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**CRITICAL EXAMINATION OF INTERNATIONAL LAW ON CHILD LABOUR IN
THE LIGHT OF CHILD TRAFFICKING AND DISABILITY IN NIGERIA**

Master's Thesis

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Tallinn

2023

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INTRODUCTION

As of May 2022, the United Nations Children's Emergency Fund (UNICEF) estimated that in the poorest countries of the world, there are slightly more than 1 in 5 children (between the ages of 5 to 17 years) who are engaged in exploitative labour which is detrimental to their health and development.¹ With about 86.6 million of these children in exploitative labour, the Sub-Saharan Africa region stands out with the most extensive prevalence of children in exploitative labour globally, and 72.1% of these children work within family units.² The agricultural sector amounts for the largest share of child labour worldwide, with about 70.0% of them engaged within.³ More so, the International Labour Organisation (ILO) has identified that the world had about 160 million children—with approximately 63 million girls and 97 million boys who were engaged in children in 2020.⁴ As for child trafficking, the ILO's Global Estimate of Modern Slavery report on forced labour and forced marriage that in 2016, about 24.9 million people were exploited under forced labour, 27% of the trafficking victims were children.⁵

Child labour is not a novel issue, and recent studies have highlighted that children are more likely to be trafficked for labour in domestic household services, work in factories, or agriculture rather than sex.⁶ These children participate in hazardous work which endangers their physical, emotional, and social well-being and, in very likely cases, leads to disabilities. Several international organizations (IOs) have implemented numerous legal structures to combat child labour with little to no success, which is caused mainly by the limited resources necessary for the execution of these instruments. For instance, stigmatization and shame have also caused several families to hide disabled children engaged in child labour from data and household services, which could aid the enactment and execution of realistic legal measurements in addressing child labour.⁷ Conclusively, this paper will evaluate existing international provisions on child labour considering child trafficking and the discrimination of disabled children in exploitative labour.

¹ UNICEF, *Child Labour* (2022), available at <https://data.unicef.org/topic/child-protection/child-labour/> (22.04.23)

² ILO UNICEF, *Child Labour: Global Estimate 2020, Trends and the Road Forward* (2021), available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_800278.pdf (22.04.23)

³ *ibid*

⁴ *ibid*

⁵ *ibid*

⁶ World's Children, *Child Trafficking Statistics*, available at <https://www.worldschildren.org/child-trafficking-statistics/> (22.04.23)

⁷ ILO, *Facts on Disability and Child Labour* (2011), available at file:///C:/Users/Samuel%20Abayomi/Downloads/wcms_165280.pdf (23.04.23)

Article 32 (1) of the Convention on the Rights of the Child (CRC) which states that, ‘States Parties recognize the right of the child to be protected from exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual moral or social development,’ is the most authoritative provision on child labour. This provision has been instrumental in categorizing trafficking and prostitution as parts of the worst forms of child labour, and children who might be engaged in any form exploitative labour to be prone to workplace violence, abuse, and accident.⁸ Following the identification of child trafficking as one of the worst forms of child labour, this connection has been the subject of some international conventions. For instance, a Protocol to the Convention against Transactional Organised Crime defines trafficking in person while linking it to child labour to include:

‘...the recruitment transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery, or practices similar to slavery, servitude or the removal of organs.’⁹

On the other hand, while child disability is often considered as the significant consequences of child labour, legal discussions establishing this relationship between disability or bodily defect due to exploitative labour is more identified especially in the definitions and legal provisions of child labour, than disabled children forced into exploitative labour.¹⁰ However, this has caused the author to shift her focus to address the position of international laws on disabled children engaging in exploitative labour due to their disabilities. The primary legal provision that supports this assertion is Article 16 (2) of the recent Convention on the Rights of Disabled Persons (CRDP), which states thus: ‘States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence by ensuring, among other things, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and

⁸ *ibid*

⁹ Art 3 (a), Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women, and Children, Supplementing the United Nations Convention against Transactional Organised Crime.

¹⁰ Art 32 (1), CRC.

caregivers.’¹¹ In addition, the Committee on the Rights of the Child (CoRC) on G.C. 9 recognized the vulnerability of children with disability to several forms of economic exploitation, including the worst states of child labour, trafficking, and begging.¹²

Unfortunately, discussions around these peculiar subjects of child labour briefly identified above do not often gain adequate scholarly attention because child labour is a contesting topic with severe consequences for children’s physical, social, and psychological development.¹³ From a global perspective, child labour is defined in its most basic terms as employment that aims to rob children of their youth, potential, and dignity and is detrimental to their physical and mental development.¹⁴ While this may capture what is meant by child labour, it has been argued that not all forms of employment engaged by children should be considered harmful because some jobs do not harm kids at such.¹⁵ However, this has led to the quest for a standardized definition of child labour. Accordingly, the International Conference of Labour Statisticians (ICLS) felt that by combining national reports from various countries under ILO’s Statistical Information and Monitoring Programme on Child Labour (SIMPOC), the quest for a standardized definition can be achieved. This however led to the adoption of the following definition which defines child labour as the ‘work that is mentally, physically or mostly dangerous and harmful to children and interferes with their schooling, by depriving them of the opportunity to attend school and by obliging them to leave school permanently; or by requiring them to combine school attendance with excessively long and heavy work.’¹⁶ While this definition is comprehensive, it is quite inadequate due to the fact that what may be defined as child labour lies within the extremes of the definition provided by SIMPOC.

As noted earlier, the Sub-Saharan African region stands out for its high prevalence of child labour. Nigeria, which owns the largest population in that region, has recently experienced an increase in the number of children in exploitative labour. Since Nigeria is quite active in

¹¹ Art 16 (2), CRDP

¹² Committee on the Rights of the Child, General Comment No 9 (2006): The Rights of Children with Disabilities, UN Doc. CRC/C/GC/9, 27 February 2007, 75

¹³ Md Nurul Momen, ‘Child Labour: History, Process, and Consequences’, W. Leal Filho et al (eds), *No Poverty, Encyclopedia of the UN Sustainable Development Goals* (2020) 1.

¹⁴ International Labour Organization, *What is Child Labour?*, available at <https://www.ilo.org/ipec/facts/lang--en/index.htm> (23.04.22)

¹⁵ N.O Enede, J.T. Enede, C.C. Agunwa, E.N. Ossai, U.E. Ezeoke, C.A. Idoko & C.O. Mbachu, Prevalence and Predictors of Child Labour among Junior Public Secondary School Students in Enugu, Nigeria: A Cross-Sectional Study, 21 *BMC Public Health* (2021)1339.

¹⁶ ILO/IPEC-SIMPOC, *Towards an Internationally Accepted Statistical Definition of Child Labour: Children’s Activities and their Definitions* (2007), 17

international politics, the author deems it necessary to evaluate the roles some international laws play in its domestic laws on the subject child labour with more light on trafficking and disabled children engaged in exploitative labour. This does not dispute the fact that in recent times, Nigeria had made considerable efforts to end the worst types of child labour with several programs, such as providing vulnerable families with seed capital to fund new businesses in areas with high child labour rates.¹⁷ These programs align with some of ILO recommendations which identified that economic growth, regard for labour standards, universal education, and social protection, and a comprehensive understanding of children's needs and rights can significantly reduce child labour.¹⁸ At the same time, the country's high rate of child labour results from a concrete legal framework and the lack of data on the current state of child labour, making the execution of specific policies difficult.¹⁹ Nevertheless, the country is equipped with a robust statute on child rights based on the international legal framework of the CRC, much of which will be evaluated in this paper concerning other international laws on child rights and labour.

Primarily, this paper addresses the effects of international law on the state of child labour with more focus on trafficking in persons and the exploitation of disabled children in Nigeria. In Chapter 1, the author traced the historical evolution of legislative instruments on child labour since the industrial revolution in the nineteenth century down to the twenty-first century and Africa's role in international law on the rights of child has played an important role in regionalizing peculiar African norms in the developing of children's rights. Chapter 2 evaluates the current framework of international instruments on child labour and how these may be linked to the trafficking of children and disabilities. The author dedicates chapter 3 to critically addressing the nature of the ratification and domestication of international provisions in Nigeria and the founding principles of child rights. Chapter 4 now focuses on systematically explaining the logical connection between the principles already established in Chapter 3 and how these principles are connected to the provisions of Section 28 of the Child Rights Act (CRA) 2003 of

¹⁷ Bureau of International Labor Affairs, *Child Labor and Forced Labor Reports: Nigeria* (2021), available at <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/nigeria> (11.04.23)

¹⁸ ILO, *Child Labour and Education* (2022), available at <https://www.ilo.org/ipecc/Action/Education/lang-en/index.htm#:~:text=Education%20is%20a%20crucial%20component,%2C%20in%20some%20cases%2C%20growth.> (11.04.23)

¹⁹ U.S. Naidu, Health Problems of Working Children – Spme Issues in Planning Long Term Care in U.S. Naidu and K.R. Kapadia (eds) *Child Labour and Health: Problems and Prospects Bombay* (1985); A.A. Aderinto and R.A. Okunola, Push, Pull, and Sustaining Factors of Child Labour in Nigeria, 6 *Psychologia: An international Journal* (199) 173.

Nigeria. Chapter 5 finally evaluates the challenges affecting the implementation of international principles in the CRA in Nigeria.

The research problem that this paper aims to address is the feasibility of evaluating child labour in light of child trafficking and the engagement of disabled children in exploitative labour while assessing the extent to which the domestic laws in Nigeria reflect the international legal frameworks of respective international conventions. More specifically, the research questions this paper will answer include, to what extent do previous and existing international instruments address child trafficking and disability in exploitative labour? Also, what are possibly the difficulties that undermine the successful implementation of these provisions in Nigeria and what may be done about them? And finally, to what extent does the Nigerian Child's Right Act (CRA) reflect the international framework and founding principles of CRC and other prominent provisions on child disability and trafficking in person? This would require attention to how effective these international provisions are in addressing internal issues in state parties while paying attention to potential political and social factors within the country.

Finally, the paper adopts a theoretical approach to the sources conducted and analytical methods which assists in identifying the links between international laws and the domestic laws of Nigeria all directed to answering the above research questions. It is expected that more attention will be directed towards evaluating the contents of international and domestic statutes, caselaw; and necessary official documents while considering their strengths and shortcomings and what may be done to manage them.

Keywords: child's rights, child labour, disability, exploitative labour.

1. A SYSTEMATIC REVIEW OF THE EVOLUTION OF CHILD TRAFFICKING AND CHILD DISABILITY: INTERNATIONAL LAW PERSPECTIVE

The engagement of children in manual labour did not start during the industrial revolution during the 1800s but has been in existence since time immemorial.²⁰ The industrial revolution only caused the significant increase in child labour following the invention of heavy machines.²¹ It is however unclear whether the term ‘child labour’ would apply to describe some of the working conditions of children before the emergence of the industrial revolution. While the term child labour is not entirely appropriate for the condition of children’s work before the revolution, in evaluating child slavery and other adverse farm children underwent, child labour may as well be established as to have existed before the revolution. In the autobiography of Olaudah Equiano, the author noted that enslaved people were usually ‘pent up together like so many sheep in a fold, without regard to sex or age,’ which insinuates that children faced virtually the same hardship as adults in slavery.²²

According to Lovejoy,²³ enslaved children were at first viewed as liabilities, but this began to change the moment was an increase in the demand of enslaved children at factories and farms, which also complemented the connection between child slavery and modern-day child trafficking. One of the foremost legal measures against the slave trade was the Slave Trade Abolition Act of 1807 which did not necessarily abolish slavery nor address child slavery but had some positive influence on child slavery. Moreover, Prussia’s Child Labour Law of 1849 is often credited as the first law on child labour enacted to forbid the employment of children younger than sixteen to work ten hours a day while outlawing both night and Sunday shifts.²⁴ Unfortunately, these statutes were ineffective in eradicating child labour because the new industrial states at that time were neither socially²⁵ nor technologically ready to overlook the

²⁰ Emma Griffin, *Child Labour* (2014), available at <https://www.bl.uk/romantics-and-victorians/articles/child-labour> (7.10.22)

²¹ *idid*

²² Olaudah Equiano, *The Interesting Narrative of the Life of Olaudah Equiano, or Gustavus Vassa, the African* (1789)

²³ Lovejoy Paul, The Children of Slavery – the Transatlantic Phase, 27 *Slavery & Abolition (A Journal of Slave and Post-Slave Studies)* (2011) 197.

²⁴ M.E., O’Sullivan, *Defending Prussian Social Policy: The Child Labour Law of 1839* (2006), available at <https://www.h-net.org/reviews/showrev.php?id=11358> (7.10.22)

²⁵ More so, non-enforcement may be tied to the repressive nature of these industrial empires where both the upper and lower classes generally viewed child labour as normative.

benefits of child labour.²⁶ According to Thompson²⁷ and von Mises²⁸, the ontology of child labour was primarily influenced by parents, which in most cases was to save the entire family from starvation and death.²⁹ On the other hand, Tuttle and Wegge³⁰ argued rather critically that society did not condone child labour at that time. However, still, parents did not often think twice before engaging their wards or children to work than sending them to schools.

1.1. Industrial Revolution and Child Labour

To begin with, the British Factory Act of 1833 first made some inputs on child labour, where it identified that children below the age of 9 were not to be engaged to work in factories and that the maximum working hours of children should not exceed 48 hours in a week. Also, children between 9 and 13 should work at least 8 hours daily, and those between 13 and 18 should work about 12 hours daily. The act also required children above thirteen to receive a form of elementary schooling for about 2 hours each day.³¹ While the working conditions of these children did not improve, Grundfossen³² argued that the central objective of the Act was only to reduce the hours of labour in the working day and not necessarily to improve the working conditions of the workers, including children. This may have resulted in the fact that the working conditions of these children were not considered as harsh.

Roughly eight decades after the passing of the Act, Warner compared these factories to prisons where children toiled for long hours with insufficient sleep and foul atmosphere, which resulted in disease and deformity.³³ Overworking on the part of children led to underdevelopment in their health, education, and training.³⁴ Furthermore, other Factory Acts of the nineteenth century include the Factory Acts of 1844, 1847, 1867, and 1901 which all may not have eradicated child labour per se but to a reasonable extent mitigated the miserable working conditions of children of

²⁶ Pradon Fanette, *Child Labour and Industrialization: The Children of a Revolution* (2015), available at <https://dune.univ-angers.fr/fichiers/20136043/20152MALLC5038/fichier/5038F.pdf> (9.10.22)

²⁷ E.P. Thompson, *The Making of the English Working Class* (1964).

²⁸ Ludwig von Mises, *Human Action* (1949)

²⁹ L.W. Reed, *Child Labor and the British Industrial Revolution* (2001), available at <https://www.mackinac.org/3879> (9.10.22)

³⁰ C. Tuttle and S.A. Wegge, 'Regulating Child Labor The European Experience', A Grief, L. Kiesling and J.V. Nye *Institutions, Innovation, and Industrialisation* (2020)

³¹ UK Parliament, *The 1833 Factory Act* (2022), available at <https://www.parliament.uk/about/living-heritage/transformingsociety/livinglearning/19thcentury/overview/factoryact/#:~:text=No%20children%20were%20to%20work,limited%20to%2012%20hours%20daily>. (9.10.22)

³² Fanette, *supra* note 26

³³ G.T. Warner, *Landmarks in English Industrial History*, (7th ed 1912), 311

³⁴ J. Humphries, *Child Labor: Lessons from the Historical Experience of Today's Industrial Economies*, 17 *The World Bank Economic Review* (2003) 175.

the nineteenth century.³⁵ Moreso aside these statutes, there were other reforms, such as those focusing on compulsory education, which contributed to massively reducing the number of child labourers in England and other developed industrialised states such as the United States of America (USA).

Child trafficking and child disability may not have been significant factors that spurred the advent of child labour during the industrial revolution in Europe in the nineteenth century. However, some evidence has highlighted the plights of some children conscripted for forced labour. According to Tuttle, apprenticeship during the nineteenth century included Paupers children/Parish Children who were mainly taken out from orphanages and workhouses as they were poorly accommodated, clothed, and fed but paid for their labours at the factories.³⁶ Pauper children were heavily exploited and taken away from their parents, akin to modern slavery, even though there were not many movements for these kids within the British Empire or Europe that may have been categorized as slavery (trafficking).

Accordingly, historians commonly agree with the two forms of child labour during the nineteenth century: Paupers Children and Free-Labour Children, which John Lawrence and Barbara Hammond first recorded in their book, 'The Rise of Modern Industry.' The Health and Moral Apprentice Act of 1807 was first passed to protect Parish children from cruel exploitation because the children were being "recruited" to work in factories without pay and in horrifying conditions. This may have been another factor linking the Paupers' situation to child trafficking.³⁷ While Paupers are the exact opposite of Free-Labour Children, Fanette noted that the latter helped to spread child labour throughout England since they were essentially orphans and errand boys who were the targets of abusive, aggressive parenting and single parents who had little money to support them.³⁸

In cases of child disability during the industrial revolution, the severity of the machinery in the industry they worked typically caused the victims to suffer accordingly. Exhaustion was among the main consequences of the industrial revolution's deplorable working conditions, as over-exhaustion significantly impacted their moral and physical health. Children were frequently

³⁵ The National Archives, 1833 Factory Act (2014), available at <https://www.nationalarchives.gov.uk/education/resources/1833-factory-act/#:~:text=In%201833%20the%20Government%20passed,under%20nine%20years%20of%20age> (9.10.22)

³⁶ Carolyn Tuttle, Child Labor During the British Industrial Revolution, available at <https://eh.net/encyclopedia/child-labor-during-the-british-industrial-revolution/> (9.10.22)

³⁷ Fanette, *supra* note 26

³⁸ Fanette, *supra* note 26

harshly punished for falling asleep at work, and others endured horrendous treatment, such as having their ears nailed to tables or being doused in water to keep them awake.³⁹ Another consequence of over-exhaustion is that it leads to the loss of limbs for many and deaths. Jane Humphries identified that children working as tappers who dozed off fell into pits, and others who forgot to shut trap doors were killed by poisonous gas.⁴⁰ Fanette also noted that children in the textile industry at that time were directly connected to dangerous machines. Children recruited as scavengers usually mingled under heavy looms while picking fallen pieces of cotton.⁴¹

In the eighteenth century, several people with impairments did not face severe discrimination and social marginalization in the workplace. Many people with incapacitating injuries and illnesses worked in mines because they were under financial stress for not working.⁴² Others have argued that in cases where people with disabilities could no longer work, they were usually fired with no recourse for compensation. While children with disabilities at that time were not prevented from working as long as possible, others had opportunities to seek literacy and pursue clerical jobs, as there were few children in education.⁴³ In response to this and other factors, the U.K. parliament enacted the Employer Liabilities Act of 1886, which gave men, women, and children the right to sue employers for any damage caused by working with them.⁴⁴ Despite difficulties surrounding this act, its implementation undoubtedly contributed immensely to eradicating children from labour, which could cause more physical damage.

1.2. Post-Industrial Revolution and Child Labour

The birth of the international laws on child rights did not come until the establishment of the League of Nations' Child Welfare Committee (CWC) and International Labour Organization (ILO), which were granted the power to examine issues relating to child welfare in State Parties

³⁹ Fran Abrams, What's Wrong with Child Labour BBC, available at <https://www.bbc.co.uk/programmes/b00tt575> (10.10.22)

⁴⁰ Jane Humphries, 'Childhood and Child Labour in the British Industrial Revolution', 66 *The Economic History Review* (2013) 395.

⁴¹ Fanette, *supra* note 24, at 32

⁴² Neil Prior, What Role Did Disabled People Play During Industrial Revolution? (2015) available at <https://www.bbc.com/news/uk-wales-33107078> (10.10.22)

⁴³ D.M. Turner, D. Blackie, *Disability in the Industrial Revolution: Physical Impairment in British Coalmining, 1780-1880* (2018).

⁴⁴ C.G. Wade, *A Treatise Upon the Employers' Liability Act of New South Wales* (1880)

and make suggestions regarding best practices.⁴⁵ Principles making up the best parts of the child's rights emerged from the pre-existing principles of the multidimensional transnational trends of the nineteenth century.⁴⁶ These trends came to be due to the development of colonization, which evolved into systematic conglomerations of networks and international associations.⁴⁷ These associations set up a permanent structure to represent them, thus serving as mediators or conducting research through expert and professional groups interested in making and distributing intervention models and reformist principles. Regarding child welfare, there were diverse groups and networks on the welfare of infants, the protection of young girls, and the fight against prostitution, constituting some difficulties in forming a unified movement.⁴⁸

Nevertheless, international child welfare representation was born at the eventual unification of these networks and international associations in the twentieth century.⁴⁹ As argued by Van Bueren⁵⁰, the expansion of international child rights law follows the evolution of international human rights generally, which resulted in three stages of development such as (1) the recognition by the international community that all individuals, including children, have been objects of international law requiring international legal protection; (2) the evolving stage of granting specific substantive rights to individuals, including children; and also, (3) the acknowledgment that to ensure for individuals to exercise their fundamental rights they must attest to possess the necessary procedural capacity to exercise and claim the rights and protection:

1.2.1. Recognition by International Associations

Following the emergence of World War I (WWI), many sovereign nations never thought child labour was a significant legal issue that should be pursued actively. Despite a few local statutes on child matters, child's rights were not substantial enough until international associations began to pry deeply into social issues surrounding children. International awareness of child labour

⁴⁵ Bice, *History of the Rights of the Child* (2014), available at [\(10.10.22\)](https://bice.org/en/history-rights-child/#:~:text=In%201919%2C%20the%20League%20of,the%20father%20of%20children%27s%20rights)

⁴⁶ S. Conrad and D. Sachsenmaier, *Competing Visions of World Order: Global Moments and Movements 1889's-1930's* (2012)

⁴⁷ Joëlle Droux, *A League of its Own? The League of Nations' Child Welfare Committee (1919=1936) and International Monitoring of Child Welfare Policies*, United Nations, *The League of Nations' Work on Social Issues: Visions, Endeavours and Experiments* (2016)

⁴⁸ *ibid*

⁴⁹ *ibid*

⁵⁰ Geraldine Van Bueren, 'A History of the International Law on the Rights of the Child', in *The International Law on the Rights of the Child* (1995) 1.

started when LON and ILO were established in 1919,⁵¹ and this constituted the first conscious steps towards making the subject of child labour a crucial international concern as politicians and experts perceived it as an instrument necessary for aiding physical reconstruction and achieving reconciliation through dialogues capable of building peaceful relationships with former enemy states.⁵² The recognition of this need by international associations evolved into what Trevor Buck had identified; that international child rights law can be compared to ‘vehicles for “manifesto” rights, that is, rights that reflect mere aspirations.’⁵³

Initially, these 'mere aspirations' came as a result of globalization which started in the latter part of the nineteenth century and only did not lead to the birth of nation-states utilising colonization but also the materialization of a vast network of international associations.⁵⁴ At the convergence of the various compartments in specific areas of child welfare, evidential proofs show that children are a particular group.⁵⁵ Since they cannot fend for themselves, more comprehensive care is required to understand their developing self, needs, behaviour, and behaviour-specific abilities.⁵⁶ In 1924, the CWC of the League was established to make itself an expert agent of the League with a collective centre for research and debate expected to produce standards on child welfare of potentially universal scope.⁵⁷ However, the CWC had emanated from two main existing international groups (ISCU and IAPCW), which had, in earlier dates—dedicated themselves to addressing the emerging social issues around child welfare during the post-war period. Their activities and relationship with the League were achieved through fierce competition. In 1920, the International Save the Children Union (ISCU) was established by Eglantyne Jebb and Dorothy Buxton in Geneva. They worked hard on the grass root in advocating that children should have rights for themselves.⁵⁸ ISCU's closest competition was the International Association for the Protection of Child Welfare (IAPCW), established in 1921 in

⁵¹ Droux, *supra* note 47

⁵² Droux, *supra* note 47

⁵³ Buck, *International Child Law* (2014 3rd)

⁵⁴ Sebastian Conrad and Dominic Sachsenmaier (ed), *Competing Visions of World Order: Global Moments and Movements 1880's-1930's* (2012)

⁵⁵ Joelle Droux, L'internationalisation de la protection de l'enfance: acteurs, concurrence et projets transnationaux (1990-1925), 52 *Critique Internationale* (2011) 17.

⁵⁶ Rita Hofstetter, 'La Transformation de l'enfant en ecolier (du 19 au milieu du 20 siecle): les 'eurekas' des sciences de l'homme naissantes, entre scientism et romantisme: un 'naturalisme de lenfance', 48 *Paedagogica Historica* (2012) 31.

⁵⁷ Droux, *supra* note 47

⁵⁸ Save the Children, *100 Years for Children* (2022), available at <https://www.savethechildren.net/about-us/100-years-children> (10.10.22)

Brussels and dedicated to a similar mission as ISCU Both merged in 1946 to form the International Union for Child Welfare (IUCW).⁵⁹

1.2.2. Substantive Child Rights Evolvement

To avoid the duplication of work by these agencies, the CWC focuses its efforts on legal and moral matters, which through the assistance of its assessors (ISCU and IAPCW), teamed together to enforce the Geneva Declaration of the Rights of the Child, which was established by the League of Nations' Fifth Assembly in 1924 and is often identified as the first international instrument explicitly acknowledging children's rights. Moreover, the Declaration did not mandate state parties but 'men and women of all nations' to prioritise child protection since children were eligible rights holders.⁶⁰ It is vital to remember that the Declaration also cited one of the League's initial contributions on child labour in paragraph IV that 'the Child must be put in a position to earn a livelihood and must be protected against every form of exploitation.'

As for the ILO, the Minimum Age (Industry) Convention 1919 and the Night Work of Young Persons (Industry) Convention 1919 were the organization's first set of conventions identifying their commitment to addressing the working conditions of children in exploitative labour. Moreover, the ILO Constitution, which is part of the Versailles Peace Treaty, points to the fact that the organization's protection of children has been a significant objective.⁶¹ However, the peace treaty rests on two pillars: collective security through the intervention of the League and the creation of social justice, which is the ILO's responsibility.⁶² These initial steps by the League and ILO set the ball rolling for developing substantive rights for international children's rights. This continued with the development of several instruments until the twenty-first century.

1.2.3. Procedural Capacity

The rebirth of the UN from the ashes of the ILO in 1946 created more opportunities beginning with the Charter establishing it through several instruments which have become responsible for the employment of more substantive and procedural laws on child rights advocacy, including labour. Article 1 (3) of the Charter of the United Nations 1945 identified that the purpose of the

⁵⁹ UIA Global Civil Society Database, *International Association for the Promotion of Child Welfare* (2022), available at <https://uia.org/s/or/en/1100058241> (15.10.22)

⁶⁰ Office of the United Nations High Commissioner for Human Rights, *Legislative History of the Convention on the Rights of the Child Volume 1*. UN Doc HR/PUB/07/1 2007

⁶¹ Marianne Dahlen, *The ILO and Child Labour* (2008) available at <http://uu.diva-portal.org/smash/get/diva2:321714/FULLTEXT01.pdf> (15.10.22)

⁶² *ibid*

organization is identified '[t]o achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.' By implication, the UN has shown through this provision its commitment to addressing any problem which may affect the 'economic, social, cultural, or humanitarian character of the United Nations, which no doubt includes child rights and child labour. However, to some, Article 1 (3) will only seem to be overstretched to include child rights since it did not add 'age' as a distinction of international problems where U.N. aims to address.

The procedural capacity established by the UN Charter provided opportunities for the adjudication of justice on any legal question directed by the General Assembly or the Security Council on any matter, including child rights and child labour.⁶³ More so, the Statute of the International Court of Justice, which is an annexed statute to the UN Charter, identifies in Article 36 that the International Court of Justice's (ICJ) 'jurisdiction comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.' Meanwhile, states parties and regional organizations that have adopted conventions like the United Nations Convention for the Rights of the Child (UNCRC) 1989, the ILO Minimum Age Convention 1973 (No 138), the ILO Worst Forms of Child Labour Convention 1999, and so on, can enforce their provisions in their respective courts following their ratification by the legislature.

1.3. The Evolution of International Law and Child Labour Law in Africa

The evolution of the reception of international law in Africa has always been perceived differently due to the inherent status of African countries as former colonies of many developed European Countries like England, France, Germany, etc., have inherited several of the international laws adopted by their colonial masters. In the case of *Ibidapo v Lufthansa Airlines*⁶⁴, it was identified that African States could be deemed *ipso facto* a high contracting party to a multilateral treaty extended to it by the legislation of its colonial master on the ground that it was formerly part of the state which ratified or adhered to it in its capacity as a high contracting party. For Nigeria, there are a series of letters exchanged between England and the Nigerian government at the time of independence, which highlighted that all the responsibilities

⁶³ Article 96, UN Charter.

⁶⁴ *Ibidapo v Lufthansa*, (SC 236/1994) [1997] 5 (04 April 1997)

and obligations of the United Kingdom towards international instruments have become assumed and apply to the Nigerian Government.⁶⁵

The origin of international law in Africa can be traced to the academic and legal contribution of scholars who had adjusted international laws from their Eurocentric nature to accommodating Afrocentric perspectives. According to T.O. Elias, the participation of Africa in the international community can be traced to hundreds of years before the advent of colonialism in the nineteenth century, primarily through international commercial practices of African kingdoms with major European countries.⁶⁶ For this reason, the contributionist school of thought rejects the notion that colonialism undermined Africa's involvement and participation in the development of international law. However, Africa should be seen as a co-equal player, participant, and shaper of international legal norms.⁶⁷

While colonial masters' participation influenced Africa's involvement in the early parts of international politics in the existing international communities, the beginning of the African countries' full participation in international communities started when sovereign African countries began to be admitted into the newly formed United Nations in 1945.⁶⁸ The coming of Organisation for African Unity (OAU) in 1963, a regional body that focused on eradicating colonialisation in the continent and promoting African unity, shared similar founding principles to the UN Charter and UDHR and complemented existing international laws on specific matters such as human rights, crimes, child rights, and other international issues.⁶⁹ The enactment of the African Charter on Human and Peoples Rights in 1981 provided the first provisions on forced labour. Article 5 states that '[e]very individual shall have the right to the respect of the dignity inherent in a human being and the recognition of his legal status. All forms of man's exploitation and degradation, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment, and treatment shall be prohibited.'

Whether the provisions in the African Charter on Human and Peoples Rights may apply to the child, the generic term 'every individual' is generally presumed to be inclusive, thereby accommodating every category human being may fall into, including age. The Universal

⁶⁵ *ibid*

⁶⁶ T.O. Elias and R Akinjide, *Africa and the Development of International Law* (1988)

⁶⁷ J.T. Gathil, 'Africa and the History of International Law', 48 *Albany Law School Research Paper* (2012) 1, at 10

⁶⁸ Elias, *supra* note 68

⁶⁹ UNCHR, *Chapter 6: The International and Regional Legal Framework* (2008), available at <https://www.unhcr.org/47cfad542.pdf> (16.10.22)

Declaration of Human Rights identified in Article 1 that ‘All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.’ This no doubt includes children. Later, express provisions on the child's rights became popular when the African Charter on the Rights and Welfare of the Child (ACRWC) was enacted in 1990. This statute made provisions for the right against degraded treatments such as child labour in Article 15, which states as thus, ‘every child shall be protected from all forms of economic exploitation and from performing any that is likely to be hazardous or to interfere with the child’s physical, mental, spiritual, moral, or social development.’

This statute has proved effective in delivering landmark judgments in most aspects of child rights, even in child labour, where the African Committee of Experts on the Rights and Welfare of the Child held in the case of *Minority Rights Group International & SOS-Esclaves (on behalf Said Quid Salem & Yarg Ould Salem) v Mauritania*⁷⁰ that State Parties must take the appropriate steps to safeguard children from economic exploitation of any kind, as well as from performing dangerous tasks or tasks that could harm their physical, mental, spiritual, moral, or social growth in both the formal and unofficial sectors. The victim in the case, Said and Yarg, worked for the EL Hassine family by herding and doing domestic chores seven days a week with no rest of their labour, a form of contemporary slavery or related slavery activities. The Committee of Experts⁷¹ emphasized that prohibiting slavery and activities similar to slavery has become international customary law and a *jus cogens* norm. They further held that when evaluating the alleged breach of Article 5 of the Charter, more attention should be directed toward how interconnected and interdependent children’s rights are. Said and Yarg’s servitude violates Article 15 of the ACRWC and other provisions on the right to a family environment, access to health care, and other essential services.

1.4. Conclusion

This chapter carefully traced the historical evolution of the legal response to child labour before and during the emergence of the industrial revolution; the latter witnessed an explosion in the engagement of underage children in hazardous working environments which resulted in some of them losing body parts and losing their lives. More so, the chapter highlighted the development

⁷⁰ *Minority Rights Group International & SOS-Esclaves (on behalf Said Quid Salem & Yarg Ould Salem) v Mauritania* 007/Com.003/2015, 003/2017.

⁷¹ African Committee of Experts on the Rights and Welfare of the child.

of child rights following the three stages of the development of the child's rights, as argued by Van Bueren⁷². These classifications tell the stories of the development of the rights of the child in the three stages 1) the recognition by the international community that all individuals, including children, have been objects of international law requiring international legal; 2) the evolving stage of granting specific substantive rights to individuals, including children; and also, 3) the acknowledgment that to ensure for individuals to exercise and claim the rights and protection.

The following chapter will explain the roles necessary conventions and treaties play in advocating against child labour, trafficking, and ill-treatment of children living with disabilities. Upon discovery, these stages may not be used to evaluate the development of child's rights in Africa since the AU worked on the existing framework of the CRC. However, regarding the importance of enacting ACRWC by the AU, Lloyd stated that the CRC overlooked several significant sociocultural and economic aspects unique to the African continent and that the Charter's body of rights considered these viewpoints to enact the African Charter on the Rights and Welfare of the Child.⁷³

⁷² Van Bueren, *supra* note 50

⁷³ Amada Lloyd, 'A Theoretical Analysis of the Reality of Children's Rights in Africa: An Introduction to the African Charter on the Rights and Welfare of the Child', 2 *African Human Rights Law Journal* (2002) 11, at 14.

2. UNDERSTANDING THE CURRENT FRAMEWORK OF INTERNATIONAL CHILD LABOUR LAW AND ITS RELATION TO CHILD TRAFFICKING AND DISABILITIES

In this chapter, much attention will be directed toward evaluating the international legal framework of international child labour and its implications. Also, some attention will be directed toward conceptualizing critical terms used throughout this paper. To carefully address this paper's topic, it becomes necessary it is approached through a fundamental human rights perspective. For instance, Article 32 of the CRC identifies that 'States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.' This means that child labour violates a child's right to protection from economic exploitation and harmful work; the right to education, good and healthy living; the right to life in extreme cases; and finally; the right to dignity.

2.1. The Right to Dignity of the Child

Child labour under the auspice of forced labour in Sub-Sahara Africa and, more narrowly, in Nigeria is rooted in the fundamental right to dignity in Section 34 of the 1999 CFRN, which states that '[e]very individual is entitled to the respect of his person, and accordingly- (a) no person shall be subjected to torture or to in humane or degrading treatment; (b) no person shall be held in slavery or servitude, and (c) no person shall be required to perform forced or compulsory labour.' In *Hassan v E.F.C.C*⁷⁴, the court held that the fundamental rights of the average citizen provided in Chapter IV of the 1999 CRFN, including the right to dignity, are rights 'which stands above the ordinary laws of the land and are in fact antecedent to the political society itself and it is a primary condition to civilized existence.'

The right to dignity is arguably the founding principle of most international treaties on human rights. For instance, this principle on the right to dignity was first identified in the preamble of the U.D.H.R. of 1945, which laid the foundation that '[a]ll human beings are born free and equal in dignity and rights....' However, while dignity has a practical meaning in establishing human

⁷⁴ *Hassan v E.F.C.C* (2014) 1 NWLR [Pt.1389] 607, at 610

rights to promote the common good, human dignity has further been identified as the basis for human rights.⁷⁵

On establishing the link between the right to dignity and children, Sigurdson identified that the 'violations of a child's physical or psychological integrity are a violation of the child's human dignity.'⁷⁶ By this statement, Polonko and Lombardo have argued that treating a person with dignity and respect is a birth right of all human society and not an earned privilege.⁷⁷ Freeman⁷⁸ also identified that the CRC adumbrated dignity in several places of the convention. He further stated that Article 37 (a) focuses on how children should not be subjected to cruel, inhumane, or degrading treatments, which no doubt protect the child's dignity and physical and mental integrity. Article 16 also provided that the child's rights should not be subjected to unlawful attacks on their honour and reputation and should be protected against such attacks.

In a way to enforce the right to dignity of a child, the Court of Justice of the European Union has highlighted in the case of *Netherlands v European Parliament and Council* that, indeed, human dignity is part of the fundamental rights recognized by the Union, which any human being can enforce at various stages of formation and development.⁷⁹ This implies that the principle can equally be applied to children. For instance, Nigeria's Child Rights Act of 2003 identifies in Section 11 that:

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

- (a) subjected to physical, mental or emotional injury, abuse, neglect or maltreatment, including sexual abuse.
- (b) subject to torture, inhuman or degrading treatment, or punishment.
- (c) subject to attacks upon his honour or reputation, or
- (d) held in slavery or servitude, while in the care of a parent, legal guardian or school authority, or any other person or authority having the care of the Child.

⁷⁵ C. McCrudden, 'Human Dignity and Judicial Interpretation of Human Rights', 19 *European Journal of International Law* (2008) 655.

⁷⁶ R. Sigurdson, 'Children's Right to Respect for their Human Dignity', in T. Haugli, A. Hylund, R. Sigurdson, L.R.L. Bendiksen (eds) *Children's Constitutional Rights in the Nordic Countries* (2019) 19, at 26

⁷⁷ K.A. Polonko and L.X. Lombardo, 'Human Dignity and Children: Operationalizing a Human Rights Concept', 18 *Global Bioethics* (2005) 17, at 19

⁷⁸ M.D.A. Freeman, 'Upholding the Dignity and Best Interests of Children: International Law and the Corporal Punishment of Children', 73 *Law and Contemporary Problems* (2010) 211, at 215

⁷⁹ *Netherlands v European Parliament and Council* European Court Reports 2001: 1(10A): 6699-7554

After weighing the reasons mentioned above on the significance of a child's right to dignity and welfare, it can be argued with authority that child labour and other related issues are attacks on a kid's dignity to lead a meaningful life. But it raises the question of why this right is not used instead as the foundation of other rights of the child.

2.2. International Child Labour Law and Child Trafficking

At this point, it is essential to note that even child labour as presented by the ILO is appreciated to be distinct within its scope; the idea of international child labour in this paper is not more than the principles that have been enshrined in the various child rights instruments especially the United Nations Convention on the Rights of the Child which includes: (1) non-Discrimination; (2) best interests of the child; (3) the right to survival and development; and (4) the views of the Child.⁸⁰ This evolution has also influenced how the international community, through the international child labour law, views and understands child trafficking. Child trafficking is a more significant part of human trafficking. It is generally defined as the 'recruitment, transportation, transfer harbouring or receipt of people through force, fraud or deception, to exploit them for profit.'⁸¹

By recruitment, an individual may be fraudulently moved from one place to another to work illegally. It borders around its close link with the demand for cheap malleable, and docile labour in sectors and among employees where operating conditions and the treatment grossly violate the human rights of the children. Also, child trafficking is primarily connected to child labour if it requires force, fraud, or coercion through physical or psychological tactics or by abusing the legal system.⁸² According to the ILO, child trafficking involves taking children out of their protected environment and preying on their vulnerability.⁸³ Also, some domestic statutes and agencies have argued that trafficking does not have to include the movement of victims from one country to another;⁸⁴ a child may still become a victim of trafficking within her country. The various forms of child trafficking include bonded labour, camel jockeying, child domestic

⁸⁰ UNICEF, *Four Principles of the Convention on the Rights of the Child* (2019), available at <https://www.unicef.org/armenia/en/stories/four-principles-convention-rights-child> (17.10.22)

⁸¹ United Nations: Office on Drugs and Crime, *Human Trafficking* (2022) available at <https://www.unodc.org/unodc/en/human-trafficking/human-trafficking.html> (17.10.22)

⁸² Development Services Group Inc, *Child Labor Trafficking: Literature Review* (2016), available at https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/child_labor_trafficking.pdf (17.10.22)

⁸³ ILO, *Trafficking in Children* (2022) available at <https://www.ilo.org/ipec/areas/Traffickingofchildren/lang--en/index.htm> (17.11.22)

⁸⁴ U.S. Department of State, *What is Modern Slavery?* (2017), available at <https://www.state.gov/what-is-modern-slavery/> (18.11.22)

labour, commercial sexual exploitation and prostitution, drug couriering, and child soldiering to exploitation or slavery-like practices in the informal industrial sector. Poverty has appeared to be the primary cause of child trafficking, especially in developing countries, as well as low-income family background, urbanization, large family size, an active demand for cheap labour, conflict and natural disasters, social factors, cultural practices, and so on.

While international regulations on child trafficking may appear modern, their continuous evolution through the past century does not make it any different from the slavery practiced before and during the industrial revolution. These laws on the abolition of slavery during the nineteenth century contributed to the development of the international anti-trafficking framework through international enforcement, mechanism, and the recognition of the immorality of exploitation.⁸⁵ This international anti-trafficking framework is typically grouped into three phases: the pre-League of Nations, the League of Nations, and the United Nations eras.⁸⁶

Firstly, the International Agreement for the Suppression of the White Slave Traffic series is identified as the first set of international conventions on human trafficking in a pre-league era in the twentieth century. The League's International Convention for the Suppression of Traffic in Women and Children in 1921 overtook it due to the series' shortcomings, especially during WWI. This Convention went far in setting worthwhile goals for the collective international effort towards scraping human trafficking, which was given aid through more grounded official recognition and necessary tools for research and addressing the problem.

Also, the establishment of the Advisory Committee on the Traffic of Women and Children saw the implementation of a system of annual reports of member states, making them form more individually centralized offices in their respective offices to track and information activities on women and children trafficking.⁸⁷ Even though no definition of child trafficking was provided in the convention, Article 6 identified its focus on protecting women and children through regulations and their protection through the employment search, which no doubt establishes the connection between child trafficking and child labour. Following the adoption of the UDHR in 1948 by the UN, trafficking was highlighted as one of the worst forms of human rights

⁸⁵ Corin Morcom and Andreas Schloenhardt, *All About Sex?! The Evolution of Trafficking in Persons in International Law* (2011).

⁸⁶ Jean Allain, White Slave Traffic in International Law, 1 *Journal of Trafficking and Human Exploitation* (2017) 1.

⁸⁷ Droux, *supra* note 47

violations; this, however, caused the instruments following the enactment of the UDHR to focus more on the connections between trafficking and its violation of human rights.

Kyung-Wha Kang has identified that the human rights violated by human trafficking include 'the right to life, to equality, dignity, and security; the right to health; the right to freedom of movement, freedom from violence and abuse, the right to be recognized as a person before the law.'⁸⁸ These rights prohibit discrimination based on race and sex, thus demanding equal rights for non-citizens, suspending arbitrary detention, forced labour, forced marriage, debt bondage, and sexual exploitation of children and women as it continues to champion freedom of movement and the rights to leave one's country.⁸⁹ *Rantsev v Cyprus and Russia*⁹⁰ held that 'trafficking in human beings, by its very nature and aim of exploitation, is based on exercising powers attaching to the right of ownership. It treats human beings as commodities to be bought and sold and put to forced labour, often for little or no payment, usually in the sex industry, but also elsewhere; it implies close surveillance of the activities of victims, whose movements were often circumscribed. It involves using violence and threats against victims living and working under poor conditions.'

For this reason, it becomes necessary that instruments on child trafficking and its link with child labour revolve around its violation of the human rights of the child who is the victim. In addition, OCHR has identified that this human rights-based approach should be the appropriate conceptual framework for dealing with trafficking since it is normatively founded on international human rights standards. Operationally, they work to advance and defend the cycle of human trafficking's abuses of human rights and member states' responsibilities under international human rights law. Additionally, these clauses aim to raise awareness of and address the discriminatory behaviours and unequal power relations that support trafficking, preserve impunity for traffickers, and deprive victims of justice.

⁸⁸ British Columbia *Human Trafficking Emphasis on Human Rights* (2019), available at [\(https://www2.gov.bc.ca/gov/content/justice/criminal-justice/victims-of-crime/human-trafficking/human-trafficking-training/module-1/human-rights#:~:text=In%201948%2C%20the%20United%20Nations,or%20degrading%20treatment%20or%20punishment\)](https://www2.gov.bc.ca/gov/content/justice/criminal-justice/victims-of-crime/human-trafficking/human-trafficking-training/module-1/human-rights#:~:text=In%201948%2C%20the%20United%20Nations,or%20degrading%20treatment%20or%20punishment) (18.11.22)

⁸⁹ United Nations Human Rights Office of the High Commissioner, Human Rights and Human Trafficking, Fact Sheet No 36, (2014)

⁹⁰ *Rantsev v. Cyprus and Russia* No 25665/04, 7

For example, Article 35 of CRC mentions that 'States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of the sale of or traffic in children for any purpose or in any form.' In a commentary by the OCHR on Article 35, trafficking is indeed a threat to the fulfilment of the rights of its victims to right to life, survival, and development, and member states need to take appropriate measures to prevent such trafficking, which may include: 'identifying unaccompanied and separated children; regularly inquiring as to their whereabouts and conducting information campaigns that are age-appropriate, gender-sensitive and in a language and medium that is understandable to the child.' This does not leave out the importance of adequate legislation and effective mechanism for enforcement concerning labour regulations and border crossing.⁹¹

In addition to the CRC, the Protocol to Prevent Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, is another essential instrument on child trafficking which is empowering the State Parties with the measures to curb trafficking. Article 5 of the Protocol requires that trafficking be criminalized, which means that State Parties may have to implement new measures subject to their legal system in criminalizing trafficking. More so, it does not mean that these instruments have achieved complete success, as it is often argued that while international laws are primarily clear in their provisions, there are still gaps that come from implementation. In many developing states, the ineffectiveness of protection measures for child trafficking is because child exploitation, child trafficking, and others remain on the increase as their traffickers and perpetrators form new ways to carry out their acts.⁹² Local governments' lack of total commitment to the fight is a big reason why implementations of international instruments have not been very successful.

