



COMPENDIUM OF THE NIGERIAN LAWS THAT PROTECT CHILDREN

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NIGERIAN LAWS THAT PROTECT CHILDREN IN NIGERIA

This publication is a compilation of the various laws in Nigeria that seek to protect children by safeguarding their rights, promoting their wellbeing, creating offences and punishing offenders, among others.

This compendium covers the following laws:

- The Constitution of the Federal Republic of Nigeria, 1999 (CFRN)
- The Childs Right Act of 2003 (CRA)
- The Children And Young Persons Act 1943
- The Labour Act 2004
- The Criminal Code Act 2004
- The Penal Code 1959
- Violence Against Persons Prohibition Act 2015
- Administrative Criminal Justice Act 2015 (ACJA)
- Cybercrimes Prohibition and Prevention Act 2015
- Matrimonial Causes Act 1970
- Marriage Act 1990
- National Agency for the Prohibition of Trafficking In Persons Act 2015 (NAPTIP Act)
- Universal Basic Education Act 2004
- Evidence Act 2011
- Disability Rights Act 2018

These laws would cover the following aspects:

- Alternative Care for Children (Kinship, Fostering and Adoption)
- Begging/ Trafficking
- Birth Registration
- Child Labour
- Child Marriage/Betrothal
- Child Neglect and Violence
- Child Pornography
- Child Prostitution
- Child Trafficking
- Children and Disability
- Children Beyond Parental Control
- Children in conflict with the law[U1]
- Children on the Move
- Custody/Maintenance of Children
- Female Genital Mutilation
- Sexual and Related Offences
- The Childs Right to Education
- The Childs Right to Health

The Constitution of the Federal Republic of Nigeria 1999 (As Amended)

The Constitution is the grundnorm and the highest law of the land from which all other laws derive their legitimacy. The Constitution seeks to promote and protect the wellbeing of Nigerian citizens by guaranteeing specific rights applicable to everyone, including children. These rights have been spelt out in Chapter IV (4) of the Constitution as follows:

- The right to life.
- The right to dignity of the human person.
- The right to personal liberty.
- The right to a fair hearing.
- The right to a private and family life.
- The right to freedom of thought, conscience and religion.
- The right to freedom of expression and the press.
- The right to peaceful assembly and associations.
- The right to freedom of movement.
- The right to freedom from discrimination.

Section 41 of the Constitution derogates from these rights when it provides that nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society in the interest of defence, public safety, public order, public morality or public health; or to protect the rights and freedom of other persons. Thus these rights can be infringed upon by the State to protect the overall interest of the country.

ALTERNATIVE CARE

Alternative care is any arrangement, formal or informal, temporary or permanent for a child who is living away from his or her parents and is intended to provide protection, stability and wellbeing while permanent arrangement is made. Such care arrangements must ensure children can exercise all their rights, including access to education, health and other services as well as the right to identity freedom of religion or belief and inheritance rights. It should also not separate children from their siblings unless there is a clear risk of abuse or other substantial reasons.

We would be looking at three forms of alternative care: Foster care, adoption and kinship care.

Childs Rights Act 2003

Foster Care

Foster care is government-subsidized and -regulated temporary care for children who have been removed from their families for reasons of abuse and neglect. The goals of foster care are the health, safety, and permanency of children. Permanency is achieved by reunification with the birth family or through adoption while reunification can be achieved by informal or formal placement with a relative (i.e., kinship care) or through independent living.[1]

The Child Rights Act states that a person may foster a child by making an application to the Court within the jurisdiction in which the person and the child reside. [2]

The Act further states that a child who may be fostered includes a child who: [3]

- is abandoned by parents; or
- is an orphan and is (deserted by his relatives, or voluntarily presented by his relatives for fostering, or voluntarily presents himself for fostering, where no relatives of his can be found;) or
- has been abused, neglected or ill-treated by the person having care and custody of him;
- has a parent or guardian who does not or cannot exercise proper guidance over him; or
- is found destitute or wandering, has no home or settled place of abode, is on the streets or other public place, or has no visible means of subsistence; or
- is voluntarily presented by his parents for fostering.

In order to ensure the safety of children under foster care, the Act provides that it should be the duty of the appropriate child development service to keep informed from time to time, of the condition and welfare of each fostered child fostered and for that purpose, arrange for child development officers to do all or any of the following things, that is

- to pay periodic visits at a reasonable time to each child fostered until the child attains the age of eighteen years and
- to enter any premises of ascertaining whether there is any contravention by a person of any condition of the fostering or any other provisions of this Act
- during a visit under this section, the officer conducting the visit may require the production of the fostered child or that information be given regarding the condition of the child.[4]

A fostering order once granted may be revoked if it is proved to the satisfaction of a court that a foster parent has abandoned, neglected or persistently ill-treated or assaulted a fostered child, the Court shall or proceed to take other necessary action under the provisions of the Act.[5]

Furthermore to further protect children, the Act also prohibits the marriage between foster parents and foster children and prescribes a punishment of a term of fourteen years imprisonment. [6]

Adoption

Adoption is the permanent legal transfer of all parental rights from one person or couple to another person or couple. Adoptive parents have the same rights and responsibilities as biological parents, and adopted children have all of the emotional, social, legal and kinship benefits of biological children. [7]

According to the Act, when an adoption order is made all rights, duties, obligations and liabilities, including any other order under the personal law applicable to the parents of the child

dissent to marriage, shall be extinguished. Hence these rights, duties, obligations and liabilities shall vest in, and be exercisable by and enforceable against the adopter as if the child were the natural child of the adopter.[8]

The CRA also provides that every State shall for adoption purposes establish and maintain a service designed to meet the needs of a child who has been or may be adopted, parents and guardians of the child and persons who have adopted or may adopt a child. They shall further provide facilities which shall include temporary board and lodgings and counselling for persons with problems relating to adoption.[9]

The Act also states that the Court shall make an adoption order in respect of a child where -

- parents or guardians of the child consents to the adoption; or
- the child is abandoned, neglected or persistently abused or ill-treated, and there are compelling reasons in the interest of the child why he should be adopted.[10]

The Act also provides procedures for adoption having the best interest of the child in mind when it states that after receiving the application, the Court shall order an investigation to be conducted by child development officers; supervision officer; and such other persons to enable the Court to assess the suitability of the Applicant as an adopter and of the child to be adopted.[11] The Act also stipulates that courts should put into consideration when reaching a decision concerning the adoption of a child the need to safeguard and promote the welfare and the best interest of the child throughout the childhood of that child as well as ascertain, as far as practicable, the wishes and feelings of the child while having regard to the age and understanding of the child.[12]

Kinship Care

Kinship care is the temporary placement of children in a family environment with relatives or extended family members when their parents aren't able to care for them.[13] Kinship care is prevalent in Nigeria but however largely informal as there are no laws regulating this form of care. The informality and normality of this form of care contributes to its strengths however its informality contributes to a lack of regulation concerning the care, protection and other rights of girls and boys living with kin care givers.[14]

BEGGING/ CHILD WANDERING/ CHILDREN ON THE MOVE

This refers to children who are moving for a variety of reasons, voluntarily or involuntarily, within or between countries, with or without their parents or other primary caregivers and whose movement might place them at risk (or at an increased risk) of economic or sexual exploitation, abuse neglect or violence.

Childs Right Act 2003

The Act provides that a child development officer, a police officer or any other person authorized by the Minister may bring a child before the Court if he has reasonable grounds for believing that

the child is found wandering or has no home or settled place of abode, is on the street or other public place, or has no visible means of subsistence. [15]

Furthermore in order to curb begging, the Act provides that a child shall not be used to beg for alms, guiding beggars, prostitution, domestic or sexual labour or for any unlawful or immoral purpose or for any purpose that deprives the child of the opportunity to attend and remain in school as provided for under the Compulsory, Free Universal Basic Education Act. [16]

To further regulate begging and protect children, the Act enjoins a Child Development Officer, a police officer or any other person authorized by the Minister to bring a child before the Court if he has reasonable grounds for believing that the child is found begging or receiving alms. This provision also applies to children who accompanies any person begging or receiving alms whether or not there is any pretence of singing, playing, performing, offering anything for sale or otherwise or is found in any street, premises or place to so beg or receive alms.[17]

Criminal Code Act 2004

The Criminal Code Act, on the other hand, provides that every person wandering or placing himself in any public place to beg or gather alms, or causing or procuring or encouraging children to do so shall be deemed idle and disorderly persons and may be arrested without warrant, and are guilty of a simple offence and liable to imprisonment for one month.[18]

BIRTH REGISTRATION

Birth registration is the process of recording a child's birth. It is a permanent and official record of a child's existence, and provides legal recognition of that child's identity by establishing where the child was born and who his or her parents are. The information collected from birth registration records helps governments decide where and how to spend money, and what areas to focus on for development programs, such as education and immunization. It also helps ensure children's other rights are upheld like the rights to protection from violence and essential services like health care and justice. [19]

Childs Rights Act 2003

The Act provides that every child has a right to a name and, accordingly, shall be given a name on his birth or such other date as is dictated by the culture of his parents or guardian and such birth shall be registered following the provisions of the Birth, Death, etc. (Compulsory Registration) Act, 1992. The Federal Government's decree No. 69 of 1992 on vital registration states that registration shall be carried out free of charge, within 60 days from the date of birth.

CHILD LABOUR

socially or morally harmful. Such exploitation is prohibited by legislation worldwide, although these laws do not consider all work by children as child labour; exceptions include work by child artists, family duties, supervised training, among others. Child Labour can occur due to ignorance, poverty, high levels of unemployment, lack of access to compulsory free education, violation of existing laws/code, the inadequacy of laws and enforcement, among other.

Despite this, here are some of the laws that protect children against child labor.

Childs Right Act 2003

The Act provides that no child shall be:

- subjected to any forced or exploitative labour;
- employed to work in any capacity except where he is employed by a member of his family on light work of an agricultural, horticultural or domestic character;
- required, in any case, to lift, carry or move anything so heavy as to be likely to adversely affect his physical, mental, spiritual, moral or social development; or
- Employed as a domestic help outside his own home or family environment.
- Employed or worked in an industrial undertaking. However, this shall not apply to work done by children in technical schools or similar approved institutions if the appropriate authority supervises the work.

It further states that any person who contravenes this provision commits an offence and is liable on conviction to a fine not exceeding fifty thousand Naira or imprisonment for a term of five years or to both.[20]

The Labour Act 2004

The Act provides that

- No child shall be employed or work in any capacity except he is employed by a family member on light work of an agricultural, horticultural or domestic character approved by the Minister; or be required in any case to lift, carry or move anything so heavy as to be likely to injure his physical development.[21]
- No young person under the age of fifteen years shall be employed or work in any industrial undertaking: It shall not apply to work done by young persons in technical schools or similar institutions if the work is approved and supervised by the Ministry of Education (or corresponding department of Government) of a State.[22]

A young Person Under the age of 14 Years

A young person under the age of fourteen years may be employed only-on a daily wage; on a day-to-day basis; and so long as he returns each night to the place of residence of his parents or guardian or a person approved by his parents or guardian. This shall not apply to a young person employed in domestic service.[23]

A Young Person Under the age of 16 Years

No young person under the age of sixteen years shall be [24]

- employed in circumstance where it is not reasonably possible for him to return each day to the place of residence of his parent or guardian except with the approval of an authorized labour officer; and on a written contract (which, notwithstanding any law to the contrary, shall not be voidable on the ground of incapacity to contract due to infancy. This shall, however, not apply to a young person employed in domestic service.
- Employed to work underground; or on machine work; or a public holiday.
- required to work for a longer period than four consecutive hours or permitted to work for more than eight working hours in one day: Provided that, save as may be otherwise provided by any regulations made under section 65 of this Act, this subsection shall not apply to a young person employed in domestic service.

However, young person's over the age of sixteen may be employed during the night [25]

- in cases of emergency which could not have been controlled or foreseen; is not periodical, and interfere with the normal working of an industrial undertaking.
- in the following industrial undertakings or activities which because of the nature of the process are required to be carried on continuously day and night, that is to say in the manufacture of iron and steel, glassworks; manufacture of paper; manufacture of raw sugar; and gold mining reduction work.

It further states that no person

- shall continue to employ any young person under the age of sixteen years after receiving notice either orally or in writing from the parent or guardians that the young person is employed against the wishes of the parent or guardian: but provided this shall not apply to a young person employed under a written contract entered into with the approval of an authorized labour officer.
- shall employ a young person in any employment which is injurious to his health, dangerous or immoral; and, where an employer is notified in writing by the Minister that the kind of work upon which a young person is employed is injurious to the young person's health, dangerous, immoral or otherwise unsuitable, the employer shall discontinue the employment without prejudice to the right of the young person to be paid such wages as he may have earned up to the date of discontinuance.

Contracts of Apprenticeship

The parent or, in the case of an orphan, the guardian of a young person above the age of twelve years and under the age of sixteen years may, with the consent of that person testified by his execution of a written contract of apprenticeship, apprentice that person to an employer to train him or have him trained systematically for a trade or employment in which art or skill is required, or as a domestic servant, for any term not exceeding five years. [26]

Trafficking In Persons (Prohibition) Enforcement and Administration Act 2015

The Act provides that any person who employs, requires, recruits, transports, harbors, receives or hire a child under the age of 12 [27] 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 seven years.

It further provides that any person who employs a child to do any work that is so 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 seven years without an option of fine. Notwithstanding, such convicted person may be liable to an additional term of not less than two years imprisonment where the child is denied payment or reasonable compensation for services rendered or for a term of not less than three years where the child is defiled or inflicted with bodily harm.[28]

The Act further provides that any person who procures or recruits a person under the age of 18 years to be subjected to prostitution or other forms of sexual exploitation, in Nigeria or anywhere else, commits an offence and is liable on conviction to imprisonment for a term of not less than seven years and a fine of not less than 1 million naira. [29]

CHILD MARRIAGE AND BETHROTAL

Child marriage is the formal or informal marriage of a young girl to an older boy or man. Many girls who are married off before they turn 18 or are forced into early marriages are deprived of educational opportunities and future independence. Child brides are also more likely to experience domestic violence, high-risk pregnancies, and high mortality and morbidity rates. Furthermore, child brides who have children may also be psychologically unprepared and ill-equipped to become mothers at such a young age. There are several reasons why Child marriage occurs, and they include a result of high levels of poverty, cultural norms and lax laws, teenage pregnancies, insecurity, gender inequality and many others.

Childs Rights Act 2003

The Act provides that no person under the age of 18 years is capable of contracting a valid marriage, and accordingly a marriage so contracted is null and void and of no effect whatsoever.[30]

The Act further states that no parent, guardian or any other person shall betroth a child to any person and any such betrothal is null and void.

Thus a person

- who marries a child; or
- to whom a child is betrothed; or
- who promotes the marriage of a child; or who betroths a child,

commits an offence and is liable on conviction to a fine of N500 thousand or five years imprisonment or both.[31]

Marriage Act 1990

The Act provides that if either party to an intended marriage, not being a Consent widower or widow, is under twenty-one years of age, the written consent of the father, or if he is unavailable, of the mother, or if both unavailable, of the guardian of such party, must be produced before a license can be granted or a certificate issued.[32] Where no parent or guardian in Nigeria can consent to the marriage, then a Governor; a judge of the High Court of the State or of the FCT Abuja; any officer of or above the grade of assistant secretary may consent in writing, upon being satisfied after due inquiry that the marriage is a proper one-[33]

Matrimonial Causes Act 1970

A marriage that takes place after the commencement of this Act is void in any of the following cases but not otherwise, that is to say, where either of the parties is not of marriageable age.

CHILD NEGLECT

Child neglect is defined as any confirmed or suspected Act or omission by a parent or other caregiver that deprives a child of basic age-appropriate needs and therefore results in physical or psychological harm. Child neglect encompasses abandonment, lack of appropriate supervision, failure to attend to necessary emotional and psychological needs, and failure to provide necessary education, medical care, nourishment, shelter or clothing.

The causes of child neglect include poverty, lack of education, serious marital/ relationship problems, violence between parents or caregivers, lack of knowledge and skills in bringing up children, loneliness and isolation, unemployment, poor social skills and unloving relationships, substance abuse, depression, a large family.

Criminal Code Act 2004

Any person who unlawfully abandons or exposes a child under the age of seven years, in such a manner that any grievous harm is likely to be caused to it, is guilty of a felony and is liable to imprisonment for five years.[34]It further provides thatany person who is the parent, guardian or other person having the lawful care or charge of a child under the age of twelve years, and being able to maintain such child, willfully and without lawful or reasonable cause deserts the child and leaves it without means of support, is guilty of a misdemeanor and is liable to one-year imprisonment.[35]

Violence against Persons Prohibition Act 2015

A person who abandons a wife or husband, children or other dependents without any means of sustenance commits an offence and is liable on conviction to a term of imprisonment not exceeding three years or to a fine not exceeding N500,000 or both. [36]

Childs Rights Act 2003

The Act provides that every child is entitled to respect for the dignity of his person, and accordingly, no child shall be subjected to neglect or maltreatment.[37] It further provides that a child may bring an action for damages against a person for harm or injury caused to the child willfully, recklessly, negligently or through neglect before, during or after the birth of that child.

Additionally, the Act enjoins child development officers, police officers or any other person authorized by the Minister to bring a child before the Court if he has reasonable grounds for believing that the child has been neglected or ill-treated or battered by the person having the care and custody of the child. It further provides that the Court shall make an adoption order in respect of a child where the child is abandoned neglected or persistently abused or ill-treated, and there are compelling reasons in the interest of the child why he should be adopted.

The Act further enjoins every State Government to take reasonable steps, through the provision of services under, to prevent children within the State from suffering ill-treatment or neglect.

CHILD PORNOGRAPHY

According to the Cybercrimes Act, child pornography includes pornographic material that visually depicts-

- a minor engaged in sexually explicit conduct;
- a person appearing to be a minor engaged in sexually explicit conduct; and
- realistic images representing a minor engaged in sexually explicit conduct.[38]

Children may get involved in such when they get trapped, coerced or even convinced into it. This may occur when children involved with prostitution get filmed by their customers, pimps or relatives and after that are sold or traded. It may also occur when children get molested by acquaintances or family members who photograph or tape the abuse and; younger, normally prepubescent, and children are coerced by the process of grooming.

Childs Rights Act 2003

The CRA states that a child shall not be used for the production of pornography or for any pornographic performance. [39]

The Act provisions cover the different categories of offences provided under the Act, which are all punishable, and they are:

Creation and Transmission of Child Pornography

These acts usually include the making, dissemination, storage, circulation, publication and transmission of information containing child pornography or child sexual exploitation in electronic form. Damages resulting from such acts can cause harm to children, especially as it would be challenging to restore children's rights once information harmful to the interests of children circulates on the Internet. Thus the Act provides that any person who intentionally uses any computer system or network in or for such an act[40] would be liable on imprisonment for a term of 10 years or a fine of not more than N20 million or both.[41]

Unsolicited Distribution of Child Pornographic Images

This involves the sharing or sending of images that contain pornographic content among several persons or groups without consent from the recipients. Thus this could include sharing and sending of such images on social media platforms like WhatsApp, Facebook, Instagram, Twitter and similar networks. In trying to protect against such, the Act provides that any person who knowingly makes or sends other pornographic images to another computer by way of unsolicited distribution shall upon conviction be sentenced to one year imprisonment or a fine of N250 thousand or both.[42]

Procurement and Possession of Child Pornography

Child pornography possession is an unusual sex crime as it is a form of child sexual exploitation that requires no direct interaction with a victim. It involves receiving and keeping images that are contraband because they show actual children (often unidentified) being sexually abused and exploited. Although a sexual motive is not required for the crime, having Child Pornography indeed suggests such a motive, and there is evidence that many perpetrators of such are sexually interested in children.[43] Thus the Act provides that any person who procures child pornography for oneself or another person, possesses child pornography in a computer system or on a computer data storage medium shall be liable on conviction[44] to imprisonment for a term of not more than five years or a fine of not more than N10 million or to both.[45]

Trafficking In Persons (Prohibition) Enforcement and Administration Act 2015

Any person who procures, recruits or offers any person under the age of 18 years for the production of pornography or pornographic performances or allows a person under the age of 18 years to be harbored in a brothel commits an offence and is liable on conviction to imprisonment for a term not less than seven years and a fine not less than 1 million naira. There would however be additional punishment of 1-year imprisonment where such person administered or stupefied the victim with any drug substance. [46]

CHILD TRAFFICKING

Trafficking In Persons (Prohibition) Enforcement and Administration Act 2015

The Act provides that any person who employs, requires, recruits, transports, harbors, receives or hire a child under the age of 12[47] 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 seven years or do any work that is so 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 seven years without an option of fine. Notwithstanding, such convicted person may be liable to an additional term of not less than 2 years imprisonment where the child is denied payment or reasonable compensation for services rendered or for a term of not less than 3 years where the child is defiled or inflicted with bodily harm.[48]

CHILD PROSTITUTION

The Trafficking in Persons Prohibition Act

The Act provides that any person who procures or recruits a person under the age of 18 years to be subjected to prostitution or other forms of sexual exploitation with himself, any person or persons, either in Nigeria or anywhere else, commits an offence and is liable on conviction to imprisonment for a term of not less than 7 years and a fine of not less than 1 million naira.

Childs Rights Act

The Act states that A child shall not be used, for prostitution, domestic or sexual labour or for any unlawful or immoral purpose[49] or procured or offered for prostitution or the production of pornography or any pornographic performance.[50]

CHILDREN WITH DISABILITIES

Disability Rights Act 2018[51]

The Act provides that a person with a disability has an unfettered right to education without discrimination or segregation without discrimination in any form. It further provides that a person with a disability is entitled to free education to secondary school level. The Commission (National Commission for People Living with Disabilities) shall provide educational assistive devices. [52]

The Act also enjoins public schools, whether primary, secondary or tertiary to be run in a manner inclusive of and accessible to persons living with disabilities. It further specifies that every school shall have:

1. Special facilities for the effective education of persons with disabilities.

The Act also provides for the inclusion in the curricular of primary, secondary and tertiary institutions, Braille, sign language and other skills for communicating with persons with disabilities. [53]

By the provisions of the Act, the Government is expected to ensure that the education of persons with disabilities, particularly children who are blind, deaf or with multiple disabilities is delivered in the most appropriate language, mode and means of communication for the individual and in environments which maximize academic and social development. [54]

Section 21, on the other hand, states that Government shall guarantee that persons with disabilities have unfettered access to adequate health care without discrimination based on disability. A person with a mental disability shall be entitled to free medical and health services in all public institutions.

CHILDREN BEYOND PARENTAL CONTROL

A child beyond parental control refers to a child who has repeatedly failed to follow the directives of his or her parents, legal guardian or person exercising custodial control or supervision other than a state agency, which behavior results in danger to the child or others.

Child Rights Act 2003

The CRA states that a Court may make a care order or supervision order if it is satisfied that the child is beyond parental control. Such care order may be on the application of a State Government, an appropriate authority or any other authorized person placing a child to whom an application is made in the care of a designated authorized person, appropriate authority or the State Government; or supervision order, placing a child under the supervision of a designated appropriate authority or supervision officer.[55]

CHILDREN IN CONFLICT WITH THE LAW

This refers to anyone under the age of 18 who comes in contact with the justice systems as a result of being suspended or accused of committing an offence. Most children in conflict with the law have committed petty crimes or such minor offences as vagrancy, truancy or alcohol use. Also, some children who engage in criminal behavior have been used or coerced by adults. Too often prejudice related to race, ethnicity or social and economic status may bring a child into conflict with the law even when no crime has been committed, or result in harsh treatment by law enforcement officials.

Criminal Responsibility of Children

Under the Criminal Code Act 2004, a person under the age of seven years is not criminally responsible for any act or omission. A person under the age of twelve years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had the capacity to know that he ought not to do the act or make the omission. A male person under the age of twelve years is presumed to be incapable of having carnal knowledge.

Administration of Criminal Justice Act 2015

The Act provides that where a convict who, in the opinion of the Court had not attained the age of 18 years at the time the offence was committed is found guilty of a capital offence, a sentence of death shall not be pronounced or recorded but in lieu of it, the Court shall sentence the child to life imprisonment or such other term as the Court may deem appropriate to make.[56]

The Act further provides that under the procedure for trying child offender, where a child is alleged to have committed an offence, the provisions of the Childs Rights Act shall apply.

Child Rights Act 2003

The CRA provides for the establishment of Family Courts to hear and determine matters relating to children. The courts are to be established for each State of the Federation and the Federal Capital Territory. They will operate at two levels as a Division of the High Court and as a Magistrates' Court.[57] Family courts are vested with the jurisdiction to hear all cases in which the existence of a legal right, power, duty, liability, privilege, interest, obligation or claim in respect of a child is in issue, and any criminal proceeding relating to children. The Family Courts can hear and determine any proceedings relating to children. This includes both civil and criminal proceedings, and proceedings for both offences committed by children, and those committed against children.

The CRA provides for the disposal of cases involving child offenders without resorting to the criminal justice system. For offences that are not serious, the police, prosecutor or any person dealing with a case involving a child offender has the power to dispose of the case through settlement rather than by formal trial. It is important to remember that adjudication before the Court shall be used as a last resort.[58]

The CRA also provides for the child to be represented by a legal practitioner and to free legal aid in the hearing and determination of any matter concerning the child.[59]

SEXUAL AND OTHER RELATED OFFENCES

A sexual offence occurs when the physical body is interfered with, inappropriately by another person, that is when a person deliberately touches any part of a person's body including [by that persons touching] the private parts in sexual manner or way. This also refers to any crime that involves sexual intercourse or any other sexual act. The main crimes in this category are rape,

Childs Rights Act 2003

The Act provides that no person shall have sexual intercourse with a child and any person who does commit an offence of rape and is liable on conviction to imprisonment for life. The Act further provides that where a person is charged with such offence, it is immaterial that the offender believed the person to be of or above the age of eighteen years or that sexual intercourse was with the consent of the child.[60]

The Act also provides that a person who sexually abuses or sexually exploits a child in any manner not mentioned commits an offence and is liable on conviction to imprisonment for a term of fourteen years.[61]

Criminal Code Act 2004

The Act states that any person who has unlawful carnal knowledge of a girl under 13 is liable to imprisonment for life with or without caning [62] and a person who attempts to commit such is guilty of a felony and is liable to imprisonment for fourteen years, with or without caning. Additionally, it states that any person who unlawfully and indecently assaults a woman or girl is guilty of a misdemeanor, and is liable to imprisonment for two years.

It further provides that any person who

- has or attempts to have unlawful carnal knowledge of a girl being of or above thirteen years and under sixteen years of age;
- knowing a woman or girl to be an idiot or imbecile, has or attempts to have unlawful carnal knowledge of her,

is guilty of a misdemeanor and is liable to imprisonment for two years, with or without caning.[63]

Note: It is, however, essential to note that it is a defense to a charge of either of the offences to prove that the accused person believed, on reasonable grounds, that the girl was of or above the age of sixteen years.

Any person who unlawfully and indecently deals with a boy under the age of fourteen years, is guilty of a felony and is liable to imprisonment for seven years.[64]

Violence against Persons Prohibition Act 2015

The Act provides that a person commits the offence of rape if

- he or she intentionally penetrates the vagina, anus or mouth of another person with any other part of his or her body or anything else;
- the other person does not consent to the penetration;

- the use of any substance or additive capable of taking away the will of such person by impersonating his or her spouse.

A person convicted of such offence is liable to a minimum of 12 years imprisonment without an option of fine to

life imprisonment except where such offender is less than 14 years, he would be liable to a maximum of 14 years imprisonment and in the case of rape by a group, the offenders are liable jointly to a minimum of 20 years imprisonment without an option of fine.

Cybercrimes Prohibition and Prevention Act, 2015

The Act provides for the offence of Online Sexual Solicitation of Children, Grooming, Luring or Predation. This is a situation where minors are engaged in sexually-orientated communications (e.g., "computer chat") often to arrange offline sexual encounters. This communication is frequently on-going, and a relationship between the offender and target can develop over several weeks or months and can contain very explicit sexual content. Thus in furtherance of this, the Act provides that any person who, intentionally^[65] engages in such activities with a child would be liable on conviction to imprisonment for a term of not more than ten years and a fine of not more than N15 million.^[66]

Furthermore, where such sexual solicitation is made

- Under coercion, inducement, force or threats;
- By a person in a recognized position of trust, authority or influence over the child, including within the family;
- Of a particularly vulnerable situation of the child, mental or physical disability or a situation of dependence;^[67]
- By recruiting, inducing, coercing, exposing, or causing a child to participate in pornographic performances or profiting from or otherwise exploiting a child; ^[68]

Such person shall upon conviction be liable to imprisonment for a term of not more than 15 years and a fine of not more than N25 million.

THE CHILD'S RIGHT TO EDUCATION.

The Constitution of the Federal Republic of Nigeria

Section 18 of the Nigerian Constitution requires that there are equal and adequate educational opportunities at all levels; this provision was to ensure the Government strives to eradicate illiteracy. Where practicable, free, compulsory and universal primary, secondary and university education is provided.

The Childs Rights Act 2003

completes his primary school education and junior secondary education.[70] It also enjoins every parent, guardian or person who has the care and custody of a child who has completed his basic education, to endeavour to send the child to a senior secondary school. When the child is not sent, to senior secondary school [71] the child shall be encouraged to learn an appropriate trade and the employer of the child shall provide the necessities for learning the trade.[72]

The Act also makes provisions for a female child who becomes pregnant, before completing her education and states that such child shall be given the opportunity, after delivery, to continue with her education, based on her ability. [73] Where a parent, guardian or person who has care and custody of a child, fails to send their ward or child to school, he commits an offence. He is liable on a first conviction to be reprimanded and ordered to undertake community service and on second conviction to a fine of two thousand Naira or imprisonment for a term not exceeding one month or to both such fine and imprisonment; and on any subsequent conviction to a fine not exceeding five thousand Naira or imprisonment for a term not exceeding two months or to both such fine and imprisonment. [74] However, these provisions shall not apply to children with mental disabilities.

Universal Basic Education Act

The Act states that every Government shall provide free, compulsory and universal basic education for every child of primary and junior secondary school age. It further provides that every parent must ensure that his child or her ward attends and completes his, primary school education and junior secondary school education by endeavoring to send the child to primary school education. It then provides that stakeholders in education in a Local Government Area, shall ensure that every parent or person who has the care and custody of a child performs the duty imposed on him under Section 2 of the Act.

Furthermore, further provides that a parent who contravenes this provision commits an offence and is liable:

- a) on first conviction, to be reprimanded
- b) on second conviction to a fine of N2000 or imprisonment for a term of 1 month or both and
- c) on subsequent conviction, to a fine of N5000 or imprisonment for a term of 2 months or both. [75]

The services provided in public and junior secondary schools shall be free of charge. A person who receives or obtains any fee contrary to the provisions of this section commits an offence and is liable on conviction to a fine not exceeding N10, 000 or imprisonment for a term of 3 months or to both. [76]

Every parent shall ensure that his or her child receives full-time education suitable to his age, ability and aptitude by regular attendance at school. The provisions of sections 2(2) and 4(1) of this Act shall not apply to any parent who for the time being is outside Nigeria. [77]

THE CHILDS RIGHT TO HEALTH

The Constitution requires that the State directs its policies towards ensuring that there are adequate medical facilities for all persons,[78] that children, young persons and the aged are protected against any exploitation whatsoever, and moral and material neglect, and the evolution and promotion of family is also encouraged.[79]

The Childs Right Act

Section 13 of the Child Rights Act provides that every child is entitled to enjoy the best attainable state of physical, mental and spiritual health. Every Government, parent, guardian, institution, service, agency, organization or body responsible for the care of a child shall endeavour to provide for the child the best attainable state of health.

Every Government in Nigeria shall -

- a) endeavour to reduce infant and child mortality rate;
- b) ensure the provision of necessary medical assistance and health care services to all children with emphasis on the development of primary health care;
- c) ensure the provision of adequate nutrition and safe drinking water;
- d) ensure the provision of good hygiene and environmental sanitation;
- e) combat disease and malnutrition within the framework of primary health care through the application of appropriate technology;
- f) ensure appropriate health care for expectant and nursing mothers; and
- g) support, through technical and financial means, the mobilization of national and local community resources in the development of primary health care for children.

Every parent, guardian or person having the care and custody of a child under the age of two years shall ensure that the child is provided with full immunization.

Every parent, guardian or person having the care of a child who fails in the duty imposed on him under subsection (4) of this section commits an offence and is liable on conviction for a first offence, to a fine not exceeding five thousand Naira; and a second or any subsequent offence, whether in respect of that child or any other child, to imprisonment for a term not exceeding one month. The Court, however, may make, in substitution for or addition to any penalty stipulated under subsection (5) of this section, an order compelling the parent or guardian of a child to get the child immunized.

CUSTODY/ MAINTENANCE OF CHILDREN

The concept of custody of children is essential for divorcing or separating parents. Custody is the right given to a parent by a court of competent jurisdiction to make essential decisions for a child's life. The parent who is awarded the custody is called the custodian parent. The parent without custody rights is called the non-custodian parent. It does not necessarily mean that the child physically lives with his custodian parent. The custodian parent of Court can decide otherwise and let the child live with the non-custodian parent, but this is limited to habitation

- Grant of an interim Order to make periodical payments to the child pending the substantive application.

There is no fixed formula for calculating child maintenance; it is on a case-by-case basis. The guide is the above-listed considerations and the overriding interest of the child.

Matrimonial Causes Act

Section 3(e) of the Act states that a marriage that takes place after the commencement of the Act is void where either of the parties is not of marriageable age.

Childs Rights Act

Under the Child's Right Act, a child has a right to maintenance from the parents and can maintain an independent action for it against the parents. This is not so under the Matrimonial Causes Act because there must be a matrimonial cause before the parents can claim ancillary reliefs for maintenance on behalf of the children.[82]

FEMALE GENITAL MUTILATION

Female genital mutilation comprises of all procedures involving the removal of the external female genitalia or other injuries to the female genital organs for non-medical reasons. The procedure is mainly dictated by tradition and is necessary to ensure marriage. It is also seen as a way of controlling a woman's sexuality.

Violence against Persons Prohibition Act

The VAPP Act prohibits the circumcision or genital mutilation of the girl child or woman. It provides that a person who performs female circumcision or genital mutilation of engages another to carry out such circumcision or mutilation commits an offence and is liable on conviction to a term of imprisonment not exceeding four years or to a fine not exceeding 200,000 thousand naira or both.[83]

Anyone who attempts to commit this offence, aids, abets or counsels another person to commit the offence is liable on conviction to a term not exceeding two years or a fine not exceeding 100,000 naira or both.

VIOLENCE

Violence means any act or attempted act which causes or may cause any person physical, sexual, psychological, verbal, emotional or economic harm whether this occurs in private or public life,

child physically lives with his custodian parent. The custodian parent of Court can decide otherwise and let the child live with the non-custodian parent, but this is limited to habitation (physical custody) as the custodian parent will still have full rights over decisions to be taken for and on behalf of the child.

Maintenance of the children, on the other hand, is the payment that a non-custodial parent makes as a contribution to the costs of raising his or her child.

Matrimonial Causes Act

This Act states that the Court may, in proceedings concerning the maintenance of children of the marriage, other than proceedings for an order for maintenance pending the disposal of proceedings, make such order, having regard to the means, earning capacity and conduct of the parties to the marriage and all other relevant circumstances

It may also, if it is satisfied that it is desirable to do so, make an order placing the children, or such of them as it thinks fit, in the custody of a person other than a party to the marriage and may include in the order such provision as it thinks proper for access to the child by the other party to the marriage, or by the parties or a party to the marriage, as the case may be.

The Court may, in proceedings under this Act, by Court in order require the parties to the marriage, or either of them, to make, for the benefit of all or any of the parties to, and the children of, the marriage, such a settlement of property to which the parties are, or either of them is, entitled (whether in possession or reversion) as the Court considers just and equitable in the circumstances of the case.[80]

The Court may, in proceedings under this Act, make such order as the Court considers just and equitable with respect to the application for the benefit of all or any of the parties to, and the children of, the marriage of the whole or part of property dealt with by ante-nuptial or post-nuptial settlements on the parties to the marriage, or either of them.

In Nigeria, maintenance is for children less than 21 years old. However, in special circumstances, the Court can use its discretion to award maintenance for a child of 21 years or more.[81] In determining the maintenance, the Court will have regard to all circumstances of the case, including the income, earning capacity, property and other financial resources of the party to which the maintenance order applies, as well as his financial needs, obligations and responsibilities. Also, all of the following must be considered in calculating child maintenance:

- The financial needs of the child.
- The income, earning capacity and property of the parties.
- Physical or mental disability of the child.
- How the child is being or is expected to be trained.
- Maintenance order can take the form of any of the following:
 - Periodical payment to the child or the Applicant for the benefit of the child.
 - Payment of a lump sum to the child or the Applicant for the benefit of the child.

community which causes or may cause any person physical, psychological, verbal, emotional or economic harm.

Violence on children have significant damages which could be immediate or long term. The initial effects include immediate pain, suffering, health problems, anger, humiliation, low self-esteem, anxiety among others while long term effects include risk for later interpersonal problems involving aggressive behaviour, substance abuse, depression, emotional distress, social withdrawal, suicidal tendencies and others.

Violence against Persons Prohibition

The Act provides that a person who willfully causes or inflicts physical injury on another person any means of a weapon, substance or object commits an offence and is liable on conviction to a term of 5 years' imprisonment or fine of 100,000 thousand naira.[84]

Section 13(1) on the other hand states that a person who causes emotional, verbal and psychological abuse on another commits an offence and is liable on conviction to a term of imprisonment not exceeding 1 year or to a fine not exceeding 200,000 or both. Furthermore, for a person who commits such offence and is liable on conviction to a term of imprisonment not exceeding 6 months or to a fine not exceeding 100,000 thousand naira or both.

The Act also criminalizes harmful traditional practices where it provides that a person who carries out harmful traditional practices on another commits an offence and is liable to imprisonment not exceeding two years or to a fine not exceeding 300,000 naira or both.[85]

The Childs Rights Act

Section 11 of the CRA provides that every child is entitled to respect of his dignity and no child shall be subjected to physical abuse, mental or emotional injury, abuse, neglect, maltreatment including sexual abuse, torture, inhuman or degrading treatment or punishment or held in servitude or slavery while in the care of his parents, legal guardian, school authority or any person having the authority of the child.

The Constitution of the Federal Republic of Nigeria

Section 34(a) of the Constitution provides that every individual is entitled to the respect of his dignity, and accordingly, no person shall be subjected to torture or inhuman, degrading treatment.

CONCLUSION

Nigerian Laws recognize the fundamental dignity of all children in Nigeria and the importance of ensuring their wellbeing and development. Children are often vulnerable to a number of crimes and exploitation; it then becomes the duty of the state to provide laws to ensure their protection, safety so they are able to develop to reach their full potential. The laws highlighted in this

publication are not exhaustive neither are they without loop holes but they recognize children have rights same as adults which should be protected.

END NOTES

[1] Deborah Borchers and Susanne Tanski, 'Foster Care' *Pediatric Clinical Advisor*[2007]<<https://www.sciencedirect.com/topics/medicine-and-dentistry/foster-care>> Accessed 27/4/2020.

[2] CRA 2003 s100.

[3] *ibid* s101.

[4] *ibid* s113.

[5] *ibid* s114.

[6] *ibid* s118.

[7] Adoption council of Ontario "What is Adoption" <https://www.adoption.on.ca/what-is-adoption> Accessed 25/05/2020

[8] CRA 2003 s 141(1).

[9] *ibid* s125.

[10] *ibid* s128.

[11] *ibid*.

[12] *ibid* s123(3)(a-b).

[13] Human Service Department 'Kinship Care'

[14] Save the Children 'Nigerian Report on Kinship Care'(2014)

[15] CRA 2003s30(2)(a).

[16] CRA 2003 s50(h).

[17] CRA 2003 s30(2)(a).

[18] Criminal code s249(b).

[20] CRA 2003 s28.

[21] Labour Act s59(1).

[22] ibids59(2).

[23] ibid s59(3).

[24] ibid s59(4)(5).

[25] ibis s60.

[26] ibid s49.

[27] This is in conflict with the law on children - Child Rights Act 2003 which is the grund norm when it comes to issues of children. The Child Rights Act in section 277 provides that a child is a person under the age of eighteen years.

[28] Trafficking in Persons Act 2015s23.

[29] ibid.

[30] CRA 2003 s21.

[31] CRA 2003 s23.

[32] Marriage Act s 19. This provision is in clear contrast to the Childs Rights Act which provides the legal age for marriage is 18.

[33] ibid s20.

[34] Criminal Code s341.

[35] ibid s372.

[36] VAPP Act 2015 s16(1).

[37] CRA 2003 s11.

[38] Cybercrimes Act 2015s23(4)

[39] CRA 2003 s30 (e).

[40] Cybercrimes Act 2015 s23(1)(a-c).

[41] ibid s23(1)(i).

[42] ibid s23(2).

[43] Janis Wolak and David Finkelhor and Kimberly Mitchell 'Child Pornography Possessors: Trends in Offender and Case Characteristics' *Sexual Abuse: A Journal of Research and Treatment* [2011]23(1) <<http://unh.edu/ccrc/pdf/CV204%20CP%20possessors.pdf>> Accessed 20/4/2020.

[44] Cybercrimes Act 2015 s23(1)(d-e).

[45] *ibid* s23(1)(ii).

[46] Trafficking in Persons Act 2015 s17.

[47] This is in conflict with the law on children - Child Rights Act 2003 which is the grund norm when it comes to issues of children.

[48] Trafficking in Persons Act 2015 s23.

[49] CRA 2003 s30(2)(a).

[50] *ibid* s30(2)(e).

[51] DRA s17 – 21.

[52] DRA 2018 s17.

[53] *ibid* s18(2).

[54] *ibid* s20.

[55] CRA 2003 s53(2)(b).

[56] ACJA s405.

[57] CRA 2003 XIII (sections 149-162).

[58] *ibid* s209.

[59] *ibid* s155.

[60] *ibid* s31.

[61] *ibid* s32(2).

[62] Criminal Code s218.

[63] *ibid* s221.

[64] This is applicable in states that have not domesticated the CRA

[66] *ibid* s23(3)(c)(i).

[67] *ibid* s23(3)(b-c).

[68] *ibid* s23(c)(ii).

[69] CRA 2003 s15.

[70] *ibid* s15(2).

[71] *ibid* s15(3).

[72] *ibid* s15(4).

[73] *ibid* s15(5).

[74] *ibid* s15(6)(a-c).

[75] UBE Act 2004 s2.

[76] *ibid* s3.

[77] *ibid* s4.

[78] CFRN 1999 s17(3)(c).

[79] *ibid* 17(3)(f)(h).

[80] MCA s72(1.)

[81] *ibid* s70(4).

[82] CRA 2003 s14(2).

[83] VAPP Act 2015s6.

[84] *ibid* s2.

[85] *ibid* s20.