labour or hazardous work. Also, there is a documented hazardous work list known as 'List of Hazardous Child Labour in Nigeria' developed with support from ILO and USDOL in collaboration with Civil Society Organisations like Trade Union Congress and Nigeria Labour Congress and this ought to be updated periodically.

On the issue of light work being addressed by the laws, the answer was yes as stated in section 59 (1) of the Labour Act. Also the Hazardous list drawn by the Ministry shows that any work not listed for prohibition is deemed light work. It however did not give the conditions or activities designated as light work.

The Labour Act in section 64 provides for the penalty for violation of its provisions of sections 59-62. This punishment is N100. On its stringency, this can be said to be stringent as at the time of the passage of the Labour Act. But compared to current dispensation, this cannot be said to suffice as penalty or punishment. The CRA 2003 provides in section 28 (3)(4) that anyone or

corporate who body contravenes the provision prohibiting exploitative child labour, he shall be liable to a fine of Fifty Thousand (N50,000.00) naira and/or five (5) years imprisonment and Two Hundred and Fifty Thousand (N250,000.00) naira respectively. There is the need to review the Labour Act to be in tune with current realities of our time. On whether the sanctions are diversified along criminal, civil and administrative or on severity of offence, the law is silent especially the Labour Act.

Strategies deployed by the Ministry to prevent and eliminate child labour are as contained in the National Plan of Action. They include the following:

1. Create and raise awareness on the evils and effects of child labour. The parents should be engaged in economic empowerment programmes that will reduce poverty in the families and communities.
2. Develop the capacities of National Institutions and Civil Society for the reduction/elimination of child labour.
3. Mobilize international stakeholders and development partners for the reduction/elimination of child labour.
4. Identify specific activities to be implemented by various sectors and stakeholders using their comparative advantage in the multi-sectoral strategy for the reduction/elimination of child labour.
5. Design and develop advocacy tools for all to use in the fight against child labour
6. Implement a functional monitoring and evaluation system that will support the management of the National child labour programme, resource mobilisation and integration of child labour intervention into Medium, perspective and annual plans of the Ministry.



7. Periodic review of the implementation plan.
8. Both formal and informal education are widely embraced in the country. The UBE programme, Almajiri School System, informal-sector Apprenticeship Schemes, Technical Education, Open University Programme etc. are some of the many alternative means of education that Nigerians are actively participating.
9. Periodic income level adjustment mechanism exists supported by hardship mitigating programmes such as the public transport intervention schemes, SURE-P, agricultural input subsidy for farmers, free and compulsory basic education of UBE programme etc are some of government effort to prevent families slipping below the national poverty threshold.
10. Governments at different levels have created establishments with mandates to facilitate, provide, and promote skill acquisition for self-employments as alternative to seeking employment. Child labour victims, working children and children from vulnerable families have benefited from schemes through SMEDAN, NAPEP, NDE and technical schools and colleges.
11. Long distance between people's home and schools, hard-to-reach terrain, community dispute, insecurity etc. makes access to education a major challenge which tends to discourage children from attending schools and encourage parents to engage them in child labour activities. Therefore, government has made efforts to make education accessible by building more schools in such areas through public-private partnership initiatives.

The researcher further asked, are you satisfied with the enforcement mechanism? The answer was in the affirmative and at the same time in the negative. For the positive aspect, there is the

institutionalization of law enforcement agencies with mandate to enforce law on child labour and related issues and prosecute cases of child labour abuses. Furthermore, FMLE have enforcement officers comprising of surveillance, intelligence and inspection officers who go round to schools, factories and job searching institutions or companies to check for children involved in child labour. This is done in the formal sector while sensitisation is carried out in the informal sectors to discourage child labour. The inspection covers majorly the public sector and organised private labour sector. For the negative aspect, the efficiency of the institutions is neither seen nor felt due to poor synergy and challenges of poor funding due to poor allocation and its late release to the Ministry to carry out its mandate including the unit.

On the question of the Federal structure being an impediment, the answer was yes. For instance, the fact that children issue is neither on the Exclusive legislative list<sup>326</sup> nor on a Concurrent Legislative List<sup>327</sup>, makes it a challenge. The nature of the federation which allows the federal and states to legislate on children matters including child labour gives room for conflict and thereby impede the progress of preventing and eliminating child labour.

There is tension/conflict between statutory laws and customary laws/practices. People believing in the culture that encourages hazardous labour like sending out girls to hawk in order to prepare for marriage and also exposing them to be engaged as house helps by richer homes as that is seen as transfer of skills for a better home building and marriage. The Almajiri practice especially in Northern Nigeria which tends to promote child labour as these boys are usually sent out to either go and beg on the streets or carry loads in the markets and parks as a means to supporting their welfare while undergoing the Islamic education they seek to acquire.

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<sup>326</sup> Part I, Second Schedule to the 1999 Constitution of the Federal Republic of Nigeria (As Amended 2011) Cap C23 Laws of the Federation of Nigeria 2004

<sup>327</sup> Part II, Second Schedule to the 1999 Constitution of the Federal Republic of Nigeria (As Amended 2011) Cap C23 Laws of the Federation of Nigeria 2004

Poor educational production often results in unskilled and unemployable school graduates. This has always been used as an excuse by poor parents, guardian or caregivers to engage or release their children for premature engagement in economic activities and depriving such children the opportunity to explore the world of education as they see no hope in the educational sector for their children. Furthermore, poverty, socio-cultural beliefs and gender bias are very strong reasons of denial of education by parents to some categories of children inclusive of girl child, physically challenged, orphans, albinos, dwarfs etc. These categories of children end up being trafficked for child labour and other acts of child abuses.

Appropriate institutions apart from FMLE include: ILO, UNICEF, United States Department of Labour (USDOL), NAPTIP, FMWASD, NIS, NSCDC, NPF, National Human Rights Commission (NHRC), Nigeria Bar Association (NBA), Legal Aid Council and Federal Ministry of Education (FMoE) are in place to checkmate the incidence of child labour and its possible reduction/elimination.

The mandate of FMLE –Child Labour Unit includes ensuring the elimination of Child Labour preventing it especially the worst forms of it including hazardous labour. The functions of the ministry (child labour unit inclusive) includes overseeing labour unions and organisation in Nigeria, conducting inspections to organised labour institutions and private sector to ensure child labour is not being done in any sphere of the society, training labour inspection officers and collaborators and partners in the fight against child labour; Conducting research and documenting same on child labour and related matters; promotion of child protection, provision of assistance and restoration of rights to child labour victims through rehabilitation and vocational training as well as start-up capital for such trainings and as child labour victims are seen as survivors and not victim. The rehabilitation is usually done through NAPTIP or Social

Welfare Department of FMWASD. Furthermore, the child labour unit championed the development of the National Plan of Action for the Elimination of Child Labour (2013-2017) framework.

There are constraints to activities effectiveness. These constraints are: Administrative bottlenecks in getting approvals for certain interventions; Inadequate funding which is responsible for poor logistics in the fight against Child Labour; Power struggle between collaborating agencies and clash of interest with other partners due to over lapping functions; insufficient trained manpower and inadequate labour inspectors; poor coordination prowess of the FMLE; No proper coordination synergy among the various stakeholders afore mentioned.

The disparities in the minimum age for employment and hazardous work for children provided in the Labour Act and CRA 2003 are some of the effect of multiplicity of laws.

On which courts entertain child labour matters, it is the National Industrial Court of Nigeria by virtue of 3<sup>rd</sup> Alteration of section 254C of the 1999 Constitution (As Amended 2011). It should however be noted that the FMLE does not prosecute but refer prosecution to FMOJ, NAPTIP, NBA, Legal Aid Council, NHRC and the Nigeria Police Force pending on the nature of issues for determination. NHRC is also consulted for advice from time to time as the case may be. The CRA 2003 on the other hand gives jurisdiction to Family Courts. This is another complexity emanating from multiplicity of laws.

A coordinated arrangement for programme implementation already exists. The coordination mandate rest on with the child labour unit (CLU) in the Inspectorate Department of FMLE. The National Steering committee on Child Labour (NSCCL) has been constituted and provides general guidance in the Implementation of the NP (National Policy) and NAP (National Action

Plan) at the National Level. The organ is replicated at state level as State Steering Committee on Child Labour (SSCCL), anchored by State Controller of labour in FMLE. Social partners, CSOs and relevant professional bodies are represented in the structural arrangements for child labour programmes implementation at both national and state level. The presence of implementing partners and stakeholders in the process of developing the National Policy and National Action Plan is an opportunity to expand existing collaboration and networking at the national and state level and need to be extended to the grassroots governance. Even though there is a National Steering Committee in place, it has hardly met due to funding constraints thereby leading to poor coordination. There is a referral mechanism in place though weak and almost not functioning.

#### **5.5.1.3 Federal Ministry of Justice- Citizen's Rights Department**

During the interaction with the Citizen's Rights Department of the Federal Ministry of Justice, the following responses emanated with regards to the definition of a child, age of admission to labour, provisions of the law regulating child labour issues and impediments if any in carrying out their mandate with regard to child labour.

A child was defined as a young boy or girl under the age of 18 years. Age of admission to employment according to them, is based on the provision of the law that is the Labour Act, as one cannot operate outside the law. According to them, 18 years is deemed to be the age for making informed decisions based on the 1999 Constitution. The Labour Act provides that a child of 12 years could be admitted to labour provided it is light work and within the family setting in the area of agriculture and horticulture. Based on this, the formal age to employment is 18 years. This age of 12 years does not coincide with the compulsory age for completion of non-formal education. The laws as stipulated in the Labour Act, raises the minimum age for admission to

employment progressively. For instance, the age required for hazardous work is 16 years if the work to be done or carried out is at night. For seamen, the age for employment as such is 15 years.

The researcher then inquired if they were aware of any legislation/policy abolishing or regulating child labour. To this, they said yes and stated that there is the UNCRC, Convention 182 on eliminating the Worst Forms of Child Labour and the Child Rights' Act, 2003. On whether there are exemptions or restrictions of the application of the laws, it was stated that the only known exemption is children in vocational training and children engaged in light work in their own homes.

It was further stated that the law defines child labour and hazardous labour and the policy on child labour by Nigeria identifies the vulnerable groups and caused a list of hazardous work to be drawn up by the Federal Ministry of Labour and Productivity (now Employment). Some of the work listed are land preparation, planting, harvesting and post harvesting activities under agriculture which exposes them to back and muscle injuries, lacerations, blisters, joint and bone deformities, rashes and other forms of dermatitis due to toxic chemicals, insect bites, parasites and micro-organisms. Another is quarrying which involves digging, chiselling, heating, cracking, excavating and hammering. This usually leads to fatality from collision, missiles from explosion and entrapment leading to loss of hearing and respiratory disorder.

They went on to state that the law in defining child labour gives room for light work to be undertaken by the child. The state however did not expressly define under what circumstances or conditions that constitutes light work.

On whether these laws provided for penalties for offenders, the answer was in the affirmative and stated that ‘penalties are as stipulated by the laws earlier mentioned.’ They did not give further explanation but expect the researcher to read up the aforementioned laws.

On strategies to prevent child labour, activities such as carrying out advocacy campaigns to all stakeholders is usually done though not so frequent due to administrative bottle necks involved in obtaining requisite permit for the campaigns. They also said that they engage with parents especially in the FCT in order to encourage them to stop sending their children to other relatives for greener pastures. Another strategy used by the department is media jingles and campaigns on effect of child labour. This is a public enlightenment and awareness intervention to prevent child labour in the long run. Here, a slot is given to the press unit of the department to speak on the ills and negative effect of child labour.

With regards to being satisfied with enforcement mechanism, the department responded in the negative. This is so as there is no synergy between agencies and the restriction of the Ministry to prosecuting at least only in the FCT which has the CRA, 2003 in place. There are no sufficient collaborative efforts among the various agencies and institutions.

On whether there is labour inspection as stipulated by the Labour Act, the response was in the negative as they claimed that it was not in their mandate and as such do not have labour inspectors as this is part of the mandate of the FMLE. Their mandate is however to facilitate collaboration with other agencies like the child development and social welfare departments of the Federal Ministry of Women Affairs and Social Development (FMWASD) to go after child labour perpetrators for subsequent prosecution. They also arrest child labourers on the streets with the intention of getting to the perpetrators.

With reference to the Nigerian structure, it can be said that the structure is an impediment. The autonomy of state and having children matters including child labour on the Concurrent Legislative List, makes it difficult for enforcement of federal laws at the state level. It therefore follows that Law at the federal level needs domestication at the state levels to make it effective. This autonomy as a result of the federal structure has impeded the progress made in preventing and eliminating child labour. Suitability of the federal laws at the state level is another impediment to eliminating child labour. This is also the case at the LGA level where most often than not, these children are removed from for labour in urban cities. The LGA are abandoned and not given autonomy on child labour issues by the state government. For instance, FMOJ cannot go to the states to take up prosecution for reasons of jurisdiction.

Also the constitutional provision on 2/3 of states passing a law makes that law binding on all states of the federation is a challenge. However, there is the recent effort on the use of body of Attorney General (AG) of states to advocate for the passage of CRA, 2003 into Child's Rights Laws (CRL) by states yet to pass it.

On enforcement mechanism, there is an enforcement mechanism in place in the FMOJ wherein compliant is usually lodged in writing. The accused is then invited in writing once the complaint is filed for possible mediation and conciliation. If there is resistance in this regards, then it will go to court for litigation. The Ministry usually adopt the Alternative Dispute Resolution (ADR) method to address such issues due to the fact that most times, there is family tie between the parents and perpetrators of child labour. There is a petition currently against a couple by the Ministry with regards to child labour. It should be noted that there is no time limits to address child labour issues as well as prosecute perpetrators but have the urgency at the back of their minds to bring the situation under control.



Multiplicity of laws has led to power struggle especially between agencies saddled with the responsibility of fighting child labour in Nigeria as there is no synergy between agencies. It is not the multiplicity of the law alone that affects the fight against child labour but states are simply saying, we are autonomous and cannot bring in federal laws even when they do not have such laws thereby guarding and guiding their autonomy jealously. The federal laws should operate in all states as well as most states that do not have such laws.

On whether there is tension or conflict between statutory laws and customary/religious laws, the Ministry responded by stating that there may be no conflict but they could be provisions of the constitution which could be rejected based on cultural and religious bias. For instance, section 10 of the constitution provides conflict that could bring about tension and therefore the need for the National Assembly to amend the constitution to remove such ambiguity and conflict generating sections. If there is no proper coordination in place, conflict as result of duplication of efforts by all relevant stakeholders could occur. Furthermore, there are cultural practice that encourages hazardous work. For instance, children in rural areas go to farm with their parents from morning till night under harsh weather conditions and without any form of protection. This harsh weather conditions expose them to health hazards like back and muscle injury, lacerations, blisters and skin burns. Other cultural/religious practice that could bring about tension is the misapplication of the Almajiri practice or system.

The Ministry affirmed that there were appropriate institutions and then went on to list same namely: Federal Ministry of Labour and Employment (FMLE), NAPTIP, FMWASD, National Human Rights Commission (NHRC) and the Nigeria Police Force (NPF).

On their mandate and functions, FMOJ has the mandate to maintain the highest standards of professionalism and loyalty to the ideals of Fairness and Justice and the sustenance of a healthy relationship between all arms and tiers of Government while further mandating the unit to protect citizen's rights including children, thereby affording them access to justice and thereby achieving democracy and justice. Challenges faced by the FMOJ in fulfilling their mandate thereby making their activities not time-bound and effective include:

- I. Restriction of activities to FCT
- II. Inadequate funding
- III. Poor staff skills and insufficient manpower
- IV. Awareness of the populace on the role of the FMOJ to carry such interventions is very low and as such cannot report such incidents to them
- V. Lack of partnerships especially with CSOs due to mistrust
- VI. No monitoring and evaluation (M&E) unit in the FMOJ to monitor progress if any and also for data computation that would necessitate appropriate action.

FMOJ prosecutes in the Federal High Courts and FCT High Courts respectively. On any landmark case on child labour, they are not aware as each case has its peculiarities.

#### **5.5.1.4 Federal Ministry of Women Affairs & Social Development-Child Development and Social Welfare Departments**

Visit was conducted by the researcher to the Child Development and Social Welfare Departments. Here she interacted with Assistant Director and Child Labour Desk officer respectively. The researcher then administered questions from the interview guide in an oral

interview manner. She inquired of the definition of a child, age to admission of work or employment, their mandates, functions, impediments to effectively perform their duties.

On the definition of a child, it was stated by the two departments to be a young boy or girl under the age of 18 years. The child development department however distinguished between a child and young persons based on the Children and Young Persons Laws of Lagos State despite the aforementioned age of 18 years drawn from the CRA 2003 provision. On further inquiry on age to admission to employment/labour, it was stated that admission age to informal labour or employment in practice according to social welfare department is 12 -15 years while that of formal requirement is 18 years. Labour Act and TIPPEAA 2015 states the age for informal labour to be 12 years while formal is 18 years. This age of 12 years does not coincide with the age of completion of education and this is due to the need of balancing income generated from child labour with poverty. The child development department on the other hand believes that no child should be admitted to labour but could be engaged in their families on domestic chores.

If aware of existing child labour prevention law/policies, the answer was in the affirmative. Both departments were aware of the laws eliminating and preventing child labour. They include: UNCRC, ILO Convention 182 & 189, the 1999 Constitution of the Federal Republic of Nigeria (as Amended), CRA 2003, TIPPLEA Act 2015, Universal Basic Education (UBE) Act, 2004 and Labour Act 1990. With regards to policies, they include: National Policy on Children, National Priority Agenda for Vulnerable Children (2013-2020), Multi-sectoral Response Plan to Ending Violence against Children 2015, Psychosocial Training Manual for Vulnerable Children, National Plan of Action for the Elimination of Child Labour in Nigeria 2013-2017 and the National Policy of Child Labour.

In these laws, there are exemptions with regards to light work and others as defined and listed in the Labour Act 1990 and the CRA 2003. There is a National Policy on Children which ensures protection of children from all forms of rights deprivations with short-term and long term goals of full self-actualisation and potentials of children. There is also the CRA 2003 which is an embodiment of all rights accruable to children. The Ministry has a National Priority Agenda (2013-2020) for Vulnerable Children including child labourers. The NPA sets standards for intervention for promoting and protecting the rights of children including child labour victims.

The law especially the UNCRC, UN Convention No. 182, Labour Act and CRA stipulates what child labour and hazardous labour is. The laws provide that any work that is injurious to the health, morals and self-actualisation of the child is tagged child labour. Furthermore, the FMLE has a List of Hazardous Child Labour, a document showing what can constitute Child work, child labour and hazardous work.

With regards to penalties for violations of the rights of children arising from child labour, they are as stipulated in the legislations mentioned above. They opined that, TIPPEAA 2015 should be encouraged to be a standard for measurement as it seem stringent enough to deter child labour offenders.

The strategies deployed by the Ministry to curb child labour includes: Development of multi-sectoral plan on children intervention including child labour, carrying out sensitisation campaigns on effect of child labour, provision of small grants to families and training in vocational centres for child labour victims who have been rescued. The Ministry (social welfare department) also does family tracing in collaboration with NAPTIP and provides counselling through the social welfare officers. The child development depart on their part, promotes child

participation by encouraging children to speak out for themselves and through the establishment of the 'Nigerian Children's Parliament'.

FMWASD does not enforce but refers and collaborate with other agencies like NHRC and NAPTIP for enforcement of such rights. It is however a member of the referral and coordination mechanism for child labour in Nigeria. On inspection of public and private facilities to track child labour perpetrators, the ministry do not have such officers as this is the mandate of the FMLE, NHRC and NAPTIP. The ministry however 'whistle-blow' if there are such occurrences reported or known to it.

The federal structure of Nigeria has impeded the progress in curbing child labour. For instance, only 24 states out of 36 states and the FCT have passed the CRA into CRL. Even states that have passed the law, implementation is a challenge. The federal structure has further led to multiplicity of laws and this has weakened the system and given room to mischief. For instance, the Bauchi State Hawking (prohibition) Law provides that child hawkers if caught hawking, their parents would be arrested and warned as first time offenders while third time offenders will be fined N50 or imprisoned. This shows clearly that the 'law does not bite enough. How can the payment of N50 deter a parent from allowing a child to hawk. Also, power struggle between relevant agencies/ministries, redundancy of some agencies/ministries especially FMLE and not clearly defining the roles of agencies are some of the effects of multiplicity of laws.

There may be tension between statutory law and customary practice. For instance, in the most Nigerian customs, it is not wrong for one to send his/her child to another relative especially for better life and greener pastures. Such children are easily used as house helps in exchange for them going to school or learning a trade. This practice of culture encourages child labour and

hazardous work. The almajiri incidence in northern Nigeria is another area for possible tension or conflict between statutory law (which prohibits child begging a form of child labour) and customary/religious laws.

On appropriate institutions, the answered in the affirmative and listed the following: UNICEF, ILO, UNODC, USAID, FMLE, NHRC, NPF, NSCDC, NAPTIP, NIS, FMoJ.

The mandate of the social unit is to ensure welfare of all citizens which include children. In achieving the said mandate, there is need to eliminate Child Labour which is an offshoot of human trafficking and mostly due to ignorance. This mandate is achieved by carrying out the following functions and activities: training of Child desk/welfare officers and partners in the fight against child labour and human trafficking; providing protection and assistance to victims through rehabilitation and vocational training as well as start-up capital for such trainings in collaboration with development partners, indigenous NGOs and other agencies that have such facilities.

On the other hand, the functions of the child development department include carrying out interventions and activities that will promote the welfare of children and provide protection for them including victims of child labour. In furtherance of this, the ministry undertakes programmes that ensure children are heard like marking the child labour day and the day of the African Child as well as Children's Day annually.

Furthermore, social welfare department activities are mostly around the area of rehabilitation and rescue, provision of psychosocial support & counselling and promotion of child welfare & development. For example, FMWASD collaborates with NAPTIP to rehabilitate children and do family tracing.

Our interventions and activities would have been more effective if not for inadequate funding which is responsible for poor programme interventions and rehabilitation among others in the fight against Child Labour. Also, clash of interest with other partners due to over lapping functions and insufficient trained manpower as well as over dependence on donors for child labour intervention and programmes are other impediments. Economic recession, low income earnings and poverty further serve as impediment that promote child labour and further limit our interventions.

The courts saddled with the responsibility of determining child labour matters according to the CRA 2003 is the Family Court while the 1999 Constitution as amended gives jurisdiction on child labour matters to National Industrial Court of Nigeria. The Ministry does not institute legal actions but support the process especially where serious abuse occurs due to the incidence of child labour. FMLE, NAPTIP and the Courts, however are to respond to whether there are appeals on child labour cases and if any land mark decision on the subject matter.

There is a coordination and referral mechanism in place. The National Steering Committee on Child Labour and some states like Ogun and Oyo states have equally inaugurated their State Steering Committee of Child Labour and the ministry is a member at all levels. Even though there is a NSCCL in existence, there is lack of proper coordination and synergy and this committee does not meet regular neither is it efficient in the fight to curb child labour. Other states are yet to inaugurate their State Steering Committee on Child Labour (SSCCL).

#### **5.5.1.5 National Human Rights Commission**

The NHRC upholds the definition of a child as enshrined in the CRA 2003. The Child's Rights Act 2003, defines a child as any one below the age of 18 years. This means that anyone who is

below 18 years, no matter how developed he/she looks physically and physiologically, he/she is a child and should be accorded all protection that is legally given to children.

Ideally, the age for admission to employment should be 18 years, because at this age, a child is expected to have completed the primary and secondary schools, if the child started primary school at the expected age of 5 years old. By this age, a person should have the capacity to do all kinds of work he or she is qualified to do at that age.

The National Policy on Child Labour defines child labour as the engagement of children below 18 years of age in any work that is essentially exploitative and injurious to the physical, social, cognitive and moral development of the child. This policy and the “List of Hazardous Child Labour in Nigeria” by the Federal Ministry of Labour and Productivity, identifies work likely to harm children. The policy also take cognisance of the provision of the Labour Act 1990 on light work but did not stipulate under what conditions such work should be performed.

Child Labour is caused primarily by poverty and the need to financially empower ones-self. If there are more poverty alleviation and empowerment programmes by government, it will go a long way to prevent and eliminate child labour. Another strategy is ensuring that the primary and secondary education is really free for all this will enable children to go to school without worrying about the payment of their school fees.

The federal structure impedes the passage and implementation of laws that have been passed in the federal level, because they have to go through the states assemblies before they become laws in the states. Example is the Child Rights Act 2003, which is yet to be passed into law in 12 northern states despite the fact that it was passed a long time ago (2003) at the federal level.



The Federal Ministry of Labour and Employment(FMLE), The National Agency for the Prohibition of Trafficking in Persons and Other Related Matters (NAPTIP), National Human Rights Commission (NHRC)etc are some of the appropriate institutions for tackling child labour in Nigeria.

The National Human Rights Commission (NHRC) has a mandate to promote, protect and enforce human rights in Nigeria while its roles and functions in curbing child labour in Nigeria include:

- a. The Commission collaborates and partners with other agencies in developing strategies to prevent and eliminate child labour in Nigeria.
- b. The Commission receives and decides on complaints that deal with children and with children who have been used in child labour.

On the question, whether its mandate cover labour inspection services and does it extend to all workplaces i.e private and public? The response was in the affirmative. The National Human Rights Commission Act (2010) as amended gives the Commission the power to inspect or pay a visit to any place where human rights violation is taking place. By virtue of this provision, it can conduct inspection in private and public institutions for the purpose of determining child labour violation.

The Commission works in partnership with stakeholders in preventing children from the worst forms of child labour. Due to the nature of the Commission's mandate it is unable to provide direct assistance in form of rehabilitation and social integration of children concerned. It therefore refers to other government institutions that have the mandate to rehabilitate and house children going through the worst forms of child labour, when reported to it. It refer such cases to

NAPTIP and Federal Ministry of Women Affairs and Social Development (Social Welfare Department).

With regards to the courts which entertain child labour issues, it should be noted that child labour issues are two-faceted. It is a human right issue and should be instituted in the High Court, which has power to hear human rights related cases. The National Industrial Court of Nigeria can also hear the matter when it has to do with issues that are not necessarily directly a human rights violation.

On referral mechanism, the answer was that there is a National Steering Committee on Child Labour in place of which NHRC is a member especially as it is saddled with the responsibility of ensuring protection of human rights including children's rights. The NSCCL has met only once since its inauguration.

On further inquiry as to the knowledge of appeals handled or any landmark court decision on child labour, the response was that 'it was negative'.

#### **5.5.1.6 Nigeria Immigration Service**

The researcher conducted a visit to the Anti-human Trafficking and Child Labour Unit of the Nigerian Immigration Service (NIS) to understand their mandate and role in curbing child labour in Nigeria. The following response was obtained with regards to definition of the age of a child, age of admission to labour, their mandate and how it helps to curb child labour and challenges faced in carrying out their duties. They based their responses on the provisions of the Child's Rights Act, 2003 and the 1999 Constitution of the Federal Republic of Nigeria (As Amended 2011)

On the question who is a child, the officers I interacted with defined a child as a young boy or girl under the age of 18 years based on section 277 of the CRA<sup>328</sup> and sections 29(4)(a) and 77(2) of the 1999 Constitution<sup>329</sup>. On further probing of age of admission to labour, it was stated that they are not aware of legal age for employment and so not aware of progressive increase of age and Convention 138.

On whether there are laws that define child labour and hazardous work, they responded by stating that the CRA 2003 frowns at child labour and hazardous labour but did not explicitly define what constitute child labour. They do not know if it identifies vulnerable groups or types of work likely to cause harm to the health, morals and safety of children especially the girl-child.

On laws addressing issue of light work, they were not in the know as the unit had just being created and they are yet to be trained on issues of child labour. They however based their current engagement in the fight to curb child labour on the provisions of the CRA 2003 and 1999 Constitution of Nigeria. They are also in the know that NAPTIP is the agency primarily saddled with the responsibility of protecting children from child labour.

On being satisfied with enforcement mechanism, they opined that NIS is not satisfied even though a new addition to their mandate. The little interaction had with other agencies shows weak enforcement structure and no synergy even among the inter-governmental security agency on human trafficking and child labour.

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<sup>328</sup> Child's Rights Act, 2003 Cap C50 Laws of the Federation of Nigeria 2004

<sup>329</sup> 1999 Constitution of the Federal Republic of Nigeria (with Amendments 2011) Cap C23 Laws of the Federation 2004

On labour inspection mandate, it was stated that it is not applicable to them as it is outside their mandate. They however, try to prevent child labour by ensuring proper manning of the borders by mounting patrol post at the borders.

It is noted that even though the NIS has a unit designated as Anti-Human Trafficking and Child labour, it is not their core mandate as Immigration Service. They however, support the fight by discouraging international adoption which is one way child labour has thrived as a result of trafficking through the refusal of issuance of international passport to any suspicious application. This strategy has worked to reduce the risk of children at the verge of being trafficked for child labour. Another strategy deployed by NIS is awareness creation especially at the borders on dangers of child labour.

The structure of Nigeria impedes the elimination and prevention of child labour. the states commands that are part of the joint task force for eliminating human trafficking and child labour face the problem of state interference especially states that are yet to pass the CRA and do not have mechanisms for checkmating such occurrences including intra-trafficking for child labour in Nigeria.

On tension and conflict, it can be seen from people laying claim to culture that encourages child labour and hazardous work. For instance, NIS found that Kwara and Niger states have high number of girls as house helps, and as these girls are usually required to save for their marriages as it is the custom. Also, the influx of almajiri is another issue. This on its surface promotes lack of acceptance of statutory laws. Almajirinci is seen as having both religious and cultural connotation which is in conflict with the provision on compulsory education as stipulated in the

UBE Act, 2004. Economic recession, low income earnings and poverty serves to promote child labour as there is influx of street children from one state to another in the quest for better living.

On availability of appropriate institution, the response was in the affirmative as there is Inter-governmental Security Agencies (Police, NSCDC, NIS, Army and NDLEA) established by government to curb child labour in collaboration with FMLE, NAPTIP and FMWASD.

The unit draws its mandate from section 69 of the Nigeria Immigration Service Act, 2015 to fight and eliminate Child Labour which is an offshoot of human trafficking and also ensures the protection of the identities of rescued children. It also ensures that international passports are not erroneously given to children being trafficked for child labour.

It collaborates with other security agencies to fight child labour and human trafficking. It should be noted that NIS upon rescuing children being trafficked for child labour, hands over both the child victim and offender to NAPTIP and Police respectively for necessary actions.

The strategy of refusing to issue international passport for instance helps to forestall children being trafficked for child labour. Manning the borders also helps to ensure children rescues are handed over immediately to NAPTIP for rehabilitation and family tracing. NIS does not however provide direct assistance for rehabilitation and social integration services.

NIS does not prosecute child labour offenders but hands same over to either the police or NAPTIP for prosecution.

There is a referral mechanism in place. The government has also set up a joint task force from the security agencies to fight human trafficking and child labour. There is currently synergy between advisory, enforcement and supervisory functions of the NIS and the inter-governmental

security agencies taskforce constituted. It should however be noted that NIS is very active in the said security taskforce.

An impediment to effectively and efficiently discharging their duties is inadequate finance and insufficient trained manpower. NGOs engaging in international adoption illegally and having connivance from some corrupt NIS officers to get passport to facilitate travels for these children being trafficked for child labour as well as absence of officers at the border post and inability to carry arms for protection against traffickers is huge impediment militating against the fight to curb child labour. Other challenges to carrying out their mandate is orphanages are being used as a hub for baby factories, buying and selling of children for eventual child labour under the guise of facilitating international adoption which most often than not are backed with fake adoption orders and papers.

## **5.6 Comparative Analysis of visits**

The researcher in this section compares the responses from the various institutions visited. From the above responses, definition of a child is based on the age of a child as stipulated by laws that is, the 1999 Constitution, CRA and Labour Act was agreed by all interacted with to be ‘any boy or girl below the age of 18 years’.

Table 1

Definition of a child/ Age of the child	Percentage of Agreement
18 years and below	100%

From the above table, all institutions agreed that definition of a child is any person below 18 years

The researcher however notes that, this age definition of ‘who is a child’ did not take cognisance of medical and our cultural definition of a child. For instance, a child is medically defined based on biological composition to be a human being between the stages of birth and puberty. This definition further sees anyone below 12 years as a child and such a person could be administered with children dosage of drugs while anyone above 12 years, takes the adult dosage of drugs.<sup>330</sup> As earlier posited in Chapter 2 of this research, a child as defined by the Meranyang tribe of Quaana-Pan LGA of Plateau state and Igala tribe of Kogi state is “any girl who has developed breast and start mensuration or any boy who starts having ‘wet-dreams’ or having voice break.” For the purpose of this research, a child is defined as anyone below 18 years. The basis for adopting 18 years in this research is against the backdrop of it being a statutory provision and looking at the diverse definitions, 18 years covers all others. This also means that for anyone to be considered an adult by this research, he/she should be physiologically, psychologically, mentally and emotionally matured and be able to take on responsibilities and make informed decisions.

The established age for admission to employment and work as stated by these agencies (NAPTIP, FMOJ and FMLE) interacted with is 12 years based on the provision of the Labour Act. This minimum age does not coincide with compulsory age for completion of education which is 15 years as stipulated by the UBE Act 2004, though the laws seeks to raise progressively the minimum age for admission to employment.<sup>331</sup> The research shares these

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<sup>330</sup> Medical Dictionary. [www.medical-dictionary.thefreedictionary.com](http://www.medical-dictionary.thefreedictionary.com). Accessed on the 28/03/17 at 13.06 pm

<sup>331</sup> Sections 59-61 Labour Act, Cap L1 Laws of the Federation, 2004

sentiments with the age of not coinciding with compulsory age of completion of education and least junior secondary school education.

Description of item	Number	percentage
Age of admission to employment	12 years	50%
Minimum age of admission to employment not coinciding with education completion age	15 years	100%

From the table above, 50% of interviews agreed that minimum age to employment should be 12 years while the other 50% held different views. All agreed that the minimum age for admission to employment does not coincide with age of education completion which is pegged at 15 years.

All the agencies/institutions visited were aware of laws prohibiting child labour in Nigeria. For instance, NAPTIP listed the laws they are aware to include: CRA 2003, 1999 Constitution, Labour Act, and the law establishing the agency. FMLE, FMoJ and FMWASD listed other laws in addition to the ones listed by NAPTIP to include UNCRC, ILO Convention 182 & 138 and its optional Protocol 190 & 191. The researcher opines that it is not just enough to be aware of the existence of the laws but it is important for the implementation of such laws to bring about impact that will translate into child labour elimination and prevention.

Furthermore, NAPTIP, NHRC, FMLE, FMoJ and FMWASD stated that child labour and hazardous work has been identified and defined especially with the development of the List of Hazardous Child Labour in Nigeria<sup>332</sup> by the FMLE (with support from ILO & USDOL) and the

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<sup>332</sup> Federal Republic of Nigeria, (2013), List of Hazardous Child Labour in Nigeria, Federal Ministry of Labour and Productivity, Abuja.



provisions of the Labour Act and CRA 2003 which prohibits child labour and hazardous work. All these agencies (with the exception of the Nigeria Immigration Service) further affirmed that light work has been looked at by the laws even though the conditions under which it should be carried out is not explicitly defined. For instance, the number of hours was not stated as to what constitute 'light work'.

On light work 83.3% agreed that the law has looked into the issue without defining the conditions under which it should be carried out.

NAPTIP based on the provision of TIPPEAA 2015 which provides for 7 years imprisonment and in some cases, a fine not less than One Million naira (N1,000,000.00) or both sees that penalty provision as stringent. Also, the FMLE and FMOJ states that based on the provision of the CRA 2003, which provides for 5 years or N50,000.00 for individuals convicted for child labour offences and N250,000.00 for corporate bodies, the punishment is stringent enough compared to the Labour Act which provides for only N1000 for offenders/perpetrators. The researcher posits that the position of NAPTIP on penalties should be adopted by all agencies if child labour is to be eliminated. 7 years imprisonment term as well as One Million Naira (N 1,000,000.00) fine of both punishments for individuals convicted of child labour offences is stringent enough. The researcher believes that this will serve as deterrent to others. A further analysis of the provisions of TIPPEAA 2015 by the researcher shows that properties acquired from proceeds of child labour and other related offences are to be forfeited by the perpetrators upon conviction. This is also another stringent measure that would deter offenders.

All the agencies visited stated and agreed that funding is a major constraint to the fight against child labour. They also agreed that poor synergy, weak referral and coordination mechanism as

well as economic recession, low income, increased poverty, overlapping functions and poor staff skills and insufficient manpower are impediments to curbing child labour in Nigeria. They also unanimously agreed that the federal structure and the multiplicity of laws are impediment to curbing child labour. For instance, both NAPTIP and FMoJ state that they cannot prosecute under state laws by virtue of their mandates. They also stated that there is no autonomy to either the State or Federal government to legislate on child labour issues. Going further on multiplicity of laws, the CRA 2003 gives exclusive jurisdiction to Family Courts on issues of children including child labour while the 1999 Constitution by virtue of the 3<sup>rd</sup> alteration as enshrined in section 254C, gives exclusive jurisdiction to National Industrial Court of Nigeria. The researcher totally agrees with these assertions made with respect to the federal structure and multiplicity of laws.

They were unanimous on sensitisation and awareness campaigns, media jingles, advocacy and economic empowerment/skill acquisition being effective strategies to curb child labour. The FMoJ, FMLE, FMWASD, NAPTIP and NIS believes that engagement with parents to discourage them from sending their children to other relative for greener pasture is another strategy that will curb child labour as parents are seen as being part of the conspiracy theory. The researcher shares these sentiments but believes that these are not the only strategy that could be used. Economic empowerment without appropriate financial literacy and promoting saving culture cannot translate to poverty alleviation or increase in income. There is the need to engage with the traditional, religious, opinion and community leaders on forming protective systems and structures at all levels to protect children from being taken for child labour.

On enforcement mechanism, NAPTIP and FMLE have surveillance officers and Labour inspectors and so seem to have a relative level of enforcement mechanism. There is also a

National Steering Committee on Child Labour established at the federal level and states are expected to replicate same. Till date, only Ogun and Oyo states have done so and also developed their state plan of action for eliminating child labour in their states. The FMoJ even though does not have the kind of enforcement mechanism like the NAPTIP and FMLE, it however have internal mechanism and relies on ADR to resolve issues of child labour as it believes that most perpetrators and parents of the child labour victims have ties in one way or the other. The researcher posits that there is no efficient enforcement mechanism if the only ones available are as described by the agencies aforementioned. There is the need to create desk offices for child labour issues in all wards and LGA if child labour is to be curbed.

However, in the following areas, the agencies differ. For instance, NHRC believes that human rights violation due to the incidence of child labour should be instituted in the High Court while FMLE stated that irrespective of the child labour issue, the matter should be instituted at the National Industrial Court of Nigeria (NICN). Also, NAPTIP on their part institute matters in both the FHC and HC (in criminal matters bearing on child labour) with the exception of Enugu and Akwa Ibom that institute in the NICN. NAPTIP however refers civil litigation on child labour issues to Legal Aid Council. The FMoJ institute child labour matters in the FHC and FCT HC where alternative dispute resolution fails. The researcher posits that child labour matters be instituted in the National Industrial Courts of Nigeria (NICN) as provided by the 3<sup>rd</sup> Alteration to the 1999 Constitution as enshrined in section 254C. The Constitution supersedes any other law of the land by virtue of section 1(3) which makes it supreme over all other laws. The CRA 2003 even though has stipulated that children issues including child labour be handled by the Family Courts, this researcher agrees with the position of the FMLE that all child labour issues be instituted in the NICN.

Furthermore, on the issue of age of admission to employment, while the NHRC posited that the age should be 18 years others like FMLE, FMWASD and NAPTIP posits that the stipulated age of 12 years for light work is sufficient. The researcher posits that a 12 year old child be allowed to work in the home or in agriculture as stipulated in the CRA 2003 and the Labour Act. This should however be done with supervision by the parents or guardian and it should be for few hours per day. There is the need to start building the financial prowess of a child to be a better adult in future, thus the need to introduce them to skill acquisition and vocational training at the age of 12 years.

While FMoJ sees administrative bottle necks as an impediment, NAPTIP sees the following as impediments peculiar to them. They include: defence lawyers frustrating matters using frivolous applications and technicalities, which often times lead to delays in court proceedings the resultant effect being witnesses losing interest and patience in the matter, fear of voodoo leads to refusal of witnesses or the victims from giving evidence in court. The position of the researcher on this, is that, the impediments are germane and should be looked at by the various authorities to ensure success in the fight against child labour.

Furthermore, the agencies differ in some of the strategies used to fight child labour. For instance, FMLE use the following strategies in addition to the earlier ones mentioned. They include: developing the capacity of national institutions and Civil society organisations, international mobilisation and development of advocacy tools, providing functional monitoring and evaluation system on Child Labour and keying into existing programmes and policies that will reduce child labour. the researcher agrees with these strategies being used and posits that there is the need for such to be shared among others to bridge the gap of power struggle among the various

institutions. The best interest of the child should be paramount in all that is been done to prevent and eliminate child labour.

The agencies differ on whom to partner with in the cause of preventing and eliminating child labour. For instance, NAPTIP partners with Legal Aid Council for civil litigation and claim of damages while FMLE partners with USDOL, NBA, Federal Ministry of Education especially for inspection of schools and CSOs. The FMoJ on the other hand do not partner with CSO due to lack of trust and partner mostly with the FMWASD. This clearly shows lack of synergy among agencies saddled with the responsibility of curbing child labour. the researcher posits that this is so as the mandate of each agency actually determines who their partners would be. However, there is the possibility of ensuring information sharing on partnership to avoid duplication of efforts.

On the issue of being satisfied with enforcement mechanism, while NAPTIP looking internally at only its mechanism says yes, FMoJ says no as there is no coordination and effective referral in place despite the establishment of the NSCCL. The FMoJ states that there is no labour inspection in their mandate but cannot speak on that for FMLE. FMLE on the other hand is partially satisfied with enforcement mechanism as they have labour inspection officers in all the 36 states and FCT but these are still inadequate compared to the volume of work that needs to done. The restriction of NAPTIP and FMoJ from prosecuting in the states and States autonomous nature makes enforcement inadequate. Added to this, is the inaccessibility and availability of requisite courts to entertain child labour concerns.



## **CHAPTER SIX**

### **SUMMARY AND CONCLUSION**

#### **6.1 Summary**

Child work is a positive development as not all work done by children should be classified as child labour. Child labour is an aberration and its acceptance by most culture is wrong.

Child work within family unit can be a positive experience as it is believed to facilitate skills and social adaptation and is often viewed as an expression of family solidarity. Any work that do not affect their health physically or mentally and or does not hinder their schooling is said to be child work. Where work is considered to be a part of a child's training (helping parents in house chores, business or on the farm during holidays) towards becoming a responsible adult, it is considered as child work. This should be for a short time or period even though it is an economic activity. Child labour on the other hand is defined as any work that is carried out full-time at too early an age or for too many hours and it exerts undue physical, social or psychological stress in a child or it is done under dangerous conditions like on the streets or in bad weather conditions and usually poorly remunerated and eventually hampers access to education or undermines children's dignity and self-esteem, such as slavery or bonded labour and sexual exploitation and it is detrimental to full social and psychological development. Furthermore, it can also be seen as children working before they reach the lawful minimum age for employment in the country which is often deemed to be the same cut-off age for compulsory attendance and completion of school.

For the purpose of emphasis, this research sees child labour as” *any work which jeopardises or is detrimental to the health, growth, development and well-being of any person under 18 years or may cause harm to the emotions, psychology, cognitive development, health, mentality, physical, social and education of persons under the age of 18 years is child labour.*”

Nigeria drew its legislations on the protection of children and prevention of child labour from international conventions and covenants being a member organisation of the UN and having ratified and domesticated these instruments.

The enforcement mechanism promoting the protection of children and prevention of child labour in Nigeria were analysed in terms of the laws establishing these institutions, their powers and enforcement mechanisms as well as the effectiveness of the interventions in the elimination and prevention of child labour in Nigeria. This research, looked at the mandates and challenges of the institutions with regards to child labour elimination and prevention. All the agencies visited were unanimous on the age of admission to employment and engagement in light work. However, in the following areas, the agencies differ. For instance, NHRC believes that human rights violation due to the incidence of child labour should be instituted in the High Court while FMLE stated that irrespective of the child labour issue, the matter should be instituted at the National Industrial Court of Nigeria (NICN). Also, NAPTIP on their part institute matters in both the FHC and HC (in criminal matters bearing on child labour) with the exception of Enugu and Akwa Ibom that institute in the NICN. NAPTIP however refer civil litigation on child labour issues to Legal Aid Council. The FMOJ institute child labour matters in the FHC and FCT HC where alternative dispute resolution fails. The researcher posits that child labour matters be instituted in the National Industrial Courts of Nigeria (NICN) as provided by the 3<sup>rd</sup> Alteration to the 1999 Constitution as enshrined in section 254C. The Constitution supersedes any other law of the land



by virtue of section 1(3) which makes it supreme over all other laws. Challenges of the legal regime and enforcement mechanism were extensively discussed.

## **6.2 Findings**

Children who work are both boys and girls and the majority of them start working under the age of fourteen years. In addition to this observation, the following are the findings of this work:

- 6.2.1 There are disparities in the law as can be observed from the provision on age definition, minimum age for employment and for hazardous work for children as enshrined in the Labour Act and the Child's Rights Act, 2003 therefore making it difficult on what age should be applicable in determining child labour for elimination. Again, these relevant laws (especially Child's Rights Act, 2003 and Labour Act) are inconsistent and contradictory in their language as well as being ambiguous on age. Section 59 of the Labour Act provides that "no young person shall be employed in any work which is injurious to his health or which is dangerous or immoral". A young person is defined in section 91 of the Labour Act as ' a person under the age of eighteen years'. The Act further provides that "no child under the Age of 16 years shall be employed in circumstances in which it is not reasonably possible for him to return each day to the place of residence of his parents or guardians". The section forbids a child of less than 16 years from working underground or on machines. It further forbids young persons from working for a longer period than four hours in one day. It places additional restrictions on the employment of a child or young person on a ship or any vessel and it prohibits the night employment of young persons but permit those that are 16 years to be employed for night duties as stated in its section 60. From the foregoing, the language of the Labour

Act itself is contradictory and inconsistent with regards to age definition of a child. Furthermore, on the other hand, the Child's Rights Act, 2003, restricts children under the age of 18 from any work aside from light work for family members, while the Labour Act applies the same light work restriction only to children under the age of 14 years. The Labour Act forbids the employment of persons under the age of 18 years in work that is dangerous to their health, safety, or morals. As stated above, the Labour Act allows children to participate in certain types of dangerous work by setting different age thresholds for various activities as stated in Section 59(2)(3)(4)(5) of the Labour Act. Further inconsistency can be seen from section 29 of the Child's Rights Act 2003 which stipulates that provisions of the Labour Act on young persons shall apply to children under this Act. The Child's Rights Act, 2003 had earlier provided for prohibition of child labour but going by its section 29, it seems the framers of the Child's Rights Act, 2003 are not consistent in their language as it relates to issue of child age and labour.

- 6.2.2 There are multiple laws, so are the sanctions which give room for the exercise of discretionary powers. For instance, the Labour Act in section 73 prescribes a fine of N 1,000 or 2 years imprisonment terms for conviction on forced labour. Section 28(3) of the Child's Rights Act 2003 on the other hand, provides N50,000 fine or 5 years imprisonment or both for individuals and N 250,000 for corporate bodies that contravene its provision on child labour(including forced labour as child labour is forced labour). Furthermore, section 22(b) of Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015 provides 5 years imprisonment and a fine not less than N1,000,000 for forced labour convictions involving children. The Penal Code of Kano state in its section 280 on the other hand provides for 1 year imprisonment or fine which

is at the discretion of the court. On child labour arising from domestic work, section 23(b) of Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015 provides for minimum of 6 months and not exceeding 7 years while for hazardous jobs, it is 2 years but not exceeding 7 years. This is discretionary and could be used mischievously as earlier posited in this work in the case of *AGF v Folashade Bankole (supra)*. The Labour Act is silent on sanctions for the contravention of its provisions on child labour like slavery and armed conflict. The Child's Rights Act, 2003 like the Labour Act is also silent on the contravention of its provisions on slavery, hawking, pornography and use of children in armed conflict which are all forms of child labour. Having several sanctions on the same issue could lead to miscarriage of justice where the judge decides to apply the least of the sanction or where prosecutors or defence counsel decide to bring the matter under the law with the least sanction as this gives room for the exercise of discretionary powers by the judges too. For instance, the penal provisions enshrined in the Child's Rights Act, 2003 and Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015 tend to give judges discretionary powers and since this discretionary power is not standardised, it could easily be abused. Also, section 23 (1) of Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015 provides a punishment of minimum 6 months but not exceeding 7 years for the employment of under aged children for domestic work. Child's Rights Act, 2003 on the other hand in section 28 provides for Fifty thousand Naira (N50,000.00) and fine or 5 years imprisonment term for child labour offenders. As seen above, the judge may decide to give the minimum term at his discretion even if justice is not served. The case of *AGF vs Folashade Bankole Olufunke (supra)*, buttresses this point. This attitude exhibited by

judges either abuse of discretionary powers limits the role of institutions like National Agency for the Prohibition of Traffic in Persons and Federal Ministry of Justice in prosecuting their matters diligently as it discourages them.

- 6.2.3 While the Constitution in its section 254C (1) of the 3<sup>rd</sup> Alteration to the 1999 Constitution as amended 2011, gave exclusive jurisdiction to National Industrial Court of Nigeria on issues of child labour, section 36 of the Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015 gives jurisdiction to High Courts for all cases to be prosecuted under it. Section 149 gives jurisdiction on children issues including child labour to Family courts either constituted at the High Court or Magistrate Court. This is contradictory as any law inconsistent with the provisions of the Constitution is null and void to the extent of its inconsistencies as provided in sections 1(1)-(3) of the 1999 Constitution as amended. Furthermore, this will nullify any judgment obtained from the High Court under section 36 of Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015 or Family Courts under section 151 of the Child's Rights Act, 2003 due to its inconsistency as jurisdiction is fundamental in law. It therefore follows that section 36 of Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015 and section 151 of the CRA 2003 are null and void due to their inconsistencies with section 254C (1) 3<sup>rd</sup> alteration of the 1999 Constitution as section 1(1)-(3) of the 1999 Constitution provides as such. Furthermore, multiplicity of laws and the federal structure has brought about the challenge inherent to conflicts of laws and jurisdiction of courts. National Agency for the Prohibition of Traffic in Persons just like the National Human Rights Commission and Federal Ministry of Justice is faced with the conflict of where to institute an action on child labour. This is borne out of the fact that prior to the

enactment of section 254C of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 which gives exclusive jurisdiction of both criminal and civil nature to the National Industrial Court of Nigeria, the High Courts had jurisdiction by virtue of section 36 of the Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015 and the Family Courts were saddled with the responsibility of adjudicating on children's issues as stipulated in the Child's Rights Act, 2003. It should be noted that in practice, child labour cases are usually instituted, prosecuted and determined in the Federal or State High Courts as seen from the cases instituted by National Agency for the Prohibition of Traffic in Persons in recent time (2012-2016). One can easily deduce from the above that either the National Agency for the Prohibition of Traffic in Persons officials are ignorant of the provisions of the Constitution or they are flagrantly contravening the provisions of the law. Whichever the case, the Judges of those courts ought to have re-directed the matters to the appropriate courts reason being that they lack jurisdiction on the matter. Furthermore, the National Human Rights Commission on the other hand, views issues of child labour from two perspective of human rights violation wherefore it institute such actions in the High Court while if of any other nature other than the violation of human rights initiates same in the National Industrial Court of Nigeria. Federal Ministry of Justice institute child labour in the Federal High Court and Federal Capital Territory High Court.

- 6.2.4 By virtue of section 254 C (2) of the 3<sup>rd</sup> Alteration to the 1999 Constitution (as amended 2011), all international conventions and covenants regulating, preventing and prohibiting child labour but yet to be domesticated shall be deemed to be so domesticated. For instance, Nigeria has ratified the Optional Protocol to the Convention on the Rights of the

Child on the Involvement of children in armed conflict as well as the Convention concerning the Prohibition and immediate action for the elimination of the Worst Forms of Child Labour but yet to domesticate them. If any issue arises as a result of these aforementioned Conventions, the National Industrial Court of Nigeria shall adjudicate on them by virtue of the above referenced section 254C (2). This situation can also be likened to the '*doctrine of covering the field*' as issues of child labour can now be determined even in states that are yet to pass the Child's Rights Act, 2003 into law.

- 6.2.5 There is poor budgetary allocation and release of funds to institutions and this hampers the actualisation of their mandates. The institutions are confronted with lack of adequate funds to hire personnel and purchase equipment to conduct surveillance across borders and sustain proactive investigations. Inadequate funding limits the ability of institutions to print the legislations and other necessary document that would effectively impact on their work or purchase requisite working tools and materials that will enhance their productivity and efficiency thereby contributing to meeting their goals and carrying out their mandates effectively. There is shortage of staff in most institutions needed to fight to curb child labour incidence due to poor funding. The financial allocation from the Government to most institutions for their annual budgets is not enough and it is not released in time thereby limiting the total number of employed manpower (specialists in social service in particular) and denies the institutions the opportunity to access adequate information on the phenomenon of child labour. Moreover, the lack of adequate fund has hampered most of the work in child labour because the means of information dissemination is limited. That is, the institutions have no adequate funding to gather relevant information on sponsors, perpetrators, movement of victims, and other

information from the general public as well as from neighbouring countries. Lack of the funds to build a central database has also hampered investigations and prosecutions especially in National Agency for the Prohibition of Traffic in Persons. The lack of adequate funds has limited the ability of National Agency for the Prohibition of Traffic in Persons and Federal Ministry of Women Affairs and Social Development to provide adequate care for the victims while they are still in custody and it has also prevented these institutions from organizing meaningful and sustainable rehabilitation programmes for the victims. Furthermore, the Federal Ministry of Labour and Employment reported that the National Steering Committee on Child Labour did not meet in 2014, 2015 and 2016 due to funding constraints. This has led to over dependence on donors. Child labour interventions and programmes are largely donor driven in Nigeria. This could be seen from the International Labour Organisation-International Programme on the Elimination of Child Labour programme and even surveys being conducted on child labour. the National Plan of Action for the elimination of child labour and other similar documents were developed with funding from United States Department of Labour and International Labour Organisation. This in itself does not promote ownership of programmes and interventions. The only National Steering Committee on Child Labour meeting held since inauguration was funded by United Nations Children Education Fund and International Labour Organisation. This over dependence makes the country susceptible to manipulation.

### **6.3 Recommendations**

The political will in Nigeria to tackle the problem of child labour is evident from the array of laws in place and the institution of the National Steering Committee on Child labour saddled

with the responsibility for the coordination of the prevention and elimination of child labour. However, the following are recommendations based on the above findings:

6.3.1 Review and harmonise all laws on child labour especially the disparities on the minimum age for employment inherent in them. It is recommended that the minimum age for employment be fixed at 12 years of age as per Labour Act and this seem to be in consonance with cultural practices and definition of the age of a child under customary and Islamic laws and that children under 18 be prohibited from all work that is likely to harm their health, safety and morals which is termed as hazardous work. It is further recommended that, where there is no age specification or limits like in the agricultural sector and child domestic workers as seen from the ‘List of Hazardous Work’ developed by Nigeria, and as such, age limit should be introduced to curb any such mischief that may arise due to not specifying the age limit. There is also the need to intensify the education of the public on existing laws and practices that contradicts customs and traditional beliefs that promote child labour.

6.3.2 Review and harmonise all laws on child labour especially the provisions on sanctions and discretionary powers inherent in them. Furthermore, the inconsistencies and discretionary powers in the prescribed penalties be eliminated by judges upholding stiffer punishments as prescribed by the Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015. Judges of the National Industrial Court of Nigeria should be advocated to for the enforcement of the provisions of the law that have stiffer penalties for child labour offences that is, the Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015. The language of the law should be simple, unambiguous and straight forward to remove any contradictions



that may occur. The reviews could be done based on researching into alternative preventive and enforcement strategies relevant to local conditions in Nigeria.

6.3.3 There should be harmonization of the legislative framework with the provisions of the section 254 C of the 1999 Constitution in view of the on-going Constitutional amendments in Nigeria been a very good opportunity. The issue of jurisdiction is fundamental in law and as such, should be thought through carefully. All laws on child labour should be amended to give the National Industrial Court of Nigeria exclusive jurisdiction on issues of child labour as the 1999 Constitution of the Federal Republic of Nigeria supersedes such laws as provided by section 254C (1) 3<sup>rd</sup> Alteration as amended 2011 which vests the National Industrial Court of Nigeria with exclusive jurisdiction on child labour issues. The Chief Justice of Nigeria should issue a practice direction with the mandate that all child labour issues for determination be transferred to National Industrial Court of Nigeria. This will strengthen workings of the National Industrial Court of Nigeria and lay to rest confusion arising from multiplicity of laws and structures created by these laws to fight child labour thereby fostering synergy and promoting efficient and effective coordination of resources.

6.3.4 There should be awareness creation on section 254C (2) of the 3<sup>rd</sup> alteration of the 1999 Constitution as amended which confers on the National Industrial Court of Nigeria powers to recognise and apply international treaties, laws, covenants and conventions even if not domesticated. This is so as the non-domesticated international agreements have the force of law to be applied in Nigeria by virtue of the aforementioned section 254C (2) of the 1999 Constitution as amended. This will also

help to prevent states that are yet to pass the Child's Rights Act, 2003 into law from giving the excuse of non-passage as the yardstick for preventing and eliminating child labour in their states. The powers inherent in section 254c (2) of the Constitution as amended has impliedly covered the field.

- 6.3.5 There should be adequate budgetary allocation in the appropriation bill and its subsequent prompt release of same to promote the workings of the institutions. A funding mechanism be established whereby funds are pooled together through partnership agreement and are targeted at specific child labour interventions including supporting coordination meetings that will infuse life into the fight for the prevention and elimination of child labour. Diversification of child labour funding source away from exclusively donor driven arrangements by extending petroleum subsidy to augment with child labour funding issues is also recommended. Poverty alleviation programs to discourage parents from depending on the income of their children such as undertaking and expanding emergency school enrolment programme in child labour endemic areas and 'second chance' as a measure to boost school attendance and improve the culture of going to school amongst children in these area be introduced. Cost saving strategies such as block-granting, philanthropic supports, scholarships and community sponsorships should be devised or adopted to ensure wide coverage of the 'emergency' school enrolment programmes in child labour endemic area. Educational counselling service are to be provided for school children by professional counsellors and child psychologist to retain their interest in education. Showcase role-models from the community, LGA, state and national levels as a deliberate strategy to retain school children's interest in education. Furthermore,

Create linkages between government poverty alleviation/eradication programme and activities of Civil Society Organisations to support child labour victims and vulnerable families through a coordinated working relationship between these programmes and the organisations as leveraging on the Civil society organisation could curb the challenge of funding gap currently been experienced in the fight to eliminate and prevent child labour. Leverage on existing systems by including child labour specific activities in the work plan of all members- organisations represented in the National Steering Committee on Child Labour and State Steering Committee on Child Labour to ensure active participation of these organisations in the national child labour programme and reduce funding constraint. For instance, enlist the services of National Youth Service Corps in extending the reach of Child labour intervention to remote communities across the country. Continuous capacity development of responders to raise awareness/understanding and apply best practices in regulatory administrative and enforcement aspect for the elimination of child labour. Solicit additional support from development agencies for Civil Society Organisations for service provision. The power of social media (a cheap source of publicity) be explored to intensify mass education and enlightenment for child labour eradication.

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## **APPENDIX**

### **Key Informant Interview Guide for Research on the Examination of the Legal and Institutional Framework for the Elimination and Prevention of Child Labour in Nigeria.**

#### **LEGAL FRAMEWORK**

1. Who is a child?
2. What should be the age for admission to employment? Is there a legal minimum age for admission to employment and for all types of work? Does the minimum working age coincide with compulsory age for completion of education and gives room for optimal development of the child? Does the policy and laws seek to raise progressively the minimum age for admission to employment to the standard set by the Convention No. 138 (age of completion of compulsory schooling not less than 15)?
3. Are you aware of any legislation or policy abolishing or regulating child labour and in particular the worst forms of child labour? If so, what laws? Are there any exemptions or restrictions from the application of laws on child labour? If so, what are they? Does it set out clear stages for the elimination of the worst forms of child labour?
4. Does the law and policy define child labour and hazardous work (likely to jeopardize the health, safety or morals of young person less than 18 years)? Does it identify vulnerable groups or types of work likely to harm the health, safety and morals of children with special attention on girls and other children at special risk?
5. Has the law addressed the issue of light work? Has the State/Nation determined the activities and conditions in which such employment or light work may be carried out?
6. What are the penalties and sanctions for violations to enforce child labour laws? Are the sanctions being applied? Does the law ensure that sanctions are provided for all persons

responsible for under-age employment (e.g. employers, parents, guardians etc.)? Are the sanctions stringent enough to serve as deterrent? If not, what reforms are considered? Are sanctions diversified between criminal, civil and administrative? Are sanctions diversified as a function of the seriousness of the offence, e.g. heavier sanctions for employment of children in hazardous than in non-hazardous work, heavier penalties for repeat offenders?

7. What are the strategies for eliminating and preventing child labour?
8. Are you satisfied with the enforcement mechanism?
9. Does the mandate of the labour inspection services extends to all workplaces i.e private and public
10. How has the Nigerian federal structure impeded the elimination and prevention of child labour in Nigeria?
11. How has the multiplicity of applicable laws affected the implementation or enforcement of child labour law in Nigeria?
12. Is there tension or conflict between statutory laws and customary/religious laws on child labour?

## **INSTITUTIONAL FRAMEWORK**

13. Are the appropriate institutions for the elimination and prevention of child labour in Nigeria?
14. If yes, do you know your mandate?
15. What are your functions?
16. Are your activities effective and are there time-bound measures being taken to: prevent the engagement of children in the worst forms of child labour; provide direct assistance to

remove children from the worst forms of child labour; provide direct assistance for the rehabilitation and social integration of the children concerned; ensure access to free basic education and to vocational training for such children; identify and reach out to children at special risk; take into account the special needs of girls?

17. Are there constraints or impediments to carrying out your functions?

18. What courts have jurisdiction over child labour issues?

19. Are there appeals of decisions not upholding the stipulated sanctions of the law?

20. Has there been any landmark court decision on child labour?

Is there referral and coordination mechanism in place to tackle child labour? What enforcement mechanisms and devices are available? What are the challenges encountered in the course of enforcement? Is there a synergy between advisory, enforcement and supervisory function.