2.3. International Child Labour Law and Child Disabilities

There are a handful of resources on the state of child disabilities but much fewer links to child labour. As agreed by Maureen et al., multiple investigators have found that children with disabilities are at increased risk for maltreatment, possibly due to their families' challenges and

⁹¹ Committee on the Rights of the Child, General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside their Country or Origin, CRC/GC/2005/6, 1 September 2005, § 50, at 52.

⁹² International Office for Migration (IOM), Increased Number of Nigerian Migrants Fall Victim to Sex Trafficking (2019), available at <https://www.iom.int/news/increased-number-nigerian-migrants-fall-victim-sex-trafficking-exploitation-mali> (20.11.22)

stress.⁹³ Since children with disabilities are less likely to start school on time or start at all, they are more vulnerable to child labour experiences. According to UNICEF Regional Office for South Asia, it was identified that 'the correlation between child labour and disabilities comes in three forms: children born with a disability who are pushed into labour, children who acquire disability on the job and/or children who have a family member with a disability and engage in labour to support the family.'⁹⁴ In the case of children born with a disability but forced into labour, the Convention on the Rights of Persons with Disabilities (CRPD) 2007 identifies people with disabilities in Article 1 as 'those who have long-term physical, mental, intellectual or sensory impairments which in interaction various barriers may hinder their full and effective participation in society on an equal basis with others.'

Article 25 (1) of the UDHR identifies that '[e]veryone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in the circumstances beyond his control.' This provision no doubt means that 'everyone,' including people with disabilities, is entitled to social and economic rights. Being disabled should not prevent any child from enjoying a good living standard. Interestingly, Article 25 (2) also indicates how the same rights apply to children 'whether born out of wedlock or not.' This can be seen as the first supposed link between child disability and labour. For this reason, a disabled child should not be deprived of the right to standard living and security because of his disability.

Before the enactment of the CRC of 1989, the Declaration on the Rights of Disabled Persons though unpopular, happened to be a huge step towards developing international laws directed towards disabled persons. While the Declaration did not specifically talk about the involvement of disabled persons in forced labour, it did identify in Paragraph 10 that disabled persons are to be protected from all forms of 'exploitation'—which usually is the central element of child labour. Paragraph 7 also identifies that their entitlement to the right to economic, social security, and decent living should be protected through their 'capabilities to secure and retain employment

⁹³ M.M. Black, and S.E. Oberlander, 'Psychological Impact and Treatment of Neglect of Children', Carole Jenny (ed), *Child Abuse and Neglect: Diagnosis, Treatment, and Evidence* (2010) 490.

⁹⁴ UNICEF Regional Office for South Asia, *Child Labour and Disability: A Sector Review* (2022), available at <https://www.unicef.org/rosa/media/18201/file/Child%20Labour%20and%20Disability:%20A%20Sector%20Review%20.pdf> (20.11.22)

or to engage in a useful productive and remunerative occupation and to join trade unions.' However, it is pretty endowed with some provisions on disability.

Article 2 of the CRC introduces the non-discriminatory principles where it identifies that 'states parties shall respect and ensure the rights outlined in present Convention to each child...without discrimination of any kind, irrespective of the child's...disability...or another status.'⁹⁵ However, disabled children are essentially part of the most vulnerable groups in any society. The non-discrimination principle plays out pretty well since social discrimination and stigmatization lead to marginalization and exclusion, which could threaten their survival development if physical or mental violence is involved.⁹⁶ Further, the provision does mean that the non-discriminatory principle may be adopted to protect a child from forced labour.

It has been identified that children with disabilities are often susceptible to several forms of economic exploitation, which involves various forms of child labour, such as drug trafficking and begging.⁹⁷ In General Comment No. 3 (2016) on Women and Girls with Disabilities, the Committee identified that girls living with disabilities might be forced to be isolated, segregated, and exploited within the family, or excluded from family activities, forced to engage in unpaid labour or household chores and prevented from attending school.⁹⁸ More so, Article 23 of the CRC is dedicated to children with disabilities as it charges states with the responsibility of creating an atmosphere 'conducive to the child's achieving the fullest possible social integration and individual development including his or her cultural and spiritual development which does not include an exploitative working environment.'

Most notable is the CRPD, the first legally binding instrument responsible for setting minimum standards for the rights of people with disabilities while stating that people with disabilities have the same rights as everyone else.⁹⁹ Article 7 confirmed that children with disabilities are entitled to 'all the human rights and fundamental freedoms on an equal basis with other children,' which no doubt guarantees all that earlier instruments on the issue of disabilities have stated. However, Article 16 mentions that state parties are responsible for implementing legislation to prevent

⁹⁵ *ibid*

⁹⁶ Committee on the Rights of the Child, General Comment No. 9 (2006): The Rights of Children with Disabilities CRC/C/GC/9, 27 February 2007, § 8, at 3

⁹⁷ *ibid*

⁹⁸ Committee on the Rights of Persons with Disabilities, General Comment No. 3 (2016) on Women and Girls with Disabilities, CRPD/C/GC/3, 25 November 2016, § 36, at 9.

⁹⁹ European Commission Employment Social Affairs & Inclusion, *United Nations Convention on the Rights of Persons with Disabilities* (2019), available at <https://ec.europa.eu/social/main.jsp?langId=en&catId=1138> (21.11.22)

exploitation, violence, and abuse, which could affect vulnerable children with disabilities. All instruments briefly evaluated above have clearly shown the potential connection between international child labour law and child disabilities; however, it is essential to note that just like many other instruments, the provisions are explicit, but the problem often comes through their implementation. As identified by UNICEF in South Asia, there are multiple ways through that child labour affects the health of children and causes disabilities, as children can experience hazards and acquire disabilities by working in specific sectors and jobs.

2.4. Conclusion

This chapter highlights a brief overview of the structural framework of international law on child labour and its relationship with trafficking and disabilities. Several references were made to conventions and other international treaties highlighting the importance of addressing child labour from a global law perspective. More so, the theoretical approach of this paper was established, which is the human rights approach focusing on the child's right to dignity. As argued above, it is expected that the basis for any statutes on child labour should be focused on respecting and upholding the dignity of the child involved. The right to dignity is the foremost of the rights on exploitative labour as recognized in the 1999 CFRN, unlike the founding principles of most child's rights statutes, which are: non-discrimination; best interests of the child; the right to survival and development; and (4) the views of the Child.¹⁰⁰ It is suggested that the right to dignity be made the founding principle on child labour, or the fifth founding principle of child's rights.

¹⁰⁰ UNICEF, *supra* note 82

3. LEGAL RESPONSE OF NIGERIA ON THE SYSTEMATIC MITIGATION OF CHILD TRAFFICKING AND DISCRIMINATION AGAINST CHILD DISABILITY THROUGH EXISTING INTERNATIONAL LAWS

Nigeria's legal attitude towards child labour has been expressed in many statutory provisions and phases since the government began as a sovereign nation. Ogunniran¹⁰¹ best explained child labour law in Nigeria in three stages: first, 1914-1943, when the government witnessed a spike in delinquency growth but no appropriate legal and institutional framework to address them. Juvenile delinquency continued significantly until the second phase between 1943-2003, which saw the establishment of some infrastructures mitigating the problems posed by juvenile delinquency. This era witnessed the enactment of the Child and Young People Law (CYPL)¹⁰² in 1958. However, this statute is the country's first statute on child welfare. It originated from the UK's Child and Young People Ordinance (CYPO), which got retained and adopted as one of the federation's laws. While the Eastern and Western Regions were the first to enact the law in 1946, Lagos adopted it in 1958.¹⁰³

The third phase witnessed the Child Rights Act (CRA.) enactment in 2003, with numerous child rights provisions. In addition, since 2003, a handful of the States Houses of Assembly have contributed to the gradual progress of child rights in the country following the establishment of specific infrastructures aiding the further enforcement of children's rights.¹⁰⁴ Despite the successes recorded in the third phase, the adoption of the CRA 2003 has been met with great difficulty due to its clash and incompatibility with existing customary laws and shariah laws. The CRA is generally agreed to be a by-product of both the UNCRC¹⁰⁵ and the ACRWC,¹⁰⁶ both of which were ratified in 1991 and 2001; they both have impacted the advancement of children's rights in the nation and the recognition of children as human beings with inherent rights and established a universal set of criteria and principles for their survival, growth, protection, and participation.

¹⁰¹ Iyabode Ogunniran, 'A Centurial Legal History of Child Justice Reforms in Nigeria 1914-2014', 2 *Law, Crime and History* (2015) 44, at 67

¹⁰² *ibid*

¹⁰³ S. Onuche and E. Onuche, 'Rights of the Nigerian Child: The Law, Myths and Reality', 5 *African Journal of Law and Human Right (AJLHR)* (2021) 55, at 60

¹⁰⁴ Ogunniran, *supra* note 107, at 67

¹⁰⁵ U.A. Dubagari, 'Legal Framework for the Elimination of Child Labour in Nigeria', 2 *International Journal of International Law* (n.d.) 144

¹⁰⁶ *ibid*

3.1. The Ratification and Domestication Process of International Laws in Nigeria

Section 12 of the 1999 CFRN provided for the ratification of international laws in Nigeria, which states as follows:

1. 'No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.
2. The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty.
3. A bill for an Act of the National Assembly passed pursuant to the provisions of subsection (2) of this section shall not be presented to the President for assent and shall not be enacted unless it is ratified by a majority of all the House of Assembly in the Federation,'¹⁰⁷

The provision mentioned above implies that the country's mere signatory or ratification of an international treaty does not automatically make it the law of the land. It must go through a more specific process for it to be effective. This two-way process is known as the dualist approach, which requires the re-enactment of any international instrument as domestic legislation before it can be operative within the country.¹⁰⁸ This two-way process stands for ratification and domestication. Ratification of international instruments has been defined as the 'final establishment of consent by the parties to a treaty to be bound by it, usually including the exchange or deposit of instruments of ratification.'¹⁰⁹ This expression also gained some support from Article 2 (1) (b) of the Vienna Convention on the Law of Treaties (VCLT), which states that: "ratification", "acceptance", "approval," and "accession" mean in each case the international act so named whereby a State establishes on the international plane its consent to be bound by a treaty.' However, these definitions do not accommodate domestication since they indicate that instruments are sufficient to be laws without passing them as domestic legislation.¹¹⁰

¹⁰⁷ Section 12, 1999 CFRN.

¹⁰⁸ L O Ugbajah, *AfCFTA in Focus: A Brief Note on Ratification and Domestication of International Agreements in Nigeria* (2020), available at <https://www.linkedin.com/pulse/afcfta-focus-brief-note-ratification-domestication-nigeria-ugbahjah/> (23.10.22)

¹⁰⁹ B.A Garner, *Black's Law Dictionary*, (10th ed 2014)

¹¹⁰ Anthony Aust, *Domestication of International Law Modern Treaty Law and Practice*, (2019)

3.1.1. Nigeria's Dualism Approach to International Law

According to Danjuma and Joel,¹¹¹ there are instances whereby the ratification of an international treaty may be binding upon the signature of a country operating the dualist system. A bilateral treaty is a good example, and this has been exercised in the ICJ's case of *Cameroon v Nigeria*,¹¹² which bordered around the issue of the question of sovereignty between the two countries where Nigeria violated its international responsibility on the fundamental principles of respect for frontiers inherited from colonisation under *uti possidetis*. Despite a declaration between the two countries, as argued by the defendant Nigeria did not carry out its part of the agreement because the former Head of State had signed the law at the time, but it was never ratified. Based on Article 36 (2) of the ICJ Statute, the court held that international law could become binding on a state upon signature regardless of whether or domestication has been done.¹¹³

In addition, Ugbajah¹¹⁴ has argued that ratification in states operating the dualist system is binding mainly on the country's relationship with other state parties in the agreement. Nevertheless, no court action may be carried out based on this agreement in national courts. Citizens and businesses cannot challenge the government in court for failing to enforce the agreement's provisions. However, in the case of domestication, Ugbajah is of the opinion that such a contract or instrument automatically becomes law in the country, allowing citizens to be able to find action based on the content of the device as in the case of *Abacha v Fawehinmi* (much of which will be discussed below) for the African Charter of Human and Peoples' Rights which is a statute in the Laws of the Federation of Nigeria (LFN).¹¹⁵

The domestication of instruments is based on an already ratified instrument, such as the C.R.A. 2003, which was based on the ratification of the CRC in 1991 and the ACRWC of 2001. In the case of *Abacha v Fawehinmi*, the Supreme Court affirmed this process where the court held that international treaties entered by the Nigerian government do not become legally binding until the National Assembly enacts them. The African Charter is a part of Nigerian law because it has

¹¹¹ Ibrahim Danjuma and K.A. Joel, 'The Legal Conundrum in the Implementation of the Convention on the Rights of the Child in Nigeria', 5 *Sriwijaya Law Review* (2021) 1

¹¹² Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening), 10 Oct 2002, ICJ Reports (2002) 303.

¹¹³ See Section 12 (1) and (2), 1999 CFRN.

¹¹⁴ Ugbajah, *supra* note 105

¹¹⁵ Ugbajah, *supra* note 105

been incorporated as a municipal (or domestic law) by the parliament as the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap. 10 Laws of the Federation of Nigeria 1990. By Cap. 10, and like all other laws, it must be upheld by the courts.¹¹⁶

Other provisions of the 1999 CFRN indicate that some domestication statutes would need to be re-enacted as state laws by the various States Houses of Assembly, which was the case with the CRA Section 12 (2) of the 1999 CFRN identified that to execute a treaty; the National Assembly might pass legislation for the Federation or any portion thereof regarding subjects not covered by the Exclusive Legislature List. While item 31 of the Exclusive Legislative List of the 1999 CFRN highlights the 'implementation into treaties relating to matters on [the] list,' the issues relating to the child's rights or the welfare of children are not among the exclusive legislative list nor even in the concurrent legislative list, where the National Assembly and State Houses of Assembly share the same jurisdiction state issues. It can, however, be assumed that the issue of children is that belonging to the residual list, which exclusively is the responsibility of the State Houses of Assembly. Also, Section 12 (2) requires that before statutes may be adopted as national laws of the country, they must have been ratified by at least a 'majority of all the House of Assembly in the Federation', even before assenting by the President of the country.

3.1.2. The Ratification and Domestication Process of the UNCRC and ACRWC

Before the successful enactment of the CRA in 2003, several attempts were made to domesticate the CRC into law following its ratification on March 21, 1991.¹¹⁷ Among these attempts was a comprehensive children's bill, drafted and presented to the National Assembly for approval in 1993 and later opposed by several religious and traditional groups on the ground that it largely conflicted with customary and Islamic norms.¹¹⁸ These issues also affected the enactment of the CRA bill.¹¹⁹ As a result, the federal government requested a special committee to review the bill, considering religious and customary laws. This also led to another failure due to the same religious and traditional rules.¹²⁰ At this point, many national and international non-

¹¹⁶ *Abacha v Fawehinmi*, S.C. 45/1997, 28 Apr 2000,

¹¹⁷ D. Oguniyi, 'The Challenges of Domesticating Children's Right Treaties in Nigeria and Alternative Legal Avenues for Protecting Children', 62 *Journal of African Law* (2018) 447, at; Committee on the Rights of the Child, Consideration of reports submitted by States parties under articles 44 of the Convention, UN Doc. CRC/C/NGA/3-4, 5 January 2009, at 11

¹¹⁸ *ibid*

¹¹⁹ *ibid*

¹²⁰ *ibid*

governmental organizations began criticizing the decision to abandon the bill. They urged the legislature to reconsider it, leading to the CRA's adoption in 2003.¹²¹

It is important to note that this statute repealed and reversed other child rights and welfare provisions in the country. For instance, definitions given to a child under these former statutes on child's rights were mainly repealed to adopt the 18 years age grade of the CRA. The Children and Young People's Act of 1958 defines a child as a person under the age of 14 years and a young person as someone who has attained the age of 14 but is under the age of 17. Similarly, Section 91 of the Labour Act defined a child as a young person under 12 years. This no doubt shows that the CRA is responsible for unifying all the several pieces of the existing child's right under one primary statute but at a languid pace which has led to its applicability in about 25 of the 36 states in Nigeria. However, Egede noted that the structure of the CRA does not reflect the provisions of the CRC 1989, nor did it acknowledge its domestication from CRC and ACRWC as in the case of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.¹²²

While its roots may be connected to these international conventions, the enactment process is just like any national law of the country. A former Nigerian Minister of Women's Affairs confirmed that the CRA contributes to the country's commitment reiterated under the CRC and the ACRWC¹²³ Regarding the adoption of the ACRWC alongside the CRC in the process of making the CRA, some have argued that CRC misses certain important socio-cultural and economic realities which are peculiar to the African continent and saw the need for perspectives of African cultural values and experiences to be included in the body of rights in the Charter.¹²⁴ In this light, Lloyd has argued that while it was necessary for the protection of children's rights at the supranational level, it became necessary since regions exhibit unique human rights problems and priorities that they wish to address, which may not have been addressed adequately at the international level due to background disparities of each state.¹²⁵ He further identified an instance where protection against discriminatory practices and other harmful and prejudicial

¹²¹ Oguniyi, *supra* note 117

¹²² D M Chirwa, 'The Merits and Demerits of the African Charter on the Rights and Welfare of the Child', 10 *The International Journal of Children's Rights* (2002) 155

¹²³ Egede, *supra* note 15, at 268.

¹²⁴ Egede, *supra* note 15

¹²⁵ Amada Lloyd, 'A Theoretical Analysis of the Reality of Children's Rights in Africa: An Introduction to the African Charter on the Rights and Welfare of the Child', 2 *African Human Rights Law Journal* (2002) 11, at 14.

regional cultural practices is more peculiar to Africa than the issue of in-vitro fertilization, which may be a significant issue in Europe.¹²⁶

3.1. Effects of C.R.A. 2003 Domestication on the 1999 C.F.R.N. and Other Nigerian Laws

3.2.1. CRA 2003 Domestication and 1999 CFRN

Several cases have identified the supremacy of the constitution of the Federal Republic of Nigeria, including the case of *Abacha v Fawehinmi*, as mentioned above, which recognizes that '[t]he Constitution is the supreme law of the land: it is the *grundnorm*....Section 1(1) is read harmoniously with Section 1(3) rather than disjointly, as counsel seemingly seeks to do; the concept of constitutional supremacy- as it is generally understood will be placed in focus because Section 1(3) stipulates that "any other law" which is inconsistent with the Constitution. The Constitution will prevail, and that other law shall be void to the extent of the inconsistency. More importantly, having been incorporated into the Nigerian municipal laws, the African Charter cannot be preferentially treated but should rank at par with other municipal legislations and be subordinated to the Constitution.'¹²⁷

The above case unlocks a feature of the dualistic approach which had been espoused in the U.S. case of *Chae Ping v. United States* that treaties have the same legal standing as congressional acts and can be amended or repealed similarly whether such an amendment or repeal is sensible or is a matter for the courts to decide. To reiterate this principle, the 1999 CFRN identifies in Section 1 as follows:

'1 (1) This Constitution is supreme, and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.

(3) If any other law is inconsistent with the provisions of this constitution, this constitution shall prevail, and that other law shall, to the extent of the consistency, be void.'¹²⁸

While the provisions of the constitution on supremacy are express and may never be called to question in any ordinary circumstances, Egede highlighted some concerns which might give birth to difficulties in applying domesticated international laws. First, he noted that in the case of the application of the domesticated convention, there is a real possibility of a clash between the

¹²⁶ *ibid*

¹²⁷ *Abacha v Fawehinmi*, S.C. 45/1997, 28 Apr 2000,

¹²⁸ Section 1 (1) and (3), 1999 CFRN.

constitutional provisions of the constitution and some provisions of international conventions.¹²⁹ This further implies that, even though the instrument is only a supplement and not necessarily a derogation of the Constitution, there is the possibility that some provisions in the instrument may not be recognized in the Constitution. For example, an attempt to enforce Article 17(1), which recognizes the right of a child to education, is not included in Chapter IV of the constitution, which governs the fundamental rights of the citizens of Nigeria, but then can be found in Section 18(3) of Chapter II of the constitution on the basic objectives and directive principles of state policy which has been argued to be non-justiciable and with the implication that it does not pose similar force to the right to life or fair hearing which are fundamental rights.¹³⁰

3.2.2. *CRA Domestication and Other Nigerian Legislation*

No clause identifies that the CRA is superior to any other legislation in the country. It may only be superior to the statutes it has repealed, which is likely the Children and Young Person's Law (CYPL). However, its relationship with other legislation may serve different purposes, such as explaining terms used in the CRA, for more provisions on its limited clauses. For instance, Section 29 of the CRA, which links to Sections 58 to 62 of the Labour Act, provided more information for other conditions of young persons engaged in employment. The only repercussion of this is the possibility of clashes in these provisions.

3.2. The International Legal Framework of the Child Rights Act 2003

According to M.T. Ladan, the CRA takes a sharp turn by incorporating into one legislation all the rights, responsibilities, and all legal matters relating to children, as well as roles, duties, and obligations of state and non-state actors in creating packed full legislation for children.¹³¹ It is divided into 24 chapters parts and 11 schedules. While each part broadly addresses rights and responsibilities, protection and welfare of children, duties and responsibilities of government, institutions for children, and other miscellaneous provisions. The schedules for respective

¹²⁹ Egede, *supra* note 15,

¹³⁰ See Section 6(6)(c) 1999 CFRN which states as follows: '[t]he judicial powers vested in accordance with the foregoing provisions of this section – (c) shall not, except in otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental objectives and Directive Principles of State Policy set out in Chapter II of this constitution.'; However Section 13 of the 1999 CFRN identifies the provisions in Chapter II to be the 'duty and responsibility' of all organs of the government including the judiciary to 'observe and apply the provisions of Chapter II.

¹³¹ M.T. Ladan, An Overview of the Child Rights Act, 2003 (2021), available at <https://nji.gov.ng/wp-content/uploads/2021/12/AN-OVERVIEW-OF-THE-CHILD-RIGHTS-ACT-2003-BY-PROF.-LADAN.pdf> (04.12.2022)

sections provide enough rules, regulations, procedures, and forms for applications and decisions.¹³² On the nature of the CRA, Braimah argued that the CRA did not only indicate the country's active intention to protect and preserve the rights of the Nigerian child, but it also specifies that the best interests of the Nigerian child should be central to all actions as it highlights virtually all aspects through which a child might be a victim to abuse.¹³³ The founding legal principles of child rights in the CRC and ACRWC will now be evaluated to reflect the international framework of the CRA.

3.3.1. General Principles

Non-discrimination, best interests,¹³⁴ right to participation,¹³⁵ survival, and development,¹³⁶ the views of the child,¹³⁷ and the right to be heard¹³⁸ have all been agreed to be the founding principles of child's rights, especially the CRC. It has been argued that these principles contribute to the realization and execution of all the other rights in the CRC.¹³⁹ They assist in conditioning the expected attitude towards children and their rights based on the idea that they share the same rights as other human beings.¹⁴⁰ As highlighted by Lundy and Byrne,¹⁴¹ the realization of these principles did not come until after the convention's adoption and not during its development, which no doubt contributes to its fluid state and lack of consensus. However, it has been observed that other statutes of child's rights, both at the regional and national level, especially the CRA, follow the pattern established by the CRC.

¹³² *ibid*

¹³³ T.S. Braimah, 'Child Marriage in Northern Nigeria: Section 61 of Part I of the 1999 Constitution and the Protection of Children against Child Marriage', 14 African Human Rights Law Journal (AHRLJ) (2014) 474, at 480.

¹³⁴ UNCHR, Chapter 6: The International and Regional Legal Framework (2008), available at <https://www.unhcr.org/47cfad542.pdf> (08.12.22)

¹³⁵ UNCHR, Chapter 6: The International and Regional Legal Framework (2008), available at <https://www.unhcr.org/47cfad542.pdf> (08.11.22) (08.12.22)

¹³⁶ UNICEF, Four Principles of the Convention on the Rights of the Child (2019), available at <https://www.unicef.org/armenia/en/stories/four-principles-convention-rights-child> (08.12.22)

¹³⁷ *ibid*

¹³⁸ *Ibid*

¹³⁹ Z. Vaghri, J. Zermatten, G. Lansdown, R. Ruggiero, (eds), *Monitoring State Compliance with the UN Convention on the Rights of the Child: An Analysis of Attributes* (2022)

¹⁴⁰ UNICEF, *Four Principles of the Convention on the Rights of the Child* (2019), available at <https://www.unicef.org/armenia/en/stories/four-principles-convention-rights-child> (08.12.22)

¹⁴¹ L. Lundy and B. Byrne, 'The Four General Principles of the United Nations Convention on the Rights of the Child: The Potential Value of the Approach in other Areas of Human Rights Law', in E. Brems; E. Desmet; and W. Vandenhoele (eds), *Children's Rights Law in the Global Human Rights Landscape Isolation, Inspiration, Integration?* (2017)

3.3.1.1. Right to Non-discrimination (See Article 2 of the CRC; Article 2 of the ACRWC)

The CRA identifies in Section 10 as follows:

1. 'A child shall not be subjected to any form of discrimination merely by reason of his belonging to a particular community or ethnic group or by reason of his place of origin, sex, religion, or political opinion.
2. No child shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.'¹⁴²

Non-discrimination is synonymous with equality¹⁴³ Abramson identified non-discrimination as both a substantive and a procedural right, thereby contributing to the realization of all other rights. Discrimination, however, boils down to the failure to treat individuals equally when there is no ground or justification for some to be favoured over others.¹⁴⁴ According to the Human Rights Committee, discrimination is 'any...exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on equal footing, of all rights and freedoms.'¹⁴⁵

It is easy to link the right to non-discrimination to a child's rights generally or to children living with disabilities using the abovementioned provisions; however, explaining this concept in line with child labour might prove difficult but attainable. This is because child labour is complex and may be linked to several subjects like gender, disability, ethnic or social origin, membership of a minority group, age, nationality, and immigration under the general principle of the right to non-discrimination. In the case of gender, there is much information on how children of both male and female genders have been susceptible to various degrees of discrimination under child labour. According to Save the Children, children's engagement in child labour is determined by broader social norms which identify the roles that the male and female gender play in the home

¹⁴² Section 10, CRA

¹⁴³ A.F. Bayefsky, 'The Principle of Equality or Non-discrimination in International Law', 11 *Human Rights Law Journal* (1992) 1, at

¹⁴⁴ B.A Garner, *Black's Law Dictionary*, (10th ed 2014)

¹⁴⁵ UN Human Right Committee, CCPR General Comment no.18 (1989) Non-discrimination, CCPR/C/21/Rev.1/Add.1, 21 November 1989, available at <https://digitallibrary.un.org/record/84170> (09.11.22).

and society.¹⁴⁶ For instance, while boys are more likely to engage in harmful work such as construction, heavy farmwork, factory work, and so on, girls are much more likely to bear the responsibility for household chores and to be victims of sexual exploitation or slavery.¹⁴⁷ In this light,

On focusing on the female gender, Gibbons et al.¹⁴⁸ have argued that the amount of time children spend in economic activities is more directed to the male gender. In contrast, the time girls spend on household chores surpasses that of the male gender. They concluded that since girls are more likely to be more engaged with household chores than boys, addressing these aspects through child labour and the impact is very much biased against the female child. Considering the soundness of the above argument, it is difficult for it to be examined in the light of the actual definition of child labour where key factors such as ‘exploitation’ or ‘harmful practices to the psychological and physical well-being of a child’ are often used as indicators to highlight what is meant by child labour. It is absurd to conclude that the amount of time spent by a girl child on household chores is capable of causing physical or moral danger to her. The UN Convention on the Elimination of All Forms of Discrimination against Women (1979) mentions in Article 5 that:

‘States Parties shall take all appropriate measures:

1. To modify the social and cultural patterns of conduct of men and women, to achieve the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.
2. To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.’¹⁴⁹

Contrary to the claims of Gibbons et al., Article 5 (b) of the UNCEDAW recognizes that specific roles are necessary for the development of ‘maternity as a social function’ or ‘common

¹⁴⁶ Save the Children, *Gender Discrimination Causes Inequality*, available at <https://www.savethechildren.org/us/charity-stories/how-gender-discrimination-impacts-boys-and-girls> (09.12.22)

¹⁴⁷ *ibid*

¹⁴⁸ E.D. Gibbons, F. Huebler and E. Loaiza, ‘Child Labour, Education and the Principle of Non-Discrimination’, *UNICEF Staff Working Papers Division of Policy and Planning Series* (2005) 1, at 4

¹⁴⁹ Art 5, CEDAW

responsibility of men and women in upbringing and development of their children’ should properly be understood by state parties before making regulations against them. So, the upbringing of children, especially the female child, in the path of reasonable degrees of household chores should be categorized as a form of child labour harmful to a child's physical, psychological, and moral well-being. For instance, it has been argued that a reasonable amount of household chores is necessary for pregnant women, significantly increasing their MET-hours/week rather than leisure time physical activity or structured exercise.¹⁵⁰ Gibbons et al. further claimed that household chores are primarily child labour because it is a barrier to the child’s right to education, which is misleading. After all, the unavailability of education is primarily a state issue.

Also, the Committee on the Elimination of Discrimination against Women, in its General Recommendation No. 39 (2022), highlighted the reasons behind the girl child being discriminated into child labour to include ‘the lack of education facilities designed, established or controlled by Indigenous Peoples; poverty; discriminatory gender stereotypes and marginalization; limited cultural relevance of educational curricula; instruction solely in the dominant language; and the scarcity of sexuality education.’¹⁵¹ However, no inference was made to household chores or the amount of time spent on them. However, they are simply barriers to the right to education for indigenous women and girls—the CRA primarily shares this principle with the UNCRC and ACRWC.

3.3.1.2. The Best Interest of a Child (See Article 3 of the CRC; Article 4 of the ACRWC)

The CRA identifies in Section 1 as follows:

In every action concerning a child, whether undertaken by an individual, public or private body, institution or service, court of law, or administrative or legislative authority, the best interest of the child shall be the primary consideration.

¹⁵⁰ Z. Hoodbhoy, R. Qureshi, R. Iqbal, Q. Muhabat, ‘Household Chores as the Main Source of Physical Activity: Perspective of Pregnant Pakistani Women,’ 68 *Journal of the Pakistan Medical Association (JPMA)* (2018) 565, at 568.

¹⁵¹ Committee on the Elimination of Discrimination against Women, General on the Elimination No. 39 (2022) on the Rights of Indigenous Women and Girls, CEDAW/C/GC/39, 31 October 2022, § 47, at 18

The best interest of the child has been evaluated by many and may summarily be explained to be the support of a child through infancy to adulthood.¹⁵² The Committee on the Rights of the Child identified that the ‘concept of the child’s best interests is aimed at ensuring both the full and effective enjoyment of all the rights recognized in the Convention and the holistic development of the child.’¹⁵³ John Eekelaar’s definition of the best interest of the child has been ranked top by many where he defines best interests as ‘basic interests, for example to physical, emotional and intellectual care development interests, to enter adulthood as far as possible without disadvantage, autonomy interests, especially the freedom to choose a lifestyle of their own.’¹⁵⁴ Undoubtedly, the principle of the best interests is one of the most complicated concepts in the rights child to pin down, with the implication of what it encompasses depending on how the concept is understood.¹⁵⁵

The CoRC in GC 14 further identified that a child's best interest must be applied to all matters concerning a child and must be considered in resolving any possible issue among the rights enacted in the convention or other human rights statutes in the best interest of the child.¹⁵⁶ In the ECtHR case of *Neulinger and Shuruk v. Switzerland*,¹⁵⁷ the court recognized that authorities must carry out a comprehensive assessment to determine the child's circumstances while considering all necessary factors, including the child’s relationship with each parent and evaluating the child’s social, cultural and psychological background, with the child’s view considered in line with their age and maturity respectively. On the correlating link between the ‘best interest’ and child labour, emerging issues on the cultural practices concerning child labour provide an opening that explores the indeterminacy of the best interest principle.¹⁵⁸

For instance, some African cultures have considered the duty of children to engage in some form of manual labour, the refusal of which could lead them to be ostracised or stigmatized.¹⁵⁹ On the

¹⁵² IFSW, *The Best Interest of the Child* (2009), available at <https://www.ifsw.org/the-best-interest-of-the-child/-:~:text=Best%20Interest%20of%20the%20child%20The%20best%20interest,society%20and%20his%2Fher%20responsibilities%20to%20the%20wider%20community.> (10.12.22)

¹⁵³ Committee on the Rights of the Children, General Comment No. 14 (2013) on the Right of the Child to have his or her Best Interests taken as a Primary Consideration (Art. 3, Para. 1), CRC/C/GC/14, 29 May 2013, § 4, at 3

¹⁵⁴ J. Eekelaar, ‘The Importance of Thinking that Children have Rights’, 6 *International Journal of Law and the Family* (1992) 230

¹⁵⁵ Freeman, *supra* note

¹⁵⁶ Committee on the Rights of the Children, General Comment No. 14 (2013) on the Right of the Child to have his or her Best Interests taken as a Primary Consideration (Art. 3, Para. 1), CRC/C/GC/14, 29 May 2013, § 4, at 3

¹⁵⁷ *Nuelinger and Shuruk v. Switzerland* 41615/07 6 July 2010

¹⁵⁸ P. Alston and B. Gilmour-Walsh, *The Best Interests of the Child: Towards a Synthesis of Children’s Rights and Culutral Values* (1996)

¹⁵⁹ *Ibid*

other hand, it could be in the best of the child to avoid any form of forced labour, which could sometimes be physically and mentally damaging to the child. According to Rwezaura, young girls in some African communities must carry babies on their backs and hips before they are mature enough for such weight.¹⁶⁰ Forced labour and other household activities may also prevent these girls from engaging in formal education or interfere with the instruction. Other implications include interference with the child's play and leisure time which are all necessary for the child's development.¹⁶¹

As for child trafficking, authorities are expected to take specific measures according to the assessment of each case in the best interests of a child; this might be done by appointing a guardian who could represent a such interest or provide support to the family of the child affected.¹⁶² In extreme cases, help may be provided by ensuring authorities do their best to protect the child's dignity. The Russian and Cypriot authorities failed to achieve this in the ECtHR case of *Rantsev v. Russia and Cyprus*.¹⁶³ In this case, after the death of a young Russian girl who had entered Cyprus on a cabaret artist visa. Since the young girl had died under suspicious circumstances, her father filed a complaint against the Russian and Cyprus authorities that they had not appropriately investigated the girl's death. The court first identified that the trafficking of human beings could be connected to Article 4 of the ECHR, which prohibits slavery and child labour. Even though it was not stated explicitly, the court highlighted that the administrative practice of employers not issuing cabaret dancers with adequate protection against trafficking and exploitation impliedly shows that these dancers' best interests were not considered. It was also identified that the Cypriot authorities should have known better that the young Russian girl was at risk of being trafficked. Appropriate measures were not taken to prevent the girl from being exploited. Thus, her best interests were not considered.

The best interest of a disabled child will be considered first in matters relating to child labour if the child is primarily engaged in it. According to Pickar and Kaufman, when assessing the child's best interests, the components such as psychological, psychiatric, educational, social, medical, legal, and financial should be acknowledged and carefully weighed from a risk-benefit

¹⁶⁰ B. Rwezaura, 'The Concept of the Child's Best Interest in the Changing Economic and Social Context of Sub-Saharan African', In Alston (ed), *The Best Interests of the Child: Reconciling Culture and Human Rights* (1994)

¹⁶¹ *Ibid*

¹⁶² Committee on the Rights of the Children, General Comment No. 14 (2013) on the Right of the Child to have his or her Best Interests taken as a Primary Consideration (Art. 3, Para. 1), CRC/C/GC/14, 29 May 2013,

¹⁶³ *Rantsev v. Cyprus and Russia* No 25665/04, 7

perspective.¹⁶⁴ On matters of disabilities, the CoRC of GC No.14 argued that the determination of the best interests of a child should not be limited to how the principle's relation with other enjoyment of other rights provided under the CRC, but more specifically to the provisions provided under the CRDP and other related conventions.¹⁶⁵ On the relationship between child disability and forced labour, the CPRD identifies in Article 16 (5) that 'States Parties shall put in place effective legislation and policies including women and child-focused legislation and policies, to ensure that instances of exploitation, violence, and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.'

It is important to note that the best interests of a disabled child with peculiar circumstances of vulnerability will not be the same as those of children in similarly vulnerable situations. More so, the authorities are still responsible for considering the different kinds and degrees of the extent of vulnerability of each child, thus assessing the child's circumstances to the time of his uniqueness. Following any individual assessment, the child's history from birth should be carried out from a wide array of reviews from a multidisciplinary team and other needed arrangements to aid the execution of the concept.¹⁶⁶ The Rights to Life, Survival, and Development

3.3.1.3. The Rights to Life, Survival, and Development (See Article 6 of the CRC and Article 5 of the ACRWC)

The CRA identifies in Section 4 as follows:

Every child has a right to survival and development.

Interestingly the CRA did not express the right of the child to the right to life. But the drafters have been careful so they must not leave any fundamental right everyone is entitled to be providing Section 3, which has identified that:

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

¹⁶⁴ B.D. Pickar and R.L. Kaufman, 'Parenting Plans for Special Needs Children: Applying a Risk-Assessment Model', 53 *Family Court Review* (2015) 113, at 125.

¹⁶⁵ CoRC, *supra* note 159.

¹⁶⁶ CoRC, *supra* note para 75 and 76

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

This may have been an ingenious provision by the drafters of the CRA since it cannot possibly include all the rights of Chapter IV of the CFRN in the CRA. Section 33 (1) provides for the right to life of a Nigerian. On the essence of the right to life in Nigeria, the Nigerian Court of Appeal in the case of *C.O.P Taraba State & Anor v. Dabo & Anor* highlighted that ‘fundamental human rights matters are serious matters. Allegations of breach of the right to life are much more serious. The first right is the right to life [in the constitution]. It is the most precious gift on earth. Thus, the law provides that everyone is entitled to life, and no one can be deprived of his life intentionally save in the execution of a sentence of a Court, etc.’¹⁶⁷ This, however, implies that the right to life is supreme and permits no derogation because it is the most precious of all rights that inheres in every human being; more so, it is a fundamental right with guaranteed protection from the state.

To begin with, Peleg and Tobin have both argued that while the right to life may not be absolute, the standard needed for the justification of any failure and the protection of the life of the child is exceptionally high.¹⁶⁸ Assessing the right to life concerning children falls into two parts which are 1) the right to have one’s life protected from birth; and 2) the right to survive and develop appropriately.¹⁶⁹ While evaluating the first part, the CRA identifies that the protection of life does not start at birth. However, then at conception, which really can be seen in the light of Section 17 (1), which states thus, ‘A child may bring an action for damage against a person for harm or injury caused to the child wilfully, recklessly, negligently or through neglect before, during or after the birth of that child.’ However, this reveals that the drafters of the UNCRC chose to remain silent on whether a child’s life begins at birth or before, leaving such provisions for member states to decide on the matter.

The Human Right Committee on the right to life in the General Comment No. 36 identified that the right to life is for all human beings without any form of discrimination with the clause that no

¹⁶⁷ *C.O.P Taraba State & Anor v. Dabo & Anor* (2019) LPELR-47215 (CA)

¹⁶⁸ N. Peleg and J Tobin, ‘Article 6: The Rights to Life, Survival and Development. In J. Tobin (ed), *The UN Convention on the Rights of the Child: A Commentary* (2019)

¹⁶⁹ Humanium, *Right to Life*, available at <https://www.humanium.org/en/life/> -

:~:text=For%20children%2C%20the%20right%20to%20life%20is%20the,to%20be%20able%20to%20survive%20and%20develop%20appropriately. (13.12.22)

one shall be arbitrarily deprived of life and that this right shall be protected by law.¹⁷⁰ The Committee also emphasized the need for State Parties to respect and enforce the right through the effective use of legislative and other administrative measures, thus providing effective remedies and reparation to victims whose right to life has been violated.¹⁷¹ Furthermore, deprivation of life has been identified to include ‘intentional, or foreseeable and preventable life terminating harm or injury, caused by an act or omission. It goes beyond injury to bodily or mental integrity or to a threat to that.’¹⁷² Child labour, as an example of such harm and injury to the welfare of a child, is no doubt a significant threat to the right to life of any child involved. This might as well extend to trafficking and the uncaring of disabled children engaged in child labour.

Also, the statutes provided above extend to the right to survival and development, which connects it to the right to life and links it with the economic and social rights of the child responsible for survival and development.¹⁷³ In addition to Article 6(2) providing for the right to survival and growth, it mandates respective States Parties to enforce these rights for children in their states. In upholding this right, this right must be interpreted broadly to encompass the child’s physical, mental, spiritual, and psychological development. According to the OHCHR, enforcing the right to survival and growth of the child means acquiring a more concentrated challenge of the self-betterment where more focus would be directed towards improving the talents and abilities of children to their full potential as well as preparing them for a more responsible life in a society that is expected to be free. They should also be granted the right to belong to a community that does not create room for discrimination.¹⁷⁴

Even though these provisions are full of promises, Sutherland highlighted a possible danger that might come with enforcing these provisions, which bothers around the fact that the requirements seek to unrealistically address “everything,” which is not specific but might amount to nothing due to the limited resources.¹⁷⁵ In an attempt to under the relationship between this Article and

¹⁷⁰ Human Rights Committee, General Comment No. 36 Article 6: Right to Life, CCPR/C/GC/36, 3 September 2019, § 3 and 6, 1-2

¹⁷¹ *idid*

¹⁷² *idid*

¹⁷³ UNICEF, *Four Principles of the Convention on the Rights of the Child* (2019), available at <https://www.unicef.org/armenia/en/stories/four-principles-convention-rights-child> (15.12.22)

¹⁷⁴ OHCHR, *Manual on Human Rights Reporting under Six Major International Human Rights Instruments* (1997) HR/PUB/91/1 (Rev 1).

¹⁷⁵ E. Sutherland, ‘The Child’s Right to Life, Survival and Development: Evolution and Progress’, 26 *Stellenbosch Law Review* (2015) 272, at 282.

many other provisions in the CRC, Nowak argued that the obligation to ensure the survival of the child is elaborated in multiple articles in the Convention, which include the right to health and healthy nutrition, the right of the child to an adequate standard of living; elimination of poverty and provisions of basic needs; the right to good rehabilitation; right to sufficient measures for the prevention of harm to the child; and protection against all forms of exploitation and degrading treatments.¹⁷⁶ While linking this to the involvement of disabled children in child labour, it can be concluded that their participation in forced labour at their age violates their right to survival and development.

Accordingly, the CRPD in Article 10 recognizes the right of a disabled person to the right to life by stating thus: 'States Parties shall reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.' Following this recognition, Article 16 (4) focuses on the recovery, reintegration, and rehabilitation of disabled individuals who have, in one way or another, suffered from exploitation which child labour is a form of. However, such recovery, reintegration, and rehabilitation also uphold the enforcement of the right to survival and development of a child who was once engaged in child labour but then set free. Finally, Article 28 (1) charges the State Parties the responsibility to recognize the right of persons living with disability to an adequate standard of living for themselves and their family, as well as improved living conditions which should be enforced without any form of discrimination.

3.3.1.4. The Right to Be Heard (See Article 12 of the CRC and Article 7 of the ACRWC)

Surprisingly, the CRA did not explicitly provide for the child's right to be heard, which means that the Nigerian child may only express this right only under Section 39 (1) of the 1999 CFRN, which identifies that '[e]very person shall be entitled to freedom of expression, including the freedom to hold opinions and to receive and impart ideas and information without interference,' through Section of the CRA. This no doubt raises the question of whether there is a reason behind this omission by the drafter of the CRA or whether the right to expression is an inherent right for adults, mainly in Nigeria, when factors such as customs and native laws of most African communities do not see it fit that children should have a say on public-related matters, even matters that affect them as children. While it might be difficult for these questions to be

¹⁷⁶ M. Nowak, A Commentary on the United Nations Convention on the Rights of the Child, Article 6: The Right to Life, Survival and Development. In T. Liefaard and J. Sloth-Nielsen (eds), *A Commentary on the United Nations Convention on the Rights of the Child* (2005)

answered, some inference will now be made regarding the drafters' intention concerning this omission.

The right to expression in Nigeria is quite a common right that has received considerable recognition from the Nigerian judiciary. In the recent case of *Shaibu & Ors v. Utomwen & Ors*¹⁷⁷, the Court of Appeal held that ‘the right to freedom of expression and the press, as recognized and guaranteed by law, is geared towards the safeguarding of the right of the citizen to impart and receive ideas and information as permitted by law. It, therefore, protects the right to seek and receive information to disseminate such information and ideas, and to express opinions orally or through publications freely. Therefore, the real essence of this right is of guaranteeing each citizen the right within the purview of the law to express himself freely without unjustifiable interference.’ According to Mowoe, the right to expression has been marked as a prerequisite for actualizing other rights. Where any form of encroachment upon these rights, they brought to the out utilizing the right to expression.¹⁷⁸

It sounds more like a fairy tale linking this right to children, but its actualization is not farfetched. Lansdown attempted to break down this right by explaining further that a child's right to be heard borders around four factors which include State Parties respecting any independent opinion a child might have in as much such a child can form their views on matters that affect him personally.¹⁷⁹ Secondly, State Parties must provide measures for which children must acquire information that would lead to their expressing their opinions on the information provided. Nevertheless, this must be done without coercion or pressure and in conducive and safe environments. Thirdly, such statements may be expressed in all matters that personally affect the child. So, it becomes paramount that the State Parties create adequate measures for children to express their views on issues bordering on child protection, emergencies, national and international settings, and in the development of prevention strategies, and play and recreational activities, as well as all locations in which children are based.

Fourthly, the views of these children should be respected following their age and maturity. She further suggested that the provision recognizes that while attention might be directed towards the period for expressing an opinion, more attention should be directed towards understanding levels

¹⁷⁷ *Shaibu & Ors v. Utomwen & Ors* (2022) LPELR-58237 (CA)

¹⁷⁸ K.M. Mowoe, *Constitutional Law in Nigeria* (2008)

¹⁷⁹ G. Lansdown, ‘Article 12: The Right to Be Heard’, In Z. Vaghri, J. Zermatten, G. Lansdown, R. Ruggiero, *Monitoring State Compliance with the UN Convention on the Rights of the Child: An Analysis of Attributes* (Vol 25 2022).

by weighing multiple factors capable of influencing capacity, cultural expectations, levels of support, individual characteristics, experience, and provision of information. These assertions on the capacity due children living with disabilities if the right to expression is limited to phrases such as ‘capable of forming his or her views’ and ‘accordance with age and maturity.’ Gillett-Swan and Sargeant argued that a significant factor in weighing the child’s right to expression relies mainly on the structures reinforcing these freedoms. Therefore, advocacy for this right for the child with a disability could reduce marginalization based on the inadequacies in assessing these disabled children’s capacity.¹⁸⁰

This view, however, does not provide a complete solution to the rights of disabled children to express their opinions on matters that affects them. However, Article 21 provides a comprehensive mechanism for how the rights of those with disabilities may exercise their rights to express their views. The Article mentions further that state parties are expected to take necessary measures that allow these to exercise their right to expression. Some methods that can be used were suggested to include formats and technologies appropriate to different kinds of disabilities promptly and without additional cost.¹⁸¹ A further example is using sign language, Braille, augmentative and alternative communication.¹⁸² So any disabled child engaged in child labour have the opportunity under these existing provisions to exercise opinions regarding their living conditions.

The right to expression also encompasses children's right to be heard directly or through a representative in all judicial and administrative proceedings. This attribute seems to be a commonly accepted level of the right of expression for children engaged in child labour or disabled children involved in child labour. This is a provision that has been recognized even before the enactment of the CRA in 2003. In the case of *Tega Esabunor v. Faweya*,¹⁸³ the second respondent sued on behalf of the first respondent, an infant. This right might also be expressed concerning any ill-treatment a child may be experiencing through exploitation or abuse, school

¹⁸⁰ J. Gillett-Swan and J. Sargeant, ‘Assuring Children’s Human Right to Freedom of Opinion and Expression in Education’, 20 *International Journal of Speech-Language Pathology* (2018) 120, at 126.

¹⁸¹ Article 21 (a), CRDP

¹⁸² Article 21 (b), CRDP

¹⁸³ *Tega Esabunor & Anor v. Faweya & Ors* (2019) LPELR-46961.

exclusion appeals, complaints or suit issues by others which could affect a childlike parental separation or adoption, child protection or criminal proceedings, and immigration suits.¹⁸⁴

3.3. Conclusion

Like most countries, Nigeria has the necessary system to adopt foreign statutes through ratification and domestication for dualist states. However, this chapter has revealed how this two-way process is not a walk around the park. Unlike in most monist states, the government operates a dualist system of ratification which warrants the additional domestication of any convention before it may be passed as laws in Nigeria. While a domestic law is not superior to the constitution like in some monist states, any ratified and domesticated law in Nigeria is still subjected to the supremacy of the constitution, and if not stated to the same level as other domesticated statutes of the county. However, the CRA does not fully share in the established international framework regarding general principles.

According to Lansdown et al.,¹⁸⁵ the general principles are general and should be universally applicable because they have been tested as the fundamental rights of children. While the right to non-discrimination and the best interest were ably represented, incomplete adoption of the remaining two rights directly in the CRA raises some preliminary questions of whether the principles were intentionally omitted or the drafters of the CRA were indeed clueless of these general principles and why they should have been included directly into the body of the statutes to represent their adherence to the international framework of the child rights. Where the Nigerian court may want to consider the right to life, for example, adopting Section 3 of the CRA in line with Section 33 (1) of 1999, CFRN would probably create some problems. The Constitution provided the death penalty as an exception to the right to life. Meanwhile, Section 221 provided for the restriction on punishment, highlighting sub-section (1) (c) that, ‘No child shall be ordered to be...subjected to the death penalty or, have the death penalty recorded against him.’ If this provision was made in line with the problem Section 3 of the CRA might create, then the drafters might have done an incredible job creating this mitigating provision.

¹⁸⁴ Committee on the Rights of the Child, General Comment No. 11 (2009): Indigenous Children and their Rights under the Convention, CRC/C/GC/11, 12 February 2009, § 38,39, at 9

¹⁸⁵ G. Lansdown, R. Ruggiero, Z. Vaghri, and J. Zermatten, *Monitoring State Compliance with the UN Convention on the Rights of the Child: An Analysis of Attributes* (Vol 25 2022).

4: THE IMPLICATIONS OF THE INTERNATIONAL LEGAL FRAMEWORK OF CHILD LABOUR IN THE CHILD'S RIGHTS ACTS ON CHILD DISABILITY AND TRAFFICKING

The previous chapter highlights how the CRA reflects the international legal framework on the general principles of the child's rights. Among the discoveries made through this evaluation, it became known that the principles are linked to child labour, trafficking, and disabilities. This chapter aims to address the international framework of the CRA on a more specific level with more consideration of the position of the law on child labour concerning trafficking and child disability. More attention will be directed toward evaluating the implications for the execution and implementation of these provisions through a comparison with the CRC and ACRWC.

4.1. The International Legal Framework of Section 28 of the CRA 2003: An Evaluation in line with the General Principles of Child's Rights

The CRA provides for the prohibition of child labour in Sections 28 and 29 as follows:

28. Prohibition of the exploitative labour

- 1) Subject to this Act, no child shall be:
 - a) subject to any forced or exploitative labour; or
 - b) 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; or
 - c) 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
 - d) employed as a domestic help outside his own home or family environment.
- 2) No child shall be employed, or work in an industrial undertaking, and nothing in this subsection shall apply to work done by children in technical schools or similar approved institutions if the work is supervised by the appropriate authority.
- 3) Any person who contravenes any provision of subsection (1) or (2) of this section 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 such fine and imprisonment.

- 4) Where an offence under this section is committed by a body corporate, any person who at the time of the commission of the offence was a proprietor, director, general manager, or other similar officer, servant, or agent of the body corporate shall be deemed to have jointly and severally committed the offence and may be liable on conviction to a fine of two hundred and fifty thousand naira.

A mere glance at these provisions shows they are full of potential but are undoubtedly ahead of their time despite being enforced over two decades ago. These provisions also contribute to why they might not be taken very seriously or respected, considering the ordeal of any child engaged in forced labour. In a critical evaluation made by Ajanwachuku¹⁸⁶, following the similarity of these provisions with those of other countries who have ratified and domesticated the CRC and the ACRWC, there are not many differences in the statutory definitions of forced or exploitative labour as identified in Section 28 of the CRA 2003 with what entails in this jurisdiction. Moreover, this is just as condemned in Nigeria. On what may be identified as the limit of child labour or the extent to which child labour may be considered as being forced or exploitative, these jurisdictions do have distinct differences in the participation of a child to engage in ‘light work.’¹⁸⁷

Unfortunately, many Nigerian scholars are keener to argue on external issues why there is no uniform application of the CRA among the 36 states of the country than internal issues, such as whether the provisions of these sections reflect or represent some or all the general principles of the rights of the child as identified in the previous chapter. Sections 28 and 29 will now be addressed considering the general principles which have been discussed during the last chapter to evaluate their international framework in light of the general principles of the right of the child, which are:

4.1.1. Right to Non-discrimination in Child Labour

While this right may not be seen in the provisions, it is no doubt the intention of the drafters of the CRA that the requirements on children be applied to all Nigerian children, including those

¹⁸⁶ M.A. Ajanwachuku, ‘A Critical Review of Child Labour in Nigeria and the Case for Child Entrepreneurship’, 3 *Rechtsidee* (2016) 71, at 75

¹⁸⁷ Ibid

that may have been brought from other countries to be exploited in the country, as well as those living with disabilities. For the sake of academic scrutinizing, as identified above, the CRA may then be argued to be quite inadequate in its adoption of the general principles as adding to the international framework of general principles on the child's rights. Lansdown argued that some groups of children are particularly vulnerable to forced or exploitative child labour, so if these provisions recognize their condition, it will aid their protection.¹⁸⁸ This has been seen in the cases of girls trafficked as domestic maids or disabled children forced into exploitative labour due to their retardation.

The CoRC in GC 20 raises concerns about the abuse of young girls in domestic labour.¹⁸⁹ They argued further that adolescence as a stage in social and biological development might then be seen as a source of discrimination where they may be exploited for their status—i.e., being trafficked or disabled—or with the impressions that they are incompetent and incapable of making decisions about their lives so subjected to the whims and caprice of their parents. They further emphasized that adolescents who might be allowed to engage in 'light work' should not be discriminated against in wages, forcing them to accept wages lower than their skills or capacity.¹⁹⁰ While other provisions address issues relating to trafficking and disabilities, it has become imperative for the judiciary to address the issues in line peculiar to the cases at hand.

4.1.2. *The Best Interest of the Child in Child Labour*

Section 28 of the CRA provides an avenue for the child's best interests by prohibiting child labour and related exploitations that are harmful or hazardous and could affect children's health. Lansdown noted that these principles play a positive role, especially for adolescents, which requested for the balance of the role that works play in the lives of adolescents while granting other rights.¹⁹¹ The CoRC for GC 14 argued that for a child's best interest to be recognized, it must be taken notice of as a substantive right, interpretative legal principle, and rule of prochild

¹⁸⁸ G. Lansdown, 'Article 32: The Right to Protection from Economic Exploitation and Hazardous Activities', In Z. Vaghri, J. Zermatten, G. Lansdown, R. Ruggiero, *Monitoring State Compliance with the UN Convention on the Rights of the Child: An Analysis of Attributes* (Vol 25 2022).

¹⁸⁹ Committee on the Rights of the Child, General Comment No. 20 (2016) on the Implementation of the Rights of the Child during Adolescence, CRC/C/GC/20, 6 December 2016, § 27, at 8.

¹⁹⁰ Ibid §21, at 7

¹⁹¹ G. Lansdown, 'Article 32: The Right to Protection from Economic Exploitation and Hazardous Activities', In Z. Vaghri, J. Zermatten, G. Lansdown, R. Ruggiero, *Monitoring State Compliance with the UN Convention on the Rights of the Child: An Analysis of Attributes* (Vol 25 2022).

are directed to children both individuals and as groups.¹⁹² More so, it has been argued that a child's best interest may be recognized more in the provisions of the CRA, which consistently acknowledge the child's view with a measure of uniformity in identifying their evolving capacities and characteristics.¹⁹³

The only inference regarding this categorization is in Section 28 (2), which states thus, '[n]o child shall be employed, or work in an industrial undertaking and nothing in this subsection shall apply to work done by children in technical schools or similar approved institutions....' This can be interpreted to apply to children who are pretty vital to work under specific industrial work but with no further indications as to the maturity level of what should be present in the child to determine whether they are fit. Almost no body of law pays attention to children's peculiar categorization or characteristics and how their best interest may be perceived differently. Similar principles may be applied to matters relating to indigenous children, but more consideration for the cultural rights of the indigenous, both on the individual and group levels.¹⁹⁴ However, rather than making provisions for the various characteristics of adolescence or the artistic rights of indigenous children, the Committee has suggested that when there is contention around determining the best interests of an individual child, the best interests of the specific child are the primary concern. At the same time, collective cultural rights play a massive role in determining the children's best interests at the group level.¹⁹⁵

4.1.3. The Right to Life, Survival, and Development in Child Labour

Impliedly the rights to life, survival, and development are no doubt enshrined within Section 28 of the CRA. This becomes more recognized under Section 28 (1) (c), which identifies as follows: 'no child shall be....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.' In this regard, Lansdown argued that the essence of the provisions on child labour is to protect the child from any work that might harm the child's physical, mental, spiritual, and moral well-being as his

¹⁹² Committee on the Rights of the Children, General Comment No. 14 (2013) on the Right of the Child to have his or her Best Interests taken as a Primary Consideration (Art. 3, Para. 1), CRC/C/GC/14, 29 May 2013, § 6, at 4.

¹⁹³ Committee on the Rights of the Child, General Comment No. 20 (2016) on the Implementation of the Rights of the Child during Adolescence, CRC/C/GC/20, 6 December 2016, § 22, at 7.

¹⁹⁴ Committee on the Rights of the Child, General Comment No. 11 (2009): Indigenous Children and their Rights under the Convention, CRC/C/GC/11, 12 February 2009, § 31, at 7

¹⁹⁵ Ibid § 32, at 7

social development.¹⁹⁶ This provision has been credited for being broader than most ILO Conventions, whose primary focus was health and moral well-being.¹⁹⁷ On matters relating to social development, the Committee added that critical factors needed for improving resilience and healthy growth in adolescents include a) close connections to and assistance from the primary adults in their lives, b) chances for decision-making and participation, c) sensitivity to individuality, and d) chances for establishing and maintaining friendships.¹⁹⁸

However, State Parties should employ necessary measures to prevent these factors' exploitation of child labour. These opportunities, which create room for 'light works', may only be explored for improving the capacities which contribute to the awareness of their rights by maintaining good physical and mental health, avoiding risky behaviour or accidents from working, creating friendships, and exercising leadership.¹⁹⁹ The CoRC in GC 20 also suggests introducing age-appropriate forms of employment, which undoubtedly contributes to the development of adolescents, equipping them with skills and learning responsibilities. At the same time, these forms of engagement may contribute to their families' economic well-being and support their access to education.²⁰⁰ All of these should be done in line with the national legal minimum working age, which should be aligned with international standards and with compulsory education, having the right to perform light employment under the appropriate working conditions, with due respect according to their rights to education and to rest, leisure, play, recreational activities, cultural life, and the arts.²⁰¹

As for adolescent children living with disabilities, Article 10 of the CRPD highlights the right of disabled persons to life; Article 27 also indicates that while the persons living with disabilities have the right to work, such employment must be on an equal basis with others, especially in aspects of wages and other remunerations, equal opportunities to work in the labour market which is inclusive and accessible to persons with disabilities. However, on matters that may affect these disabled adolescents, Article 27 (b) highlights that States Parties are expected to have measures that should protect 'the rights of persons with disabilities, on an equal basis with

¹⁹⁶ G. Lansdown, 'Article 32: The Right to Protection from Economic Exploitation and Hazardous Activities', In Z. Vaghri, J. Zermatten, G. Lansdown, R. Ruggiero, *Monitoring State Compliance with the UN Convention on the Rights of the Child: An Analysis of Attributes* (Vol 25 2022).

¹⁹⁷ *ibid*

¹⁹⁸ Committee on the Rights of the Child, General Comment No. 20 (2016) on the Implementation of the Rights of the Child during Adolescence, CRC/C/GC/20, 6 December 2016, § 17, at 6.

¹⁹⁹ *ibid*

²⁰⁰ *ibid* § 85, 22

²⁰¹ *ibid* § 85, 22

others, to just and favourable conditions of work, including equal opportunities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances.’

4.1.4. The Right to Be Heard.

Just like the other general principles which have been evaluated in line with the provisions of Section 28 of the CRA 2003, the right to be heard, as explained by Lansdown concerning child labour, mentions that it is indeed the responsibility of States Parties to ensure the views of children are very much adopted in the development of all relevant legislations and policies on must laws that affect their lives, including child labour.²⁰² This, however, implies that there should be a body of representatives of working children through which the views of the children engaging in employment might be adopted in any measures that State Parties wish to adopt.²⁰³ As identified earlier, the right to be heard can also be seen in line with all judicial and administrative proceedings directly or through a representative.²⁰⁴

There are no indications that the drafters of Section 28 consulted children to understand their views on the nature of child labour in their area and how it can be mitigated. Sub-Sections 3 and 4 of Section 28 of the CRA are impliedly connected to the child's right to be heard through judicial proceedings. This, however, extends to both children that have been trafficked to be able to report their exploitation in Nigeria, even though they are from other countries, and for disabled children to also report their grievances to the nearest court in their vicinity. While several instances show how children engaged in child labour have gotten their voices heard, it is hilarious that Committees keep harping on children advocating and negotiating their rights when the legal system of most countries does not provide room for such determination.

Following the above evaluation of the general principles in Section 28 of the CRA, it becomes evident that the Section reflects most of the general principles of child rights impliedly but with

²⁰² G. Lansdown, ‘Article 32: The Right to Protection from Economic Exploitation and Hazardous Activities’, In Z. Vaghri, J. Zermatten, G. Lansdown, R. Ruggiero, *Monitoring State Compliance with the UN Convention on the Rights of the Child: An Analysis of Attributes* (Vol 25 2022).

²⁰³ *ibid*

²⁰⁴ G. Lansdown, ‘Article 12: The Right to Be Heard’, In Z. Vaghri, J. Zermatten, G. Lansdown, R. Ruggiero, *Monitoring State Compliance with the UN Convention on the Rights of the Child: An Analysis of Attributes* (Vol 25 2022).

many implications, such as the inadequacy of the provisions for upholding these principles and also why these principles will not result to legal questions on specific matters like trafficking and the engagement of disabled in forced or exploitative labour without making references to other parts of the CRA or other related statutes. Other findings include how it may not be convenient for judicial and administrative proceedings to always highlight the connection of these general principles to Section 28, except if there is a need for a specific need to answer a legal principle related to either of these principles.

4.2. Implications of the General Principles of the International Legal Framework of Section 28 of the CRA 2003

The above evaluation shows how far child labor provisions might be accommodated under the assessment of the general principles as highlighted in Section 28 of the CRA without many issues in identifying the connections between child labour and child trafficking. However, it might prove tricky to connect child labour and child disability because there are limited provisions for disabled children under the CRA 2003; a possible suit for a disabled child might still be heard regardless. The following will examine the links between child labour and child trafficking on the one hand; and child labour and child disability on the other, all under the general principle.

4.2.1. Child Labour and Child Trafficking

Many case laws that have been decided on issues bordering on child trafficking usually have links to the general concept of forced or exploitative labour. So, wherever child trafficking is discussed, it is only a form of child labour. In this light, the CRA only records a small provision for child trafficking in Section 30 (b), which states as thus, '[a] child shall not be used...as a slave or for practices to slavery such as sale or trafficking of the child, debt bondage or serfdom and forced or compulsory labour'. While this provision identifies the correlation between child trafficking and child labour by categorizing it alongside 'forced or compulsory labour', it no doubt shares the same general principles as child labour, as stated earlier.

Arkada-Thibert and Lansdown highlight the correlating links between the general principles and child trafficking by a state that 1) the right to non-discrimination comes in handy when child trafficking is done in gender bias such as the use of girls as domestic maids in a foreign land or biases against a minority group; 2) the best interests of the child cover areas where protective and

preventive measures are taken to make the child less of a criminal but more of a victim; 3) the right to survival and development in trafficking shows regardless of the exploitation the child experiences, they are all threats to the fulfilment of their right to life, survival, and development; 4) the right to be heard covers the rights of victims of child trafficking to judicial proceedings to acquire justice, or through the administrative proceedings as the agent to shape policies.²⁰⁵

Accordingly, the CoRC of GC 20 has also recalled how adolescents risk being trafficked for economic reasons.²⁰⁶ They further raise the point regarding discrimination of the general principles that State Parties are expected to pay more attention to gender-based dimensions of vulnerability and exploitation. The children's right to be heard may be challenged through the awareness-raising activities such as social media and other mediums through which parents and children might be aware of the dangers of domestic and international trafficking.²⁰⁷ Regarding indigenous children, the Committee also emphasizes issues bordering on discrimination, particularly around gender-based biases where young girls are generally vulnerable to trafficking, and minority groups of indigenous children who are victims of poverty and urban migration are at a high-risk of becoming victims of trafficking and sexual exploitation.²⁰⁸ More so, to combat trafficking in persons, there is more need for an extensive protection framework that would cut across international humanitarian law, refugee law, criminal law, labour law, and international law.

However, it is pretty interesting to note that the African Committee of Experts on the Rights and Welfare of the Child still tries to connect the general principles with issues on child labour and child trafficking, for instance, in the case of *Minority Rights Group International & SOS-Esclaves (on behalf Said Quid Salem & Yarg Ould Salem) v Mauritania*²⁰⁹ where Said and Yarg who were victims of slavery and child labour were born to a family who is part of Mauritania's slave class. This caused the children to be slaves to the El Hassine family, who looked after the family's herd of camels in the bush and carried out other household chores such as cooking,

²⁰⁵ A. Arkadas-Thibert and G. Lansdown, 'Article 35: Prevention of Abduction, Sale, and Trafficking', In Z. Vaghri, J. Zermatten, G. Lansdown, R. Ruggiero, *Monitoring State Compliance with the UN Convention on the Rights of the Child: An Analysis of Attributes* (Vol 25 2022).

²⁰⁶ Committee on the Rights of the Child, General Comment No. 20 (2016) on the Implementation of the Rights of the Child during Adolescence, CRC/C/GC/20, 6 December 2016, § 78, at 21.

²⁰⁷ Ibid

²⁰⁸ Committee on the Rights of the Child, General Comment No. 11 (2009): Indigenous Children and their Rights under the Convention, CRC/C/GC/11, 12 February 2009, § 31, at 7

²⁰⁹ *Minority Rights Group International & SOS-Esclaves (on behalf Said Quid Salem & Yarg Ould Salem) v Mauritania* 007/Com.003/2015, 003/2017.

washing, and buying goods from the market without pay for seven days a week. In one of the issues that the Committee considered, it was held that the general principle of the right to non-discrimination was violated when the children were treated differently from other children living in the family and were called enslaved people while subjected to more tedious work without pay.

As for best interest, the Committee also emphasized that the right of the child's best interest was violated the moment the authorities of Mauritania failed to implement its anti-slavery law. The child's best interest would have been considered a primary consideration if there had been prompt legal action against the enslavers of the victims and charges against other persons involved in slavery across the country. As for the violation of Article 5, right to survival and development, the Committee held that the forms of slavery Said and Yarg severely impeded the overall growth and well-being since they were treated as properties of the El Hassine family. On its most important link to child trafficking, the Committee establishes the link between child labour and trafficking by first identifying the commonly accepted definition of trafficking as stated in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women, and Children, which has been stated above. The Committee interpreted that Article 29 of the ACWRC should include every form of traditional and modern slavery or slavery-like practices. By analyzing Article 29 this way, it can be said that the Complainants' claim under this clause mentions slavery, human trafficking, and kidnapping insofar as they relate to slavery and activities comparable to slavery.

4.2.2. Child Labour and Child Disability

Regarding child labour and child disability, the general principles are also aligned on addressing possible violations of the fundamental rights of disabled children engaged in child labour. Foremost breaches of these principles begin from the violation of the right to non-discrimination, which generally drives disabled children to be subjected to child labour due to their disability in the first place. However, there are difficulties in ascertaining the links between child labour and child disability generally, as there are not many provisions directed to this link in both the UNCRC and the CRA. Article 13 of the ACWRC identifies the right of the disabled child to 'effective training, preparation for employment and recreation opportunities in a manner conducive to the child achieving the fullest possible social integration, individual development, and cultural and moral development.' Impliedly, it might be interpreted that the drafters of the ACWRC provided a clause in Article 13, which, if violated, could result in forced and

compulsory labour for the child. Therefore, the opposite of ‘effective training’ and ‘preparation for employment’ under inconducive employment could result in exploitative labour for the disabled child.

Assessing this about the general principles highlighted above would first be seen under the right to non-discrimination. A disabled child forced into exploitative labour is said to be discriminated against due to the denial of the child to his right to education. While discrimination is not limited to the disability status of affected children, it also spreads to gender discrimination, where indigenous women and girls with disabilities living in institutions are subjected to discrimination to be forced into labour.²¹⁰ Article 16 (2) of the CRDP indirectly highlights the general principle of non-discrimination when it provides that,

‘State Parties shall also take all appropriate measures to prevent all forms of exploitation, violence, and abuse by ensuring, among other things, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence, and abuse. States Parties shall ensure that protection services are age-gender and disability-sensitive.’

Other general principles which highlight the link between child labour and disability include the best interests of the child. Due to the principle's available scope, which aims to cover all facets of child care and protection in all contexts, the primary consideration of the best interests of the child is granted when a disabled child is saved and protected from all forms of exploitation which might prevent the child from being socially integrated into fairness and equality. More so, attention to the welfare of disabled children in employment becomes a primary consideration where state authorities do their best to implement the provisions of existing conventions, which will mitigate difficulties disabled children face in employment. Also, implementing other measures such as legislation, policies, economic and social planning, decision-making, and budgetary decisions should follow procedures that ensure that the child's best interest, including adolescents, is a primary consideration in all actions concerning them.²¹¹

²¹⁰ Committee on the Elimination of Discrimination against Women, General Recommendation No. 39 (2022) on the Rights of Indigenous Women and Girls, CEDAW/C/GC/39, 31 October 2022, §9, at 4.

²¹¹ Committee on the Rights of the Child, General Comment No. 20 (2016) on the Implementation of the Rights of the Child during Adolescence, CRC/C/GC/20, 6 December 2016, § 22, at 7.

It should be noted that the obligations of States Parties to implement measures combines with the general principle of the right to be heard. Children should be represented in various bodies like parliament, committees, and other forms where they can voice their opinions and participate in making decisions that affect them as children in general and as children with disabilities.²¹² This right of children living with disabilities will be granted as much as they are included in the process of generating more procedures affecting them, and their views are respected. Children's participation in this process ensures that policies are tailored to their wants and needs and serves as an effective instrument for inclusion by providing that the decision-making process is participatory. Children should have access to any communication they require to voice their opinions.²¹³

Furthermore, the right to be heard also extends to the right for the disabled child to sue by himself or through a legal representative when readdressing is needed, primarily through forced labour. Lastly, the right to survival and development for the disabled child concerning child labour becomes evident when the child's employment prevents the child from necessary growth and social development, thus violating other rights, such as the right to education. State Parties are encouraged to take the needed steps in curbing activities such as child labour, which will end practices that could entirely or partially compromise the child's right to survival and development.²¹⁴ Additional measures include spreading awareness, creating relevant legislation, and enforcing laws to guarantee that those who directly or indirectly violate the right to life, survival, and growth of children with disabilities face the necessary penalties.²¹⁵

4.3. Conclusion

This chapter addressed the similarities in the international legal framework of the provisions that address child labour, trafficking, and disability in Nigeria. Aside from the fact that the universality of the general principles, as aforementioned in the previous chapter, could guarantee a remedy for a child engaged in peculiar circumstances of child labour, the lack of precise provisions in CRA, which ordinarily should represent the totality of these provisions proves the fact that the drafters of the CRA might not have been aware of the need for these principles to be ably described in the statute as well as in the sections that address typical issues of the child.

²¹² Committee on the Rights of the Child, General Comment No. 9 (2009) The Rights of Children with Disabilities CRC/C/GC/9, 27 February 2007, § 32, at 9

²¹³ *ibid*

²¹⁴ *ibid*, § 31, at 9

²¹⁵ *ibid*.

Lansdown et al.²¹⁶ has done an incredible job highlighting the possibility whereby most of the provisions of the UNCRC may be linked to the general principles, thereby proving its worth as being available and universally applicable. The above evaluation identifies why drafters of statutes on child's rights must pay attention to peculiar instances where the new cases on strange matters may be addressed with accurate decisions. When the law is not very precise on some issues, courts are usually at the discretion of delivering different choices in matters of peculiar nature, like the much-emphasized disabled children in the exploitative.

However, there is a contrast in the link between child labour and trafficking because, as asserted above by the definition of trafficking mentioned in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women, and Children, there is no difficulty in ascertaining the facts that forced exploitation is indeed an aspect of child labour, and for it to have a dedicated provision even though limited shows that the link is primarily established by both its definition and the already provided provisions in all the statutes. Finally, instead of an expected repealing of the CRA due to these flaws, the government of Nigeria should then see to enacting a more comprehensive law or regulations dedicated to addressing child labour in the country which would not only uphold the general principles but also accommodating peculiar instances where the CRA currently does not have a solid provision. Also, the Committee on the Rights of the Child should be mandated to provide a General Comment on the rights of disabled children in forced and compulsory labour, which would also guide states in making adequate provisions.

²¹⁶ G. Lansdown, R. Ruggiero, Z. Vaghri, and J. Zermatten, Monitoring State Compliance with the UN Convention on the Rights of *the Child: An Analysis of Attributes* (Vol 25 2022).

5: EXAMINING SECTIONS 28 AND 29 OF THE CRA 2003 IN RELATION TO SIMILAR PROVISIONS OF THE CRC AND ACWRC: SOLUTIONS IN FIXING THE LOOPHOLES

Having examined the universality of the general principles in all related statutes of the child's right with the CRA lacking the right to be heard, only be present indirectly. This must have proven the incompetency of the CRA of very germane provisions or the lack of accurate knowledge of the drafters on the importance of these general principles. As noted earlier, the importance of having a right-based approach for statutes on the right of the child is not far from the assertions of Lansdown et al., who had argued that the right to impose accountability calls for a dedication to the rights of all children, demands the understanding that rights are unalienable, and require the child's involvement in the methods used to carry out their requests.²¹⁷ To put it another way, to realize rights, States Parties must analyze all of the actions they have taken to implement each right, which leads to the general principles of the convention.²¹⁸

5.1. Evaluation of Child Labour in the light of Sections 28 and 29 of the CRA

In this light, more attention will now be directed toward Sections 28 and 29 and their international law counterparts, which are as follows:

The CRC identifies Article 32 as follows:

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education; or to be harmful to the child's health or physical, mental, spiritual, moral, or social development.
2. State Parties shall take legislative, administrative, social, and educational measure to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, State Parties shall, in particular:
 - A. Provide for a minimum age or minimum ages for admission to employment;
 - B. Provide for appropriate regulation of the hours and conditions of employment;
 - C. Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

²¹⁷ G. Lansdown, R. Ruggiero, Z. Vaghri, and J. Zermatten, Introduction, In Z. Vaghri, J. Zermatten, G. Lansdown, R. Ruggiero, *Monitoring State Compliance with the UN Convention on the Rights of the Child: An Analysis of Attributes* (Vol 25 2022).

²¹⁸ *ibid*

The ACRWC identifies in Article 15 as follows:

1. Every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral, or social development.
2. States Parties to the present Charter shall take all appropriate legislative and administrative measures to ensure the full implementation of this Article measures to ensure the full implementation of this Article which covers both the formal and informal sectors of employment and having regard to the relevant provisions of the international of the International Labour Organization's instruments relating to children, States Parties shall in particular:
 1. Provide through legislation, minimum ages for admission to every employment;
 2. Provide for appropriate regulation of hours and conditions of employment;
 3. Provide for appropriate penalties or other sanctions to ensure the effective enforcement of this Article;
 4. Promote the discrimination of information on the hazardous of child labour to all sectors of the community.

A glance at the provisions of the CRC and AWCRC structurally identifies the similarities in their child labour provisions. The easily spot out difference between these provisions is that while the CRC appears to be a direction to States Parties on their obligations to protect the child against any form of economic exploitation, the second paragraphs of the two provisions highlighted the need for the State Parties to enact legislations and implement measures directed towards curbing child labour. More so, the AWCRC sounds more authoritative in directing child labour abolition, making it possible for the first paragraph to be presented as a right rather than a directive, '[e]very child shall be protected from all forms of economic exploitation....' However, the CRA does not share a similar framework with the CRC and ACRWC, even though similar provisions are embedded in Section 28.

5.1.1. Economic Exploitation

This term has been identified as being generic to every statutory provision on the child's right against degrading treatments that might have resulted from exploitative or child labour in this

context. According to Swepston,²¹⁹ although not defined by the CRC, economic exploitation is often understood to include a much broader term than child labour in its conventional sense. However, it can be summed up as a material interest obtained by coercion, mistreatment, abuse, victimization, oppression, or other cruel behaviour that shows disregard for the child's dignity or the healthy development of their personality.²²⁰ The World Bank highlighted that the many forms of exploitation include prostitution (of its numerous states), child labour, slavery, indentured servitude, bonded labour (where labour is done in exchange for paying off loans), truck systems (the payment of workers in goods and services than in money), forced labour, organs sale, forced marriages, and child abduction or kidnapping.²²¹ Even with this, economic exploitation may be categorized into two forms, consensual and non-consensual exploitation.²²²

In addition to the definitions mentioned above and descriptions, economic exploitation of child labour is 'hazardous.' It must, in one way or the other 'interfere with the child's physical, mental, spiritual, moral, or social development.' Other documents, such as the EU Directive on preventing and combating trafficking of human beings and protecting its victims, identify child labour and other similar services, such as begging, slavery, or practices as forms of exploitation.²²³ This term also identifies trafficking to be a form of economic exploitation. The same EU Directive in Article 2 (1) identifies trafficking to be the 'recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.'²²⁴ This was well expounded in the case of *Rantsev v. Russia and Cyprus*,²²⁵ where the court held that trafficking might be brought under the scope of

²¹⁹ L. Swepston, 'A Commentary on the United Nations Convention on the Rights of the Child, Article 32: Protection from Economic Exploitation', *A Commentary on the United Nations Convention on the Rights of the Child* (Vol 32, 2012)

²²⁰ S. Van der Hof, E. Lievens, I Milkaite, V. Verdoodt, T. Hainnema, and T. Liefwaard, 'The Child's Right to Protection against Economic Exploitation in the Digital World', 28 *The International Journal of Children's Rights* (2020) 833, available at <https://doi.org/10.1163/15718182-28040003> (12.1.23)

²²¹ J. Koettl, *Human Trafficking, Modern Day, Slavery, and Economic Exploitation: A Discussion on Definitions, Prevalence, Relevance for Development, and Roles for the World Bank in the Fight Against Human Trafficking* (2009)

²²² *ibid*

²²³ European Parliament and Council, Directive 2011/36/EU of the European Parliament and of the Council of 15 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting its Victims, 15 April 2011, OJ 2011 L 101/1.

²²⁴ *ibid*

²²⁵ *Rantsev v Russian and Cyprus* No. 25965/04, 7 January 2010.

Article 4 of the ECHR, which prohibits slavery, servitude, forced labour, and compulsory labour. In defence of the deceased girl, the court ruled that in violating Article 4, the authorities did not do their best to protect the dead against exploitation.

Regarding this substantive provision, the CRA in Section 28 prohibited economic exploitation of the child through ‘any forced or exploitative labour,’ including some of the forms of financial exploitation identified above. However, the drafters of the CRA decided to accommodate indigenous children within the country and other adolescents willing to engage in fair labor. However, they unrealistically limited the options in Section 28 (1) (b) to work in agricultural, horticultural, or domestic character, allowing room for other light employment to be accommodated. In addition, Section 59 (5) of the Nigerian Labour Act (1971) prohibited work for children if the work is underground, on a machine, or on a public holiday. This further agrees with the general knowledge that adolescence and indigenous children may be permitted to undergo some specific forms of light employment.

According to the Committee on General Comment No. 20, even though adolescents have the rights to be protected from economic exploitation and other worst forms of child labour, these restrictions do not prevent the introduction of age-appropriate forms of work, which no doubt plays an essential developmental role in the lives of adolescents, equipping them with skills and enabling economic well-being and support their access to education.²²⁶ Another Committee in the case of indigenous children also identified that financial exploitation is detrimental to the well-being of indigenous children; the implementation of measures should be done which distinguish child labour which needs to be abolished, and other acceptable forms of employment which are expected to help the children acquire livelihood skills, identity, and culture.²²⁷

Finally, since there are no concrete provisions for disabled children, neither the CRC nor ACRWC provides provisions for disabled children within the conditions dedicated to child labour. Moreover, it can be insinuated that the terms ‘right of the child’ and ‘every child’ used by the two statutes would no doubt accommodate children living with disabilities since they are also children. It would no doubt make a difference if Articles 32 and 15 of the CRC and ACRWC included short clauses to accommodate children living with disabilities. It is not common for scholars or other authorities to always think of disabled children in exploitative labour. The CoRC of GC 20 omitted such an instance when discussing ‘adolescents with disabilities’ after stating the possibility of being barred from participating in social, cultural, and religious rites of

²²⁶ Committee on the Rights of the Child, General Comment No. 20 (2016) on the Implementation of the Rights of the Child during Adolescence, CRC/C/GC/20*, 8 December 2016, §84-85, at 22

²²⁷ Committee on the Rights of the Child, General Comment No. 11 (2009) Indigenous Children and their Rights under the Convention, CRC/C/GC/11, 12 February 2009, §69, at 16

passage. However, as rightly recognized by the Committee, they may be denied access to secondary or tertiary education or vocational training, consequent acquisition of social, educational, and economic skills necessary for future employment and freedom from poverty.²²⁸ These denials also cause these children to be forced into exploitative labour, which is hazardous. A provision for disabled children in exploitative labour is possible since there is a similar provision in the CRDP in Articles 16 (1) and (2), which states as follows:

- 1) ‘States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the homes, from all forms of exploitation, violence, and abuse, including their gender-based aspects.
- 2) States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence, and abuse to ensure, among other things, proper arrangements of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence, and abuse. State Parties shall ensure that protection services are age-gender and disability-sensitive.’

5.1.2. Minimum Age and Hours

The second limb of the CRC and ACWRC provisions on child labour provided the opportunity for the children to engage in meaningful work but then with age and hours limits. While there was not specific mention of ages and hours expected for the child to be involved in light work, the power has been granted to State Parties to set the limits. However, while there is no mention of this provision in the CRA 2003, Section 29 of the CRA 2003 directed for more conditions in Sections 58 to 62 of the Nigerian Labour Act (1971). These sections highlight the age and hours requirements and the kind of employment the young person may engage in. The international framework in this regard will be compared to the provisions of some ILO conventions on the subject. The only tricky part of this analysis is that there are almost no Nigerian case laws.

These provisions identify three consecutive ages (14, 15, and 16 years) for which employment may be permitted under different circumstances. The hours required for these to work will also

²²⁸ Committee on the Rights of the Child, General Comment No. 20 (2016) on the Implementation of the Rights of the Child during Adolescence, CRC/C/GC/20*, 8 December 2016, §84-85, at 22

be addressed in this light. However, a point of observation would be that the current state of age limit, which has repealed other provisions of the minimum age conventions of the ILO, is identified in the C138 – Minimum Age Convention of 1973, which is highlighted in Article 3 (1) that, ‘the minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons shall not be less than 18 years.’ It is on record the Nigeria has ratified this Convention since the 2nd of October 2002, and it is stated to be in force.²²⁹ Despite this Convention coming years after the enactment of the Nigerian Labour Act (1971) into law, that provision tallies correctly with Section 59 (6), which identifies that:

‘No young person shall be employed in any employment which is injurious to his health, dangerous or immoral; and, where an employer is notified in writing by the Minister (either generally or in any particular case) 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.’²³⁰

The Convention, in its benevolence, provided two clauses where children under 18 may be permitted to work. Article 5 (1) of the Convention provided thus that: ‘A Member whose economy and administrative facilities are insufficiently developed may, after consultation with the organizations of employers and workers concerned, where such exist, initially limit the scope of application of this Convention.’ This might have been the exception to the mentioned 18 years as the minimum age for employment. This is not applicable in Nigeria since the country has a somewhat developed industrial sector contributing to its position as the largest economy in the continent.²³¹ Secondly, the Convention in Article 7 (1) identifies that States Parties may, through their national laws or regulations, permit the employment of young persons between the ages of 13 to 15 years on light work which is not likely to be harmful to their health or development, and which does not affect their attendance at school. Paragraph 2 emphasizes how State Parties may as well allow the employment of work of persons at least 15 years of age but have not yet

²²⁹ ILO, Ratifications of C138 – Minimum Age Conventions, 1973 (No.138) (2022) , available at https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312283

²³⁰ Section 59, Nigerian Labour Law (1971)

²³¹ Nigerian Economic Summit Group, Economic Implications of the African Continental Free Trade Agreement (AfCFTA) on the Nigerian Industrial Sectors, available at https://nesgroup.org/download_resource_documents/AfCFTA%20on%20Industrial%20Sector_1576844589.pdf

completed their compulsory schooling on work which reaches the condition of the work not being harmful or affecting school attendance. All of these may as well sum up the international framework on the minimum age of the child engaged in employment, and more attention will now be directed towards some of the provisions of the Labour Act on young persons in young persons in employment.

The international framework of child labour is reflected in the Act, where Section 59 (2) prohibits 15 years from working in any industry except in circumstances where such employment is part of a technical school training or related institutions. Subsection (3) of 59 noted children of 14 years may be employed if the work includes 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. Subsection 4 of 59 prohibits children of 16 years is not permitted to engaging in employment where it is not unreasonable for the child to return to his home daily; subsection prevents the employment of a child from working underground, on machine work, or on a public holiday. Regarding hours, subsection 8 of 59 prohibits young persons of 16 years from working four consecutive hours or eight working hours in one day. Regarding night work, 60 (1) prohibits young persons from working at night. However, paragraph 2 of the section permits those over the age of 16 years may be allowed to work at night when the nature of their work needs to be carried on continuously, day and night, during emergencies, and so on.

However, a difficulty produced by these provisions is their incompatibility with issues of child trafficking or disabled children. While any action contrary to the provisions of these Sections would amount to economic exploitation, they do not quite well cover trafficking and disabled children in forced labour as a subject matter. It would cover child trafficking, which is exploitative labour and not the transportation of children from one place to another. It also raises the question of whether the same minimum ages and hours would apply differently to disabled children in exploitative labour.

5.2. Challenges to the Adoption of the Provisions of Sections 28 and 29 of CRA 2003

The critical examination of the international framework of these provisions on child labour and its connections with trafficking and disability has proving has revealed some challenges which might not be addressed until a revised statute is enacted in place of the current provisions, which will address not only trafficking but also disabled children in exploitative labour. In addition to

the several challenges identified throughout this evaluation, more attention will now be directed towards the more internal issues such as customary and shariah law and how they may affect the implementation of Sections 28 and 29 of the CRA.

5.2.1. Customary Law

This factor has prevented the adoption of CRA as state law in all 36 states of Nigeria. This law has been identified to be indigenous to the local communities operating within Nigeria. It springs from the local customs of the indigenous people of Nigeria. In the case of *Aku v. Aneka*²³², the Nigerian Court of Appeal defined custom as ‘the unrecorded tradition and history of the people which has “grown” with the “growth” of the people to stability and eventually became an intrinsic part of their culture. It is a usage of a people which by common adoption and acquiescence and by long and unvarying habit has become compulsory and has acquired the force of law concerning the place or the subject matter to which it relates.’ However, customs are not customary laws, except they receive that judicial status through precedents that become established law.²³³ In the case of *Oyewumi v Ogunsesan*²³⁴, the court defines customary law as ‘the organic or living law of the indigenous people of Nigeria regulating their lives and transactions of the community subject to it. It is a well-recognized source of Nigerian law. Nevertheless, then has been identified as a possible challenge for implementing some of the provisions of CRA and its late enactment due to a clash with existing cultural principles.

Egede argued that the need to balance a group's beliefs and cultural values and the need to guard against human rights could not be overemphasized.²³⁵ Nevertheless, balancing does not come by easily; at least, that is what the drafters of the CRA have been doing since the ratification of the UNCRC by the Nigerian government in the early 1990s. No solution was achieved that equally balanced the customs and the provisions coming from the international conventions on what should be universally accepted.²³⁶ However, many scholars are unclear on the implications of these customs and values on child labour. Instead, more focus has been directed toward other intrinsic matters such as child marriage, female circumcision, tattoos, and skin marks on the

²³² *Aku v Aneka* [1991] 8 NWLR (pt 209) 280

²³³ O.N. Ogbu, *Modern Nigerian Legal System* (3rd ed 2013)

²³⁴ *Oyewumi v. Ogunsesan* [1990] 3 NWLR (pt. 137) 137

²³⁵ E. Egede, ‘Bringing Human Rights Home: An Examination of the Domestication of Human Rights Treaties in Nigeria’, 51 *Journal of African Law* (2007) 249, 281

²³⁶ M.T. Ladan, *An Overview of the Child Rights Act, 2003* (2021)

body of children.²³⁷ It should be expected that the customs and values would require the child to have more input in particular employments, which the provisions of the CRA and other statutes on child labour might consider exploitation. If these issues are not addressed alongside respecting the customs and values of the indigenous people, the proper implementation of the CRA will be complex.

On the other hand, customary law also proves challenging in hearing matters relating to child labour, trafficking, and disabilities. It is important to note that while there are no uniform customary laws in the country, in the case of *Ojisua v. Aiyebelehin*,²³⁸ the court stated that for something to be considered customary law, it must exist, be both a custom and a law, be accepted, be mostly unwritten and flexible due to its oral nature. It must be universally applicable within the permissible range. So, where there are numerous conditions regarding the engagement of children in employment based on some existing customary laws, it would be difficult for the provisions of the CRA to be applicable in this regard. At the same time, States Parties are encouraged to make tailored provisions around the existing customs and rules around matters relating to child labour and the community's attitude towards children living with disabilities. A UN committee determined that cultural practices must conform with other Convention rules and are never permitted if they harm the child's dignity, health, or development.²³⁹

5.2.2. Shariah Law

While customary law is rampant in southern Nigeria, Shariah law is due to most Muslims in the northern part of the country having Islamic law as part of their legal system, with some express legal provisions to other parts of the country. While there are not many provisions for child protection in this place, CRA has not gained enough ground since many states in that region have not adopted CRA based on its contradictions with their beliefs and legal system. Unlike the customary law system, it is primarily written and rigid, with the Quran and the Hadiths as primary sources.²⁴⁰ While child labour is generally abhorred, the child's interest is protected following the tenets of Islam, which already outlines the right of the children to be fulfilled by

²³⁷ T. A Abdulraheem, M.K. Imam-Tamin, A.H. Folorunsho, 'Child Rights in Nigeria: Exploring the Contentions between the Child Rights Act 2003, Cultural Practices and Islamic Rules', *Addressing the Socio-Legal Challenges of Human Rights Protection in Nigeria: Factoring in Strong Legal Pluralism* (2015) 1, at 3

²³⁸ *Ojisua v. Aiyebelehin* [1990] 3 NWLR (pt 137) 137

²³⁹ Committee on the Rights of the Child, General Comment No. 11 (2009) Indigenous Children and their Rights under the Convention, CRC/C/GC/11, 12 February 2009, §22, 5

²⁴⁰ O.N. Ogbu, *Modern Nigerian Legal System* (3rd ed 2013)

parents, adults, society, or the government. The requests are said to be determined when a child is conceived. Islam adherents believe that Islam never recognizes any form of abuse or harm to be inflicted as a hadith of the Prophet Muhammad, which states that “He who did not show tenderness (mercy) to the young ones and respect to the elders is not from us.”²⁴¹²⁴²

Understandably, the system's attitude to child abuse may be welcome. However, the issue of child labour comes on weighing the extent or limits to what may not be considered child labour under Islam. However, it may be regarded as child labour under the CRA or other statutes regarding the child's rights. Other factors which might be determined in this light are that the usages and customs around Islamic law have developed over time and have given its interpretation of specific social issues to the peculiarity of the vicinity where the law is applied. For instance, the Maliki school of thought is adopted in northern Nigeria.²⁴³ While there are not many resources that might address the realities of the condition of children in the North without scholars trying to be biased in their exposition of how Islamic law tends to protect the abused child. The *Almajiri* system of child beggars is an excellent example of the exposure of children with no parental supervision to be forced to engage in exploitative labour and trafficking and people with disabilities subjected to begging to sort the sympathy of passers-by. According to Mohammad and Yusuf, the system has been credited for exposing unacceptable social flaws and social explosion, which only harms society. This continues to create avenues for child exploitation, trafficking, and the engagement of disabled children in forced exploitation.²⁴⁴

5.3. Possible Solutions to the Challenges of the Implementation of the Provisions for Child Labour, Trafficking, and Disabled Children in Forced Labour

The standard recommendation is for the States Parties to review their provisions on child labour to include both trafficking and disabled children in forced labour. This should be done first by imputing the general principles in the entire body of the CRA or any other statutes that may be used to replace the existing provisions on the rights of the child. as highlighted by citing the case of *Minority Rights Group International & SOS-Esclaves (on behalf Said Quid Salem & Yarg*

²⁴¹ M. Tirmithi, *Hadith* (1913)

²⁴² A. Mohd, N.K.N. Mahmud, A.A. Muhammad, M.C.M. Sallah, ‘Child Labor Under Islamic Law (The SHARI’AH): An Overview’, 23 *Al-Shajarah* (2018), 295, at 299

²⁴³ O.N. Ogbu, *Modern Nigerian Legal System* (3rd ed 2013)

²⁴⁴ I. Mohammed, D. Yusuf, ‘The Almajiri Education System: Origin, Dynamics and Challenges’, 2 *Taraba Journal of Political Science and International Relations* (2015) 1, at 9

*Ould Salem) v Mauritania*²⁴⁵ where general principles were used in combination with other provisions to bring justice for the victims involved in the case. A robust general direction with all the comprising elements would be outstanding in addressing the areas where the law seems to be relatively silent. More so, the general principles would expectedly make the CRA rank up to standard than its controversial state, which may be compared to a rushed work that was only done to please pressing NGOs and other stakeholders who wanted the country to have domestic laws of the rights of the child.

Also, it might not be possible for provisions to be made about every potential issue that may be thought about. While there is a tremendous possible occurrence of the evolvement of disabled children in forced labour, it is understandable that the safety provisions made for the average child will be applied similarly. However, more dedicated requirements to accommodate these, as recognized by Article 16 of the CRDP, would show that the CRA's drafters considered their interest. The Act only reflects several fractions of existing international provisions, with few distinctions. While these provisions might need to maintain the nature of the principles representing them, revision of the act with conscious attention on each condition, thereby applying recommendations from General Comments bordering around indigenous girls and women, child labour, disabilities, adolescents, and so on. The right to education has been credited to be the ultimate solution to child labour, even for those living with disabilities. If free and compulsory education is introduced, this might keep many children away from child labour, even those with disabilities. State Parties may do well to capitalize on this and other infrastructural development, providing many opportunities to mitigate child labour.

5.4. Conclusion

Following the nature of child labour extensively as presented in the CRA and its comparison with the CRC and ACRWC, it has been identified so far that the former relies on the other two statutes for content and provisions of what should be a befitting conglomeration of statutory provisions not just on the rights of the child, but on rights that relate to child labour with links with trafficking and disabilities. However, it is essential to note that through evaluating these provisions, the CRC and ACRWC were not enough to address the peculiarities of the research questions, particularly on what connections child labour has with trafficking and what child

²⁴⁵ *Minority Rights Group International & SOS-Esclaves (on behalf Said Quid Salem & Yarg Ould Salem) v Mauritania* 007/Com.003/2015, 003/2017.

labour has with disabilities. A significant finding was discovered in Section 29, which established that child labour should indeed be seen from the perspective of labour under the Nigerian Labour Act, thus following the framework of ILO Conventions in these provisions for the minimum age of the child employment and number of hours a such child is expected to have worked. This, however, leads to the conclusion that the provisions of the CRA, especially Section 29, do not have anything to do with the other statutes on the rights of the child, like the UNCRC, but rely on the framework established by the other conventions which might just have provided enough ample provisions for the subject matter in question.

The chapter highlighted the challenges of the two significant sub-systems that run within the country and how they might affect the already laid principles of child labour in the international conventions, up to the point of rendering these provisions, especially on matters that bother around well-kept customs, values, and religious beliefs. More so, the existing infrastructure of child's rights in the country may not also contribute to having better results from these provisions as laid in the CRA. However, there are solutions to these challenges, which have been highlighted to include a more robust legal framework that does not entirely rely on the principles established in these international conventions, but in a mixture with the existing values and customs of Nigerian society as well as awareness, campaigns and other methods which would help boost recognition to these provisions on the rights of the child to be protected against child labour in general.

CONCLUSION

As identified throughout this paper that while there are more than enough provisions and scholarly works on child labour and trafficking in persons, there is a constant shortage of legal provisions and scholarly materials on the engagement of disabled children in exploitative labour in Nigeria. More so, aside the provisions of the CRA 2003 and the Nigerian Labour Act 1971, no other requirements talked extensively about child labour and how they need to be mitigated. The few Nigeria cases cited in this paper also showed that the matters relating to child's rights in Nigeria are still in the developing stage. This, however, proves the weak legal infrastructure of the enforcement of crimes against child labour offenders and the lackadaisical attitude of the Nigeria government to addressing issues of child trafficking and disabled children in exploitative labour. Other challenges include the lack of adequate cases of disabled children in exploitative labour.

Other challenges include the lack of adequate case of disabled children in exploitative labour at the regional and international levels. The research problem that this paper found solution to is on the viability of evaluating child labour in the light of trafficking and child disability, while drawing a link between the legal framework of respectable conventions on these concepts and the domestic laws of Nigeria. This thesis squarely addressed these links as well as giving attention to more specific issues, some of which will be discussed below. It became known that child labour can indeed be elaborated more specifically in more specialised issues such as child trafficking and the plight of disabled children in exploitative labour. Also, another discovery that was made regarding the research problem is that these connections are not new since they have been subjects of discussion since the industrial revolution.²⁴⁶ However, while chapter 1 reveals the less extreme attitudes of countries in addressing these problems, a gradual growth in addressing these problems, a gradual growth in addressing these issues proves how these issues gained momentum to be discussed as primary child rights matter up to the twenty-first century.

Also, it is essential to note that while trafficking and child disability are specific issues, they are essentially and impliedly covered by the CRC before the enactment of other instruments, such as the Protocol to Prevent Suppress and Punish Trafficking in Persons, Especially Women, and Children, Supplementing the United Nations Convention against Transnational Organized Crime

²⁴⁶ Buck, *International Child Law* (3rd 2014).

which dwelled extensively on the trafficking in persons. On the other hand, the Convention on the Rights of Disabled Persons (CRDP) 2007, especially Article 16, prohibits disabled children from economic exploitation. There were further clarifications which show that the founding principles of child's rights, such as non-discrimination, the best interest of the child, right to life, survival and development, and right to be heard,²⁴⁷ may all be used to explain not only the provisions on child labour but how their deficiencies may be used to describe trafficking in persons and disabled children in trafficking ineptly. Furthermore, it became known that while international provisions address these issues with viable requirements, the domestication system and other international political and social factors make it challenging to implement these works (Chapters 3 to 5).

Regarding the research questions such as how previous and present international laws and the use of exploitative labour by children with disabilities have addressed child trafficking. The systematic evaluation of the historical development in Chapter 1 showed that the principles of existing child labour provisions emanated from the less successful statutes before and during the industrial revolution. And how the evolution of these principles continues to be more specific decades after decades on more narrow topics such as the trafficking of persons primarily covered by the Convention against Transnational Organized Crime and disabled children by the Convention on the Rights of Disabled Persons (CRDP). The founding principles, as highlighted above, have proved to be effective in guiding any statute that might need to address child rights matters. Moreso, these principles have proved to not be without shortcomings since Chapter 2 primarily emphasizes how the right to dignity should instead be included in the founding principles of not only child rights matters but also child labour.

Chapters 3 and 4 highlighted the difficulties that often affect countries trying to adopt the provisions of international laws to address more international problems. Nigeria's ratification and domestication process have proved effective in adopting Nigeria's African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act,²⁴⁸ and the Child's Rights Act as laws in Nigeria reveals that; At the same time, the government of Nigeria may quickly implement international conventions on more general human right matters such as the Africa Charter on Human and People's Rights, the domestication of instruments on more specific issues such as

²⁴⁷ Z. Vaghri, J. Zermatten, G. Lansdown, R. Ruggiero, *Monitoring State Compliance with the UN Convention on the Rights of the Child: An Analysis of Attributes* (Vol 25 2022).

²⁴⁸ *Abacha v Fawehinmi*, S.C. 45/1997, 28 Apr 2000,

child's rights or the CRC is often tricky which might require more processes especially such subjects are not the primary duty of the federal government. Other factors, such as cultural and social factors,²⁴⁹ have been identified in chapters 3 and 5 as difficulties in the domestication of the CRC and ACWRC since they have been labelled to have principles contrary to the provisions of the customary law and shariah systems operating within the country.

Lastly, the thesis paper on how the CRA reflects the international framework on child rights, which was established majorly in light of how the general principles were represented in the CRA. Chapter 4 highlighted that while the CRA generally reflects the international framework based in the CRC and ACWRC, this adoption did not wholly reflect the principles necessary for the establishment of the CRC and ACWRC, and this may have been as a result of how such regulations might conflict international factors within the country. Or that the drafters of the CRC are clueless about these principles and whether they need to be adopted. However, it is essential to note that commentaries on child rights and human rights were broadly sought after, in addition with reportable journals and other arguments to drive the significant discussions of this paper.

It is now recommended that scholars should pay more attention to child labour and trafficking of children. Also, the right to dignity of the person is included as part of the founding rights of the child. Excluding these principles would easily accommodate other inhumane issues children may suffer, such as servitude, modern slavery, exploitative labour, etc. The enactment of a convention, especially by ILO, dedicated to addressing child labour while focusing extensively on trafficking in children and child disability would go a long way in addressing the inadequacy of current instruments on this matter. Finally, it is recommended that the Nigerian government adopt a process that would aid the easier adoption of international principles and the CRA amended to address the current issues highlighted in this work.

²⁴⁹ O.N. Ogbu, *Modern Nigerian Legal System* (3rd ed 2013)

KOKKUVÕTE EESTI KEELES

Nüüd on soovitatav, et teadlased pööraksid rohkem tähelepanu laste tööle ja lastekaubandusele. Samuti on lapse põhiõiguste hulka lisatud õigus inimväärikusele. Nende põhimõtete väljajätmine võimaldaks hõlpsasti ka muid ebainimlikke probleeme, mille all lapsed võivad kannatada, nagu orjus, kaasaegne orjandus, ekspluateeriv töö jne. Konventsiooni vastuvõtmine, eriti ILO poolt, mis käsitleks laste tööjõu kasutamist, keskendudes samal ajal põhjalikult lastega kauplemisele ja laste puudele, aitaks palju kaasa praeguste vahendite ebapiisavusele selles küsimuses. Lõpetuseks soovitatakse Nigeeria valitsusel võtta vastu protsess, mis aitaks lihtsustada rahvusvaheliste põhimõtete vastuvõtmist ja muuta CRAd, et käsitleda käesolevas töös esile toodud praeguseid probleeme.

ABBREVIATIONS

1999 CFRN – 1999 Constitution of the Federal Republic of Nigeria

ACRWC – African Charter on the Rights and Welfare of the Child

CoRC – Committee of the Rights of the Child

CRA – Child Labour Act 2003

CRDP – Convention of the Rights of Disabled Persons

CRDP- Convention on the Rights of Disabled Persons

CWC – Child Welfare Committee

GC – General Comment

IAPCW – International Association for the Protection of Child Welfare

ICJ – International Court of Justice

ICLS – International Conference of Labour Statisticians

ILO – International Labour Organisation

IO – International Organisation

ISCU - International Save the Children Union

IUCW – International Union for Child Welfare

LFN – Laws of the Federation of Nigeria

NWLR - Nigerian Weekly Law Report

SIMPOC – Statistical Information and Monitoring Programme on Child Labour

UN – United Nations

CRC – Convention on the Rights of the Child

UNICEF – United Nations Children’s Emergency Fund

WHO – World Health Organisation

BIBLIOGRAPHY

A. Case-Laws

Nigerian Cases

1. Abacha v Fawehinmi, S.C. 45/1997, 28 Apr 2000.
2. Aku v Aneka [1991] 8 NWLR (pt 209) 280.
3. C.O.P Taraba State & Anor v. Dabo & Anor (2019) LPELR-47215 (CA).
4. FRN v. Okunomo & Ors (2010) LPELR-4154 (CA).
5. Hassan v E.F.C.C (2014) 1 NWLR [Pt.1389] 607, at 610.
6. Ibidapo v Lufthansa, (SC 236/1994) [1997] 5 (04 April 1997).
7. Labinjoh v Abake (1924) 5 NLR p 23.
8. Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening), 10 Oct 2002, ICJ Reports (2002) 303.
9. Ojisua v. Aiyebilehin [1990] 3 NWLR (pt 137) 137
10. Oyewumi v. Ogunesan [1990] 3 NWLR (pt. 137) 137
11. Ransome-Kuti v. Attorney General of the Federation (1985) 2 NWLR, 211, SCN

12. Shaibu & Ors v. Utomwen & Ors (2022) LPELR-58237 (CA)
13. Tega Esabunor & Anor v. Faweya & Ors (2019) LPELR-46961.

African Cases

14. Minority Rights Group International & SOS-Eslaves (on behalf of Said Quid Salem & Yarg Ould Salem) v Mauritania 007/Com.003/2015, 003/2017.

European Cases

15. C.N. and V. v. France, No 67724/09, 11 October 2012.
16. Netherlands v European Parliament and Council European Court Reports 2001: 1(10A): 6699-7554
17. Rantsev v. Cyprus and Russia No 25665/04, 7

United States Cases

18. Chae Ping v. United States, 130 U.S. 581
19. Painter v Bannister 140 N.W. 2d 152 (1966)

B. Online Sources

20. Bice, *History of the Rights of the Child* (2014), available at <https://bice.org/en/history-rights-child/#:~:text=In%201919%2C%20the%20League%20of,the%20father%20of%20children%27s%20rights>
21. British Columbia *Human Trafficking Emphasis on Human Rights* (2019), available at <https://www2.gov.bc.ca/gov/content/justice/criminal-justice/victims-of-crime/human-trafficking/human-trafficking-training/module-1/human-rights#:~:text=In%201948%2C%20the%20United%20Nations,or%20degrading%20treatment%20or%20punishment>
22. Bureau of International Labor Affairs, *Child Labor and Forced Labor Reports: Nigeria* (2021), available at <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/nigeria>
23. Carolyn Tuttle, *Child Labor During the British Industrial Revolution*, available at <https://eh.net/encyclopedia/child-labor-during-the-british-industrial-revolution/>
24. David Batty, *Timeline: A History of Child Protection* (2005), available at <https://www.theguardian.com/society/2005/may/18/childrenservices2>
25. Development Services Group Inc, *Child Labor Trafficking: Literature Review* (2016), available at https://ojjdp.ojp.gov/model-programs-guide/literature-reviews/child_labor_trafficking.pdf
26. Emma Griffin, *Child Labour* (2014), available at <https://www.bl.uk/romantics-and-victorians/articles/child-labour>
27. Encyclopaedia Britannica, *International Law* (2022) available at <https://www.britannica.com/topic/international-law/States-in-international-law>

28. European Commission Employment Social Affairs & Inclusion, *United Nations Convention on the Rights of Persons with Disabilities* (2019), available at <https://ec.europa.eu/social/main.jsp?langId=en&catId=1138>
29. Government of Netherlands, *The Difference Between Signing and Ratification* (2013), available at <https://www.government.nl/topics/treaties/the-difference-between-signing-and-ratification#:~:text= Ratification%3A%20approval%20of%20agreement%20by%20the%20state&text=After%20approval%20has%20been%20granted,officially%20binding%20on%20the%20state>
30. Humanium, *Children with Disabilities* (2019), available at <https://www.humanium.org/en/children-with-disabilities/>
31. Humanium, *Right to Life*, available at <https://www.humanium.org/en/life/-:~:text=For%20children%2C%20the%20right%20to%20life%20is%20the,to%20be%20able%20to%20survive%20and%20develop%20appropriately>.
32. IFSW, *The Best Interest of the Child* (2009), available at <https://www.ifsw.org/the-best-interest-of-the-child/-:~:text=Best%20Interest%20of%20the%20child%20The%20best%20interest,society%20and%20his%2Fher%20responsibilities%20to%20the%20wider%20community>.
33. ILO UNICEF, *Child Labour: Global Estimate 2020, Trends and the Road Forward* (2021), available at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_800278.pdf
34. ILO, *Child Labour and Education* (2022), available at <https://www.ilo.org/ipec/Action/Education/lang--en/index.htm#:~:text=Education%20is%20a%20crucial%20component,%2C%20in%20some%20cases%2C%20growth>.
35. ILO, *Facts on Disability and Child Labour* (2011), available at file:///C:/Users/Samuel%20Abayomi/Downloads/wcms_165280.pdf
36. ILO, *Global Estimates of Child Labour: Rights and Trends 2012-2016* (2017), available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575499.pdf
37. ILO, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (2017), available at https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf
38. ILO, *Ratifications of C138 – Minimum Age Conventions, 1973 (No.138)* (2022), available at https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312283
39. ILO, *Trafficking in Children* (2022) available at <https://www.ilo.org/ipec/areas/Traffickingofchildren/lang--en/index.htm>
40. International Labour Organization, *What is Child Labour?* available at <https://www.ilo.org/ipec/facts/lang--en/index.htm>

41. International Office for Migration (IOM), Increased Number of Nigerian Migrants Fall Victim to Sex Trafficking (2019), available at <https://www.iom.int/news/increased-number-nigerian-migrants-fall-victim-sex-trafficking-exploitation-mali>
42. IWM Collections, *10 Ways Children Took Part in the First World War* (2022), available at <https://www.iwm.org.uk/history/10-ways-children-took-part-in-the-first-world-war#:~:text=During%20the%20First%20World%20War%2C%20factories%20employed%20women%2C%20refugees%2C,addition%20to%20a%20family%27s%20income.>
43. L O Ugabajah, *AfCFTA in Focus: A Brief Note on Ratification and Domestication of International Agreements in Nigeria* (2020), available at <https://www.linkedin.com/pulse/afcfta-focus-brief-note-ratification-domestication-nigeria-ugabajah/>
44. L.W. Reed, *Child Labor and the British Industrial Revolution* (2001), available at <https://www.mackinac.org/3879>
45. M.E., O'Sullivan, *Defending Prussian Social Policy: The Child Labour Law of 1839* (2006), available at <https://www.h-net.org/reviews/showrev.php?id=11358>
46. M.T. Landan, An Overview of the Child Rights Act, 2003 (2021), available at <https://nji.gov.ng/wp-content/uploads/2021/12/AN-OVERVIEW-OF-THE-CHILD-RIGHTS-ACT-2003-BY-PROF.-LADAN.pdf>
47. Marianne Dahlen, *The ILO and Child Labour* (2008) available at <http://uu.diva-portal.org/smash/get/diva2:321714/FULLTEXT01.pdf>
48. Mathias Forteau, *Regional International Law* (2006), available at <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1463-:~:text=1%20Regional%20international%20law%20can%20be%20defined%20narrowly,any%20rule%20having%20a%20regional%20scope%20of%20application.>
49. Neil Howard, *Child Trafficking and Slavery* (2022), available at <https://www.oxfordbibliographies.com/view/document/obo-9780199791231/obo-9780199791231-0227.xml#:~:text=%E2%80%9CChild%20trafficking%E2%80%9D%20began%20its%20career,commercial%20sexual%20exploitation%20of%20children.>
50. Neil Prior, What Role Did Disabled People Play During Industrial Revolution? (2015) available at <https://www.bbc.com/news/uk-wales-33107078>
51. Nigerian Economic Summit Group, Economic Implications of the African Continental Free Trade Agreement (AfCFTA) on the Nigerian Industrial Sectors, available at https://nesgroup.org/download_resource_documents/AFCFTA%20on%20Industrial%20Sector_1576844589.pdf
52. Oluwaniyi Oluwatoyin, *Internal Child Trafficking in Nigeria: Transcending Legal Borders* (2009), available at https://scholar.google.com/scholar?hl=en&as_sdt=0%2C5&as_vis=1&q=child+trafficking+in+nigeria&btnG=
53. Pradon Fanette, *Child Labour and Industrialization: The Children of a Revolution* (2015), available at <https://dune.univ-angers.fr/fichiers/20136043/20152MALLC5038/fichier/5038F.pdf>

54. S. Van der Hof, E. Lievens, I. Milkaite, V. Verdoodt, T. Hainnema, and T. Liefwaard, 'The Child's Right to Protection against Economic Exploitation in the Digital World,' 28 *The International Journal of Children's Rights* (2020) 833, available at <https://doi.org/10.1163/15718182-28040003>
55. Save the Children, *100 Years for Children* (2022), available at <https://www.savethechildren.net/about-us/100-years-children>.
56. Save the Children; *Gender Discrimination Causes Inequality*, available at <https://www.savethechildren.org/us/charity-stories/how-gender-discrimination-impacts-boys-and-girls>
57. Sir John Monash Centre Australian National Memorial France, *How Children Experienced the First World War* (2017), available at <https://sjmc.gov.au/how-children-experienced-the-war/>
58. The National Archives, 1833 Factory Act (2014), available at <https://www.nationalarchives.gov.uk/education/resources/1833-factory-act/#:~:text=In%201833%20the%20Government%20passed,under%20nine%20years%20of%20age>
59. U.S. Department of State, *What is Modern Slavery?* (2017), available at <https://www.state.gov/what-is-modern-slavery/>
60. UIA Global Civil Society Database, *International Association for the Promotion of Child Welfare* (2022), available at <https://uia.org/s/or/en/1100058241>
61. UK Parliament, *The 1833 Factory Act* (2022), available at <https://www.parliament.uk/about/living-heritage/transformingsociety/livinglearning/19thcentury/overview/factoryact/#:~:text=No%20children%20were%20to%20work,limited%20to%2012%20hours%20daily>
62. UN Human Right Committee, CCPR General Comment no.18 (1989) Non-discrimination, CCPR/C/21/Rev.1/Add.1, 21 November 1989, available at <https://digitallibrary.un.org/record/84170>
63. UNCHR, *Chapter 6: The International and Regional Legal Framework* (2008), available at <https://www.unhcr.org/47cfad542.pdf>
64. UNCHR, *Chapter 6: The International and Regional Legal Framework* (2008), available at <https://www.unhcr.org/47cfad542.pdf>
65. UNICEF Regional Office for South Asia, *Advocacy Brief-Child Labour and Disability* (2020), available at <https://www.unicef.org/rosa/media/13541/file/Advocacy%20Brief%20-%20Child%20Labour%20and%20Disability.pdf>
66. UNICEF Regional Office for South Asia, *Child Labour, and Disability: A Sector Review* (2022), available at <https://www.unicef.org/rosa/media/18201/file/Child%20Labour%20and%20Disability:%20A%20Sector%20Review%20.pdf>
67. UNICEF, *Child Labour* (2022), available at <https://data.unicef.org/topic/child-protection/child-labour/>
68. UNICEF, *Child Protection: Child Labour*, available at <https://www.unicef.org/protection/child-labour>

69. UNICEF, *Child Rights and Why They Matter: Every Right, for Every Child* (2022), available at <https://www.unicef.org/child-rights-convention/child-rights-why-they-matter>
70. UNICEF, *Four Principles of the Convention on the Rights of the Child* (2019), available at <https://www.unicef.org/armenia/en/stories/four-principles-convention-rights-child>
71. UNICEF, *Four Principles of the Convention on the Rights of the Child* (2019), available at <https://www.unicef.org/armenia/en/stories/four-principles-convention-rights-child>
72. UNICEF, *Information Sheet: The Child's Rights Act* (2007), available at https://ovcsupport.org/wp-content/uploads/Documents/Child_Rights_Act_Nigeria_UNICEF_information_sheet_1.pdf
73. United Nations: Office on Drugs and Crime, *Human Trafficking* (2022) available at <https://www.unodc.org/unodc/en/human-trafficking/human-trafficking.html>
74. WHO, *Countries Failing to Prevent Violence against Children, Agencies Warn: Global Status Report on Preventing Violence against Children calls for more Government Action and Warns of 'Dramatic Impact' of COVID-19* (2020), available at <https://www.who.int/news/item/18-06-2020-countries-failing-to-prevent-violence-against-children-agencies-warn>
75. World's Children, *Child Trafficking Statistics*, available at <https://www.worldschildren.org/child-trafficking-statistics/>

C. Journal Articles

76. A.A. Aderinto and R.A. Okunola, Push, Pull, and Sustaining Factors of Child Labour in Nigeria, 6 *Psychologia: An International Journal* (199) 173.
77. A.F. Bayefsky, 'The Principle of Equality or Non-discrimination in International Law,' 11 *Human Rights Law Journal* (1992) 1, at
78. Adebola T Adeoti, Child Labour in Nigeria: Causes and Consequences for National Development, 3 *Young African Leaders Journal of Development* (2021) 39.
79. Amanda Lloyd, 'A Theoretical Analysis of the Reality of Children's Rights in Africa: An Introduction to the African Charter on the Rights and Welfare of the Child,' 2 *African Human Rights Law Journal* (2002) 11, at 14.
80. B.D. Pickar and R.L. Kaufman, 'Parenting Plans for Special Needs Children: Applying a Risk-Assessment Model,' 53 *Family Court Review* (2015) 113, at 125.
81. D M Chirwa, 'The Merits and Demerits of the African Charter on the Rights and Welfare of the Child,' 10 *The International Journal of Children's Rights* (2002) 155
82. E.D. Gibbons, F. Huebler and E. Loaiza, 'Child Labour, Education and the Principles of Non-Discrimination,' *UNICEF Staff Working Papers Division of Policy and Planning Series* (2005)
83. Edwin Egede, 'Bringing Human Rights Home: An Examination of the Domestication of Human Rights Treaties in Nigeria' 51 *Journal of African Law* (2007) 249, at 250
84. Egede, 'Bringing Human Rights Home: An Examination of the Domestication of Human Rights Treaties in Nigeria', 51 *Journal of African Law* (2007) 249, 281

85. Geraldine Van Bueren, 'A History of the International Law on the Rights of the Child,' in *The International Law on the Rights of the Child* (1995) 1.
86. I.M Shehu, N. Osman, and M.F. Othman, 'Nigerian Citizens and Fundamental Rights: Myth, Manoeuvre, and Reality,' 12 *Journal of International Studies* (2016) 53, at 60
87. Ibrahim Danjuma and K.A. Joel, 'The Legal Conundrum in the Implementation of the Convention on the Rights of the Child in Nigeria,' 5 *Sriwijaya Law Review* (2021) 1
88. Iyabode Ogunniran, 'A Centurial Legal History of Child Justice Reforms in Nigeria 1914-2014', 2 *Law, Crime and History* (2015) 44, at 67
89. J. Eekelaar, 'The Importance of Thinking that Children have Rights,' 6 *International Journal of Law and the Family* (1992) 230
90. J. Gillett-Swan and J. Sargeant, 'Assuring Children's Human Right to Freedom of Opinion and Expression in Education,' 20 *International Journal of Speech-Language Pathology* (2018) 120, at 126.
91. J. Humphries, Child Labor: Lessons from the Historical Experience of Today's Industrial Economies, 17 *The World Bank Economic Review* (2003) 175.
92. Jean Allain, White Slave Traffic in International Law, 1 *Journal of Trafficking and Human Exploitation* (2017) 1.
93. Joelle Droux, L'internationalisation de la protection de l'enfance: acteurs, concurrence et projects transnationaux (1990-1925), 52 *Critique Internationale* (2011) 17.
94. K.A. Polonko and L.X. Lombardo, 'Human Dignity and Children: Operationalizing a Human Rights Concept,' 18 *Global Bioethics* (2005) 17, at 19
95. Lovejoy Paul, The Children of Slavery – the Transatlantic Phase, 27 *Slavery & Abolition (A Journal of Slave and Post-Slave Studies)* (2011) 197.
96. M.A. Ajanwachuku, 'A Critical Review of Child Labour in Nigeria and the Case for Child Entrepreneurship,' 3 *Rechtsidee* (2016) 71, at 75
97. M.D.A. Freeman, 'Upholding the Dignity and Best Interests of Children: International Law and the Corporal Punishment of Children,' 73 *Law and Contemporary Problems* (2010) 211, at 215
98. McCrudden, 'Human Dignity and Judicial Interpretation of Human Rights', 19 *European Journal of International Law* (2008) 655.
99. Md Nurul Momen, 'Child Labour: History, Process, and Consequences,' W. Leal Filho et al. (eds), *No Poverty, Encyclopedia of the UN Sustainable Development Goals* (2020) 1.
100. Mohammed, D. Yusuf, 'The Almajiri Education System: Origin, Dynamics and Challenges,' 2 *Taraba Journal of Political Science and International Relations* (2015) 1, at 9
101. Mohd, N.K.N. Mahmud, A.A. Muhammad, M.C.M. Sallah, 'Child Labor Under Islamic Law (The SHARI'AH): An Overview', 23 *Al-Shajarah* (2018), 295, at 299

102. N.O Enede, J.T. Enede, C.C. Agunwa, E.N. Ossai, U.E. Ezeoke, C.A. Idoko & C.O. Mbachu, Prevalence and Predictors of Child Labour among Junior Public Secondary School Students in Enugu, Nigeria: A Cross-Sectional Study, 21 *BMC Public Health* (2021)1339.
103. O.S. Adesina, Modern Day Slavery: Poverty and Child Trafficking in Nigeria, 12 *African Identities* (2014) 165, at 165.
104. Oguniyi, 'The Challenges of Domesticating Children's Right Treaties in Nigeria and Alternative Legal Avenues for Protecting Children', 62 *Journal of African Law* (2018) 447, at
105. R. Sigurdson, 'Children is Right to Respect for their Human Dignity,' in T. Haugli, A. Hylund, R. Sigurdson, L.R.L. Bendiksen (eds) *Children's Constitutional Rights in the Nordic Countries* (2019) 19, at 26
106. S. Onuche and E. Onuche, 'Rights of the Nigerian Child: The Law, Myths, and Reality, 5 *African Journal of Law and Human Right (AJLHR)* (2021) 55, at 60
107. Sutherland, 'The Child's Right to Life, Survival and Development: Evolution and Progress,' 26 *Stellenbosch Law Review* (2015) 272, at 282.
108. T. A Abdulraheem, M.K. Imam-Tamin, A.H. Folorunsho, 'Child Rights in Nigeria: Exploring the Contentions between the Child Rights Act 2003, Cultural Practices and Islamic Rules', *Addressing the Socio-Legal Challenges of Human Rights Protection in Nigeria: Factoring in Strong Legal Pluralism* (2015) 1, at 3
109. T.P. Botchway and A.H. Kwarteng, 'Developing International Law in Challenging Times,' 11 *Journal of Politics and Law* (2018) 53, at 57
110. T.S. Braimah, 'Child Marriage in Northern Nigeria: Section 61 of Part I of the 1999 Constitution and the Protection of Children against Child Marriage', 14 *African Human Rights Law Journal (AHLJ)* (2014) 474, at 480.
111. Tuttle and S.A. Wegge, 'Regulating Child Labor The European Experience', A Grief, L. Kiesling and J.V. Nye *Institutions, Innovation, and Industrialisation* (2020)
112. U.A. Dubagari, 'Legal Framework for the Elimination of Child Labour in Nigeria,' 2 *International Journal of International Law* (n.d.) 144
113. U.S. Naidu, Health Problems of Working Children – Some Issues in Planning Long Term Care in U.S. Naidu and K.R. Kapadia (eds) *Child Labour and Health: Problems and Prospects Bombay* (1985)
114. Z. Hoodbhoy, R. Qureshi, R. Iqbal, Q. Muhabat, 'Household Chores as the Main Source of Physical Activity: Perspective of Pregnant Pakistani Women,' 68 *Journal of the Pakistan Medical Association (JPMA)* (2018) 565, at 568.
115. Z. Vaghri, J. Zermatten, G. Lansdown, R. Ruggiero, (eds), *Monitoring State Compliance with the UN Convention on the Rights of the Child: An Analysis of Attributes* (2022)

D. Textbooks

116. Abramson, *A Commentary on the United Nations Convention on the Rights of the Child Article 2: The Right of Non-Discrimination* (2008)
117. Anthony Aust, *Domestication of International Law Modern Treaty Law and Practice*, (2019)
118. Arkadas-Thibert and G. Lansdown, 'Article 35: Prevention of Abduction, Sale, and Trafficking', In Z. Vaghri, J. Zermatten, G. Lansdown, R. Ruggiero, *Monitoring State Compliance with the UN Convention on the Rights of the Child: An Analysis of Attributes* (Vol 25 2022).
119. B.A Garner, *Black's Law Dictionary*, (10th ed 2014)
120. C.G. Wade, *A Treatise Upon the Employers' Liability Act of New South Wales* (1880)
121. D.M. Turner, D. Blackie, *Disability in the Industrial Revolution: Physical Impairment in British Coalmining, 1780-1880* (2018).
122. E.P. Thompson, *The Making of the English Working Class* (1964).
123. G. Lansdown, 'Article 12: The Right to Be Heard', In Z. Vaghri, J. Zermatten, G. Lansdown, R. Ruggiero, *Monitoring State Compliance with the UN Convention on the Rights of the Child: An Analysis of Attributes* (Vol 25 2022).
124. G. Lansdown, 'Article 32: The Right to Protection from Economic Exploitation and Hazardous Activities', In Z. Vaghri, J. Zermatten, G. Lansdown, R. Ruggiero, *Monitoring State Compliance with the UN Convention on the Rights of the Child: An Analysis of Attributes* (Vol 25 2022).
125. G. Lansdown, 'Article 32: The Right to Protection from Economic Exploitation and Hazardous Activities', In Z. Vaghri, J. Zermatten, G. Lansdown, R. Ruggiero, *Monitoring State Compliance with the UN Convention on the Rights of the Child: An Analysis of Attributes* (Vol 25 2022).
126. G. Lansdown, R. Ruggiero, Z. Vaghri, and J. Zermatten, Introduction, In Z. Vaghri, J. Zermatten, G. Lansdown, R. Ruggiero, *Monitoring State Compliance with the UN Convention on the Rights of the Child: An Analysis of Attributes* (Vol 25 2022).
127. G. Lansdown, R. Ruggiero, Z. Vaghri, and J. Zermatten, *Monitoring State Compliance with the UN Convention on the Rights of the Child: An Analysis of Attributes* (Vol 25 2022).
128. G. Lansdown, R. Ruggiero, Z. Vaghri, and J. Zermatten, *Monitoring State Compliance with the UN Convention on the Rights of the Child: An Analysis of Attributes* (Vol 25 2022).
129. G.T. Warner, *Landmarks in English Industrial History*, (7th ed 1912), 311
130. Geraldine Van Bueren, 'A History of the International Law on the Rights of the Child,' in *The International Law on the Rights of the Child* (1995) 1.
131. J. Humphries, Child Labor: Lessons from the Historical Experience of Today's Industrial Economies, 17 *The World Bank Economic Review* (2003) 175.
132. J. Koettl, *Human Trafficking, Modern Day, Slavery, and Economic Exploitation: A Discussion on Definitions, Prevalence, Relevance for Development, and Roles for the World Bank in the Fight Against Human Trafficking* (2009)
133. Jane Humphries, *Childhood and Child Labour in the British Industrial Revolution*

134. Joëlle Droux, A League of its Own? The League of Nations' Child Welfare Committee (1919=1936) and International Monitoring of Child Welfare Policies, United Nations, *The League of Nations' Work on Social Issues: Visions, Endeavours and Experiments* (2016)
135. K.M. Mowoe, *Constitutional Law in Nigeria*, (2008)
136. L. Lundy and B. Byrne, 'The Four General Principles of the United Nations Convention on the Rights of the Child: The Potential Value of the Approach in other Areas of Human Rights Law,' in E. Brems; E. Desmet; and W. Vandenhoele (eds), *Children's Rights Law in the Global Human Rights Landscape Isolation, Inspiration, Integration?* (2017)
137. L. Swepston, 'A Commentary on the United Nations Convention on the Rights of the Child, Article 32: Protection from Economic Exploitation', *A Commentary on the United Nations Convention on the Rights of the Child* (Vol 32, 2012)
138. Ludwig von Mises, *Human Action* (1949)
139. M.M. Black, and S.E. Oberlander, 'Psychological Impact and Treatment of Neglect of Children,' Carole Jenny (ed), *Child Abuse and Neglect: Diagnosis, Treatment, and Evidence* (2010) 490.
140. N. Peleg and J Tobin, 'Article 6: The Rights to Life, Survival and Development. In J. Tobin (ed), *The UN Convention on the Rights of the Child: A Commentary* (2019)
141. O.N. Ogbu, *Modern Nigerian Legal System* (3rd ed 2013)
142. R. Sigurdson, 'Children's Right to Respect for their Human Dignity', in T. Haugli, A. Hylund, R. Sigurdson, L.R.L. Bendiksen (eds) *Children's Constitutional Rights in the Nordic Countries* (2019) 19, at 26
143. Rita Hofstetter, 'La Transformation de l'enfant en ecolier (du 19 au milieu du 20 siecle): les 'eurekas' des sciences de l'homme naissantes, entre scientism et romantisme: un 'naturalisme de lenfance', 48 *Paedagogica Historica* (2012) 31.
144. S. Conrad and D. Sachsenmaier., *Competing Visions of World Order: Global Moments and Movements 1889's-1930's* (2012)
145. Sebastian Conrad and Dominic Sachsenmaier (ed), *Competing Visions of World Order: Global Moments and Movements 1880s-1930s* (2012)
146. Sebastian Conrad and Dominic Sachsenmaier (ed), *Competing Visions of World Order: Global Moments and Movements 1880's-1930's* (2012)
147. T.O. Elias and R Akinjide, *Africa and the Development of International Law* (1988)
148. Tuttle and S.A. Wegge, 'Regulating Child Labor The European Experience', A Grief, L. Kiesling and J.V. Nye *Institutions, Innovation, and Industrialisation* (2020)

E. Official Documents

149. Committee on the Elimination of Discrimination against Women, General on the Elimination No. 39 (2022) on the Rights of Indigenous Women and Girls, CEDAW/C/GC/39, 31 October 2022, § 47, at 18

150. Committee on the Elimination of Discrimination against Women, General Recommendation No. 39 (2022) on the Rights of Indigenous Women and Girls, CEDAW/C/GC/39, 31 October 2022, §9, at 4.
151. Committee on the Rights of Persons with Disabilities, General Comment No. 3 (2016) on Women and Girls with Disabilities, CRPD/C/GC/3, 25 November 2016, § 36, at 9.
152. Committee on the Rights of the Child, Consideration of reports submitted by States parties under articles 44 of the Convention, UN Doc. CRC/C/NGA/3-4, 5 January 2009, at 11
153. Committee on the Rights of the Child, General Comment No 9 (2006): The Rights of Children with Disabilities, UN Doc. CRC/C/GC/9, 27 February 2007, 75
154. Committee on the Rights of the Child, General Comment No. 11 (2009): Indigenous Children and their Rights under the Convention, CRC/C/GC/11, 12 February 2009.
155. Committee on the Rights of the Child, General Comment No. 20 (2016) on the Implementation of the Rights of the Child during Adolescence, CRC/C/GC/20, 6 December 2016.
156. Committee on the Rights of the Child, General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside their Country or Origin, CRC/GC/2005/6, 1 September 2005.
157. Committee on the Rights of the Child, General Comment No. 9 (2006): The Rights of Children with Disabilities CRC/C/GC/9, 27 February 2007.
158. Committee on the Rights of the Child, Written replies by the Government of Nigeria concerning the list of issues (CRC/C/Q/NGA/2) received by the Committee on the Rights of the Child relating to the consideration of the 2nd periodic report of Nigeria (CRC/C/70/Add.24), UN Doc. CRC/C/RESP/72, 26 November 2004.
159. Committee on the Rights of the Children, General Comment No. 14 (2013) on the Right of the Child to have his or her Best Interests taken as a Primary Consideration (Art. 3, Para. 1), CRC/C/GC/14, 29 May 2013, § 4, at 3
160. European Parliament and Council, Directive 2011/36/EU of the European Parliament and of the Council of 15 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting its Victims, 15 April 2011, OJ 2011 L 101/1.
161. United Nations Human Rights Office of the High Commissioner, Human Rights, and Human Trafficking, Fact Sheet No 36, (2014)

LIST OF STATUTES

International Conventions

1. Charter of the United Nations 1945
2. Convention on the Rights of Disabled Persons (CRDP) 2007
3. Convention on the Rights of the Child 1989 (CRC)
4. Declaration on the Rights of Disabled Persons
5. Geneva Declaration of the Rights of the Child 1924
6. ILO Minimum Age Convention 1973 (No 138)
7. ILO Worst Forms of Child Labour Convention 1999
8. ILO, Minimum Age (Industry) Convention 1919
9. International Agreement for the Suppression of the White Slave Traffic
10. LON International Convention for the Suppression of Traffic in Women and Children 1921
11. Night Work of Young Persons (Industry) Convention 1919
12. Protocol to Prevent Suppress and Punish Trafficking in Persons, Especially Women, and Children, Supplementing the United Nations Convention against Transnational Organized Crime
13. Universal Declaration of Human Rights

14. Versailles Peace Treaty
15. Vienna Convention on the Law of Treaties (VCLT)

Regional Conventions

16. African Charter on Human and Peoples Rights 1981
17. African Charter on the Rights and Welfare of the Child (ACRWC) 1990

Nigerian Statutes

18. 1999 Constitution of the Federal Republic of Nigeria (CFRN)
19. Child Rights Act 2003 (CRA)
20. Children and Young People's Act 1958
21. Nigeria's African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act
22. Nigerian Labour Act 1971

Other Statutes

23. British Factory Act 1833
24. Child Rights Act 2003 (CRA)
25. Convention on the Rights of Disabled Persons (CRDP) 2007
26. Convention on the Rights of the Child 1989 (CRC)
27. Employer Liabilities Act 1886
28. Health and Moral Apprentices Act 1807
29. Prussia's Child Labour Law of 1849
30. Slave Trade Abolition Act 1807