

Abstract

Despite Nigeria's domestication of various international and regional treaties on child rights protection, cases of child rights violation still persist. The problem appears to be centred on the perceived gaps in the legal provisions and their enforcement, as well as the passive role of States in ensuring the welfare and protection of children. Exploring the legal, institutional, and policy frameworks in place, this study aims to critically examine the concept of States as duty holders in child rights protection in Nigeria. In undertaking this task, this study adopts a doctrinal method of research in the analysis of statutory instruments, case law, and international conventions relevant to child rights protection. Findings in this study reveal that whilst laws such as the Child Rights Act 2003 provide a robust framework, issues such as legal pluralism, weak institutional capacity, and lack of political will significantly hinder effective implementation. It is recommended that the government enhance coordination among enforcement agencies, increase budgetary allocations for child welfare programs and intensify public awareness campaigns to shift socio-cultural attitudes that undermine child rights. The study concludes that without deliberate State action and systemic reform, the promise of child rights protection in Nigeria will remain largely unfulfilled.

Keywords: Child Rights, State Responsibility, Duty Holders and Violation

1. Introduction

Children, by virtue of their nature are vulnerable and helpless in the society particularly when it bothers on matters of violation of their rights.¹ As such, children need special protection and care since they are incapable of providing themselves security and safety when exposed to violence and abuse. Without adequate provisions by Government and relevant stake holders in their duty of care to children, the Nigerian child will be continuously exposed to different forms of abuses and violations of their rights. These violations include abuses and violation of their rights such as; early or forced marriage, street hawking, trafficking, molestation, lack of health care and access to quality education.² The literacy rate for children especially the girl child education in Nigeria is only 56 per cent compared to 72 per cent for their male counterparts.³ The rate of unwanted pregnancies among teenagers, terrorism and insecurity are pointers to the adverse effects of child rights violations. For example, the effect of the kidnap of the Chibok school girls by the Boko Haram insurgents in the North-Eastern part of Nigeria on the 14th of April, 2014 is one of such instances where children bear the brunt of insecurity and insurgency. It is regrettable that almost eleven (11) years after, the Chibok girls are yet to be reunited with their families. So far, of the 271 reported kidnapped Chibok girls by Boko Haram insurgents, 57 girls escaped shortly in 2014, 103 were released through the intervention of the Federal Government and 20 others were freed by the efforts of the state government while 92 students are still in captivity.⁴ One begins to wonder; with whom were these negotiations for the release of the 103 girl made and the 92 released on account of the State Government's intervention?

A country that has the best interest of her children at heart will show commitment to their welfare, survival and development. Nigeria is one of the countries that ratified the two major instruments on child rights protection.⁵ The United Nations Convention on the Rights of the Child (CRC) 1989, which it ratified in March 1991 is the first with most of the articles incorporated into the Child Rights Act, 2003⁶ and the second is the 1900 African Charter on the Rights and Welfare of the Child, ratified in February 2003. Nigeria's child rights regime is anchored in both international and domestic instruments. At the international level, Nigeria ratified the Convention on the Rights of the Child (CRC) in 1991 and the African Charter on the Rights and Welfare of the Child (ACRWC) in 2001. Nigeria ratified International Labour Organization (ILO) Conventions on Child Labour No. 138 (Minimum Age) and No. 182 (Worst Forms of Child Labour). These conventions prohibit: Child labour in hazardous conditions; Exploitative child labour, including trafficking and forced labour. However, economic pressures and lack of enforcement result in continued violations.

Domestically, the Child Rights Act was passed in 2003 to domesticate these two conventions. The Child Rights Act guarantees several rights, including the right to survival, development, protection from abuse and participation in decision-making processes affecting the child. However, under Nigeria's federal system, the Child Rights Act applies only in the Federal Capital

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¹ T. Ibraheem, 'Legal Framework for the Protection of Child Rights in Nigeria' [2015] *Agora International Journal of Juridical Sciences*, Vol. 9 No. 3, 46-52

² Nigeria is one of the countries with high mortality rate of under-5 (per 1000, live births) <<http://data.worldbank.org/indicator/SH.DYN.MORT>> accessed 13 February, 2024.

³ National Bureau of Statistics, 2006. Though high enrolment is reported, yet the standard of education has remained low with only 47 per cent of children having access to secondary school (69.3 per cent urban and 37.5 per cent rural). UNICEF report, as cited in Oyitso & Olomukoro, 'Promoting the Development of Women through Literacy Education in Nigeria', *Journal of Educational and Social Research*, 2014 4(6), 343.

⁴ <https://punchng.com/nigerian-army-rescues-pregnant-chibok-girl-10-years-after-abduction/#google_vignette> accessed 4 March 2025.

⁵ The two major instruments are: the United Nations Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49, and the African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999.

⁶ U. C. Ejie Michael & O. B. Akinola. 'Children's Rights and Participation in Schools: Exploring the Awareness Level and Views of Nigerian Primary School Children.' Online 8.1 (2009), 177

Territory unless adopted by individual states. As at 2023, only 29 out of 36 states have domesticated the Act, creating a fragmented implementation landscape.⁷

2. Historical Evolution of the Concept of Human Rights

The development of human rights has undergone remarkable evolution after the adoption of the Universal Declaration on Human Rights (UDHR) in 1948.⁸ The evolution of human rights is described in terms of 'generations' of rights. The political and civil rights are portrayed as the first generation rights, while the economic, social and cultural rights are regarded as second generation rights⁹ and collective-developmental human rights as the third generation of rights.¹⁰ The UDHR 1948 as an important source of human rights is useful in analysing the socio-economic rights of children. Under it, the United Nations has proclaimed that '*childhood is entitled to special care and assistance*'.¹¹ The UDHR was later adopted as two separate conventions: the first is the International Covenant on Civil and Political Rights (ICCPR), while the second is the International Covenant on Economic, Social and Cultural Rights (ICESCR),¹² both adopted in 1966. The ICESCR provides the primary international legal source of economic, social and cultural rights of children while article 2(3) of the ICESCR has obligated developing countries to determine to what extent they would guarantee socio-economic rights within the available limited resources to non-nationals. This is done in the expectation that the ICCPR will provide the legal source of civil and political rights, which is considered justiciable rights by countries.

Under the ICESCR, the idea of free human beings enjoying freedom from fear and want can only be achieved if conditions ensuring that children enjoys economic, social and cultural rights, as well as his civil and political rights without any hindrance are put in place.¹³ As such, the socio-economic rights, as guaranteed in the ICESCR, obliges state parties to ensure the provisions of economic, social and cultural rights to every person in the member countries. This is so because children form the most vulnerable group in the society. To guarantee their proper development and growth, therefore, they should enjoy all the basic socio-economic provisions. Thus, it is important for State to ensure that the core minimum standard for development and survival of children is met. The African Charter on Human and People's Rights (African Charter)¹⁴ 1981 is another important regional instrument adopted to protect and promote human rights in Africa. The African Charter incorporates both the economic, social and cultural rights as well as the civil and political rights of children.¹⁵ The African Charter also imposes obligations on state parties to recognize and take all positive legislative steps within its available resources towards the realization of the socio-economic rights.¹⁶ These include the right to health, education, housing as well as appropriate standard of living, social security, food/nutrition and access to water, etc.¹⁷ The United Nation Declaration on the Rights of the Child,¹⁸ the African Charter on Human and Peoples' Right,¹⁹ the African Charter on the Rights and Welfare of the Child,²⁰ and the Child Rights Act²¹ are the primary instruments put in place for the protection of the rights of children. Despite these instruments, the rights of the Nigerian child are still far from being respected. This is as a result of bottle-necks around the enforcement and implementation these legal instruments.

The rights of every child are recognised and protected by Law. This is in addition to the fundamental human rights guaranteed every human being as enshrined in the Nigerian Constitution²². This implies that the right of a child cannot be abused or violated without legal consequences to the abuser or the violator. This is what the legal framework on child rights protection advocates the world over. The Legal framework on Child Right's Protection was adopted by the United Nations general assembly²³ known as the United Nations Declaration on the Rights of the Child. It stated that children under the age of eighteen (18) years have special right's bequeathed to them which is recognized and protected by law. The right's to which a child is entitled includes:-

⁷Child Rights Act 2003, Cap C50, Laws of the Federation of Nigeria (LFN) 2004

⁸UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217A (III)<<http://www.refworld.org/docid/3ae6b3712c.html>> Accessed 13 February 2024

⁹A. C. Diala, *Realising the Right to Adequate Housing in Nigeria* Madonna University Law Journal, vol. 1 no. 2 (2012) pp. 155-173, 159.

¹⁰ Third generation rights are the newest set of rights to be recognized by the international community. The African Charter provides the rights as follows: the right of all peoples to freely dispose of their wealth and natural resources (Article 21); the right to economic, social, and cultural development (Article 22); and the right to a generally satisfactory environment favourable to their development (Article 24) as expressly stated by Danwood Chirwa in his article; *Toward Revitalizing Economic, Social, and Cultural Rights in Africa: Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v. Nigeria*. Hum. Rts. Br., 10, 14-36, 15.

¹¹See the preamble to the UDHR 1948, para 5.

¹² The ICESCR was adopted and opened for signature, ratification and accession by the United Nations (UN) General Assembly on 16 December 1966 and entered into force on 3 January 1976.

¹³ See the preamble to the International Covenant on Economic, Social and Cultural Rights (hereafter ICESCR). Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976, in accordance with article 27, para. 3

¹⁴The African Charter was adopted in 1981 in Gambia. See as cited by Ojo, Olusola and Sesay, Amadu, *The OAU and Human Rights Prospects for the 1980s and beyond*, Human Rights Quarterly, Vol.8, No.1 (Feb., 1986), pp.89- 103, at 94-96.

¹⁵ C.M. Danwood, '*Toward Revitalizing Economic, Social, and Cultural Rights in Africa: Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v Nigeria* [2002] Human Rights Br 10, 14-36.

¹⁶ The African Charter 1981, Art 1&2, see also the ICESCR 1966, art 11(1)

¹⁷ The ICESCR 1966, art 11(1)

¹⁸United Nations Declaration on the Rights of the Child, 1948

¹⁹ ACHPR 1981

²⁰ ACRWC 1991

²¹ 2003

²²CFRN 1999 (As Amended) s6(6)(c).

²³ Adopted and Proclaimed by the General Assembly Resolution 217A, December, 1948.

right of survival and development,²⁴ right to a name,²⁵ freedom of Association and Peaceful Assembly,²⁶ Freedom of thought, conscience and religion.²⁷ Other rights are: right to freedom of movement,²⁸ right to freedom from discrimination,²⁹ right to dignity of the child,³⁰ right to health and health services.³¹ Others are; right to parental care, protection and maintenance,³² right of a child to free compulsory and universal education,³³ right of a child in need of special protection measures,³⁴ Right of the unborn child to protection against harm³⁵ and contractual right of a child.³⁶ The United Nations Convention on the Rights of the Child, underpinned child protection as legal and enforceable in the law court. This framework conveys a significant idea about the value that is placed on children. This is so because children form the basis for the continuity of society as it reveals the model adult members of the society should exemplify in dealing with children. This has made significant contributions to the prevention and responses to violence against children. It has contributed to the functioning of juvenile justice systems, providing a framework for prevention, early interventions and response services and direction on the funding required. State parties to the Convention are obliged to undertake all appropriate legislative, administrative, judicial and other measures to implement the rights enshrined in the Convention as well as local legislations. In other words, countries that are signatories to the Convention are to draw inspiration from the legal framework of the Convention by contextualising and domesticating the provisions of the Convention in their domestic laws. This is particularly aimed at the protection of children by member states. Nigeria is under a legal obligation, to respect, protect and take steps toward the full realisation of the rights of children.³⁷

3. Conceptual Clarification

Every child has unique characteristic that entitles him to a special protection which is *sine qua non* to general rights. These characteristics are recognised internationally and nationally and are determined by age, self-worth and self-esteem, dependence and vulnerability. The notion of ascribing rights to children is intrinsically borne out of the concept of the dignity of the human person.

Age: A child is defined as anyone below the age of 18, unless the laws of a particular country set the legal age for adulthood younger.³⁸ This definition has found acceptance and applied by all member states including Nigeria. The definition is centred on the context of social care and welfare, to mean all individuals who have not reached the age of (18) prior to the completion of the calendar year which can be verified by means of a birth certificate, an identification card or any other official document.³⁹ Thus, the law recognises a person as a child by using his or her age as a standard of judgment when the rights of the child are called into question. The legal implication of this is that, a child by law enjoys protection from arbitrary constraints from his immediate environment and from any unwarranted interference to his personality from the wider society. In other words, the law exonerates the child from obligations reserved for adults in any society and in other cases from criminal liabilities. Therefore, requesting a child to carry out an obligation or task outside his age limit makes such action a breach of his right. It is therefore illegal for a child to be married and given out in marriage, conscript into the army as a soldier, fend for himself, engage in a workforce, employed as a sex worker or trafficked. This observed illegal obligations mentioned above is consistent with the provisions in the Child Rights Act⁴⁰ that prohibits the use of a child for the purposes of alms begging, beggar guides, prostitution, domestic abuse, sexual exploitation, slavery, child trafficking and forced or early marriage.⁴¹

Self-Worth and Self-Esteem: The dignity of every child has to be respected in such a way that their social, mental and spiritual developments are not hampered. It goes to show that the early age of formation of the child is a major concern for society. Interrupting this developmental process will have a long term negative effect on the child's ability to function when he becomes an adult. Safeguarding and protecting the child from experiences that would endanger his mental health and social responses has to be protected and safeguarded in the interest of the child.

Dependence: The special nature of children requires them to be dependent on other adults for their daily survival. A child depends on others especially parents for a number of needs such as security, shelter and clothing. A child must feel safe and sound with their basic survival needs met.

²⁴ Section 6 CRA.

²⁵ Section 7 CRA.

²⁶ Section 8 CRA.

²⁷ Section 9 CRA.

²⁸ Section 10 CRA.

²⁹ Section 11 CRA.

³⁰ Section 12 CRA.

³¹ Section 13 CRA.

³² Section 14 CRA.

³³ Section 15 CRA.

³⁴ Section 16 CRA.

³⁵ Section 17 CRA.

³⁶ Section 18 CRA.

³⁷ UNHR, Key concepts on ESCRs: *What are the obligations of States on economic, social and cultural Rights?* <https://www.ohchr.org/en/human-rights/economic-social-cultural-rights> Accessed 13 February 2024.

³⁸ UNICEF, *The Convention on the Rights of the Child. Guiding Principles: general requirements for all rights* < <https://www.unicef.org/child-rights-convention/convention-text-childrens-version> > Accessed 13 February 2024

³⁹ O. A. Nemat, *Roundtable Conference 'Comparative Analysis of Family Law in the Context of Islam*. (Heinrich Boll Foundation), 2006, 12

⁴⁰ Ss 21, 22, 23, 24, 25, 27, 31, 32 CRA, 2003.

⁴¹ *Ibid*.

Vulnerability: A vulnerable person is one who is physically or mentally disabled. It refers to who is dependent on institutional services.⁴² The trait of vulnerability is a common characteristic among children. Hence, children are placed under the guidance of an adult so that they can be protected. Schweiger posited that there is a seeming correlation between vulnerability of children and the rule of law.⁴³ The statement finds expression on the notion that the concept of child vulnerability is related to a child's right to development. He contends that child vulnerability is the outcome of the interaction of a range of individual and environmental factors that compound dynamically over time.⁴⁴ In order to control the negative tendencies of individuals and any environmental factor that would lead to action which could expose the child to become vulnerable, the law enforcement agents are under obligation to intervene by arresting any individual that causes a child to suffer physically or emotionally. Child vulnerability is a major concern of the international community. For instance, the special vulnerability of children is recognized by the United Nations Convention of the Rights of the Child⁴⁵ (UNCRC), which underscores the need to extend special care and protection to children on grounds of physical and mental immaturity. The UNCRC stipulates Governments' responsibility to take protective and preventive measures against all forms of child maltreatment and to support parents in meeting their child-rearing responsibilities through the development of institutions, facilities and services. This action is in response to lingering factors that appear to have perpetually rendered children vulnerable in the society. Some of these factors include a) *Individual factors*: Individual factors contributing to child vulnerability stem from cognitive, emotional and physical capabilities or personal circumstances, for instance age, disability, that is, a child's own disposition or mental health difficulties; b) *Environmental factors*: Environmental factors contributing to child vulnerability operate at both family and community levels. Family factors include income, poverty, material deprivation, parents' health and health behaviours, parents' educational level, family stress and exposure to domestic violence.⁴⁶

Indecision: Children act most of the time from an involuntary and unconscious state of mind. Actions are to be taken after a critical thinking and brainstorming session. Children lack such ability to think deeply before acting. The term indecision implies the trait of being irresolute, that is, lacking firmness of purpose and doubt concerning two or more possible alternatives or courses of action. Children hardly make decisions that can be trusted. Majority of children make decisions that are destructive. It is against this backdrop that parents are allowed by law to take active roles in the decisions to be taken in relation to a child. This too is also dependent on the level of maturity and understanding of the child on the issue⁴⁷

4. Concept of Child's Right

The Child Right's International Network⁴⁸ states that Children's rights are human rights. It submitted that children must be treated with equality, respect and dignity not because they are the future or the adults of tomorrow, but because they are human beings today. All humans are born inherent with fundamental freedoms and rights. This conceptual thought indicates that every child is bestowed with rights as such, children must enjoy the same human rights as everybody else - from the right to freedom of expression to the right to privacy *et cetera*. This means all human rights laws apply equally to children. Children are however afforded a low status in most societies. For example, in Nigeria, children under the age of 18 are denied political power because they cannot vote. This means that children ought to have specific rights to help protect them from the threats, exclusions and discrimination they are vulnerable to. Under international laws, these rights are embodied in the Convention on the Rights of the Children (CRC) including the Optional Protocols on the sale of Children, Child Prostitution and Child Pornography. There is also the Optional protocol on Armed Conflict which functions majorly as a mechanism that receives case bothering on Child abuses. The principle under Article 12 (1) of the CRC provides that State parties shall assure to the child who is capable of forming his or her own views, the right to express those views freely in all matters affecting the child, the view of the child being given priority in accordance with the age and maturity of the child.⁴⁹ The Convention sets out the rights that must be realised for children to develop to their full potential. The Convention offers a vision for the child as an individual and as a member of a family and community, with rights and responsibilities appropriate to his or her age and stage of development. By recognising children's rights in this way, the Convention firmly sets the focus on the child. The Convention recognises the fundamental human dignity of all children and the urgency in ensuring their well-being and development. It makes clear the idea that a basic quality of life should be the right of all children, rather than a privilege enjoyed by a few.

Amnesty International⁵⁰ describes Children's rights as a subset of human rights with particular attention to the rights of special protection and care afforded to minors. The implication from this definition presupposes that there are justifications for children's rights. There is a plethora of human rights laws, treaties, both general and child-specific, which recognizes the distinct status and particular requirements of children. Children, owing to their particular vulnerability and their significance as the future generation, are entitled to special treatment generally, and, in situations of danger, to priority in the receipt of assistance and protection. This implies that every child is entitled to respect for the dignity of his person and not subject to any physical, mental, or emotional injury, Oyetola⁵¹ examined some of the justifications for respecting the rights of the child in Nigeria. He found that the child is a person and thus qualify to be respected as prescribed by the law. The Child's Right Act of 2003

⁴²Bryan A. Garner, *Black's law dictionary* 9thedn, WEST 2009, p59

⁴³Schweiger, G. *Ethics, poverty and children's vulnerability*: Ethics and Social Welfare 2019, 1-14

⁴⁴Ibid.

⁴⁵Child Right's International Network: *what are Children's Rights?* (2018), <<https://archive.crin.org>> accessed June 24, 2023

⁴⁶Ibid.

⁴⁷Ibid.

⁴⁸Child's Right International Network (CRIN) (2018), *what are Children's Rights?* <<https://archive.crin.org>> Accessed 24 June 2023.

⁴⁹Ibid.

⁵⁰Children's Rights Archived 2008-09-21 at the Way-back Machine, Amnesty International. <Access 24 June, 2023.

⁵¹Oyetola Muyiwa Atoyebi, *An Overview Legal Rights of a Child in Nigeria*, 2023; <<https://lawpavilion.com>> accessed 24 June 2023.

specifically makes provisions towards the child's protection and therefore in the face of the law, the rights are legally affirmed as one who should enjoy all the proviso of the law of the state. The author also alludes to the fact that the best interest of a child provides a justifiable reason why his right should be respected and upheld as paramount in all actions that concern a child. Thus, it is reasonable that a child should be accorded the legitimate rights as contained in much legislation globally.

5. Constitutional Provisions for the Protection of the Rights of the Nigerian Child

The protection of the rights of the Nigerian child is enshrined in the Nigerian Constitution.⁵² It has been put forward for example that the constitutional provisions are of particular benefits for the protection of the Rights of the Nigerian Child.⁵³ The authors are of the view that due to the vulnerable nature associated with childhood, to protect the Child from the dictates and mercy of abusive adults and the State, the provisions of the law becomes imperative. The extent to which these legal provisions have benefited the Nigerian child is one of the main issues in this present study. The existence of the provisions under chapter four of the 1999 Nigeria Constitution is an indication that Nigeria as a nation recognises the need to safeguard and protect the right of every Nigerian citizen including children. Onyema⁵⁴ argues that the Rights of a Child as enshrined in Nigerian Laws especially under Chapter four of the Constitution provides for the fundamental rights of every person including children. Osita⁵⁵ posits that the Constitution made provisions guaranteeing the Rights of all citizens, both adult and children. He maintains that the 1999 Constitution provides for some basic and fundamental Rights necessary for the safe-guard, preservation and protection of citizens against Government or private interference and to enable the individual within a society to achieve maximum development and welfare. He alludes to the fact that children are included in this proviso.⁵⁶ Therefore, children as citizens are entitled to enjoy their guaranteed fundamental human rights under the Constitution.

The Child's Rights Act 2003 expands and provides for more defined specific rights for the protection of the rights of the Nigerian Child. The Act guarantees the rights of all children in Nigeria, providing that the best interest of the child is of paramount consideration in all actions relating to the child⁵⁷. It also provides that a child is to be given protection and care necessary for his or her wellbeing. It therefore becomes imperative that the rights and responsibilities of a child as enshrined in Part II (Section 3 – 20) of the Child's Rights Act 2003 should be thoroughly communicated through every available medium to the knowledge of the Nigerian child as well as to parents, guardians and caregivers. The survival of a child is an important factor for the continuation of any society. Hence, it is a concern to a majority of national and regional governments using the provisions of the law to pave way for their survival. In this regard, Government undertakes the initiative to ensure the survival of the child where their chances of survival become limited. This right is foundational and all other rights are hinged on it. Therefore, failure to guarantee the right to Life jeopardizes and obliterates other rights of a Child in Nigeria. Section 34⁵⁸ makes it clear that this Right does not only place a duty on the State to abstain from taking life, but also enjoins the State to take practical measures to ameliorate or eradicate infant mortality, malnutrition, and also the spread of epidemics that leads to death. The State must put in place measures to prevent or curb all acts of infanticide, murder, genocide etc., and all other acts which affect the life of the Child. The indication is that the peculiarity of the child as a defenseless and vulnerable person in society makes the safeguard and protection of his life sacrosanct. Any mishap that shall befall the child caused by negligence of adult members of society and government institutions should attract appropriate sanctions because the law prescribes sanctions to the effect that culprits shall face the full wrath of the law. This is in line with the principle of the 'Duty of Care' as reasoned by Fairgrieve, Duncan, and Dan Squires.⁵⁹ Therefore, in order to succeed in an action in negligence, the claimant must establish that he or she was owed a duty of care by the defendant.⁶⁰ The safeguard and protection is a duty of adult members of the society and the state owe the child. The protection of the rights of a child is an imposed duty on adults and the state alike that should not be neglected.

Negligence is the most important and dynamic of all torts. Not every act of carelessness or negligence is actionable under the tort of negligence. Lord Wright reasoning in this view in *Lochgelly Iron & Coal Co v McMullan*⁶¹ explained negligence thus; 'in strict legal analysis, negligence means more than heedless or careless conduct, whether in omission or commission. It properly connotes the complex concept of duty, breach and damage thereby suffered by the person to whom the duty is owed'. This is further expressed in the interpretation of the concept of negligence in the case of *Odinaka v. Moghalu*,⁶² where the Supreme Court held that 'negligence is the omission to do something which a reasonable man under similar circumstances would do, or the doing of something which a reasonable and prudent man would not do'. The tort of negligence may therefore be defined broadly as the breach of a legal duty to take care which results in damage undesired by the defendant, to the plaintiff. This definition makes someone and institution liable when they fail in their legal duty to a child.

⁵²Chapter II, Constitution of the Federal Republic of Nigeria 1999

⁵³E.O.A., Etannibi, A.O.A., Victor and W. J. Nimi; *Civil and Human Rights Education for Nigerian Students*, (LEADS-Nigeria 2001), 35.

⁵⁴Onyama, Nneamaka, *The Rights of a Child in Nigeria* (The Nigeria Lawyer News letter) <<https://thenigerialawyer.com>>. accessed July 05, 2023

⁵⁵ N.O., Osita, *Human Rights Law and Practice in Nigeria: An Introduction*, (CIDJAP Press, Enugu, Nigeria); 1999, 86

⁵⁶ *Ibid.*

⁵⁷s3.

⁵⁸*Ibid*

⁵⁹Fairgrieve, Duncan, and Dan Squires QC, *DUTY OF CARE*, *The Negligence Liability of Public Authorities*, 2ndedn (New York; online edn, Oxford Academic 2019), <<https://doi.org/10.1093/oso?/>> Accessed 5 July 2023

⁶⁰ Okonkwo v Ogbogu [1996] 5 NWLR (Pt. 449) 420

⁶¹ [1934] AC 1

⁶² [1992] LLJR SC

6. Legal Duty of the State in the Protection and Promotion of Child's Rights in Nigeria

In many societies, children generally are poorly treated with little or no warmth, affection, and compassion, while little recognition and least tolerance is accorded and extended to them in homes and at public places. That is why children are vulnerable to all forms of inhuman and reckless abuses. Also, they are inexplicably denied of their basic and fundamental rights, perhaps, due to their status as minors. Onyemaechi, Thomas Uche⁶³ opine that the State often rises to the occasion of proving protection for the right of children in the discharge of her legal duty to the child. However, the small minority that gets the attention of the criminal justice system are so fortunate to form a fraction of the legitimized target. Such ones are lucky enough to escape all the harshest and most destructive impulses that are inadvertently directed against their peers and contemporaries as a whole. A close look at the role of policy makers and those that shape the direction of children reveals that they have constantly failed to allow children to express their views or participate in making decisions that really affect them.

In many societies, children's views are seldom considered, tolerated or taken seriously by their parents, guardians or committee of friends. Thus, there is always a general apathy that children are only to be seen and not to be heard. This is a violation of the provisions of Article 4(2) of the African Charter. In consideration of the above the state often intervenes as a rescue mission to savage a situation that would place the child at risk. State participation in ensuring that legal rights of a child are enforced by the state is by initiating the enforcement order through the law court where offenders would be punished.⁶⁴ This agrees with the report by the State of Hawaii,⁶⁵ that, when a responsible parent fails to meet the child support obligation, the Child Support Enforcement Agency (CSEA) takes action to enforce the order of support. Federal and State laws provide the agency with a variety of enforcement remedies to encourage or force compliance with the order. Most enforcement activities are automatically initiated by the state's automated child support system. Steven J. Grocki⁶⁶ explained that child support enforcement matters are generally handled by State and Local authorities, and not by the Federal Government. He noted that only in very limited circumstances is federal jurisdiction implicated in a child support matter. For this reason, child support issues should be reported to state and local law enforcement authorities. This assertion affirmed that the state is concerned about the legal duty the state owes the child.

The 1999 Constitution has implications for the safeguard and protection of the rights of the child in the following ways: children have fundamental human right like adult members of the society. This makes the safeguard and the protection of the right of the child sacrosanct,⁶⁷ the Constitutional provisions makes it possible for adult members including parents/caregivers and the state to engage in legal duty owe the child,⁶⁸ violation of legal duties owe the child makes the parent liable and punishable by law,⁶⁹ legal duty owe children confer on parents responsibility of care and failure results in sanctions,⁷⁰ the court is the means by which the state takes action against offenders for child rights abuse and the Constitution provides legal framework for ensuring that the child is made to enjoy the rights that is accrued to him in a hostile environment projected by the Nigeria state.

7. Conclusion

Children's rights are a subset of human rights as such States should ensure that these rights are given priority with a view to safeguarding and promoting the rights of children in Nigeria. To overcome some of the inherent challenges in the effective implementation of the legal frame works on the protection of child rights, the extant provisions of Chapter 4 of 1999 Constitution, which provides for fundamental rights, should be amended to include socio-economic rights of children. These rights should not be subject to any form condition before their enforcement. They should be regarded as fundamental and justiciable.

⁶³Onyemaechi, Thomas Uche, *Children, Status and the Law in Nigeria*; (African Research Review) Vol. 4(3a) July, 2010. Pp. 378-398: <www.afirevjo.com> accessed July 07, 2022

⁶⁴ S. Udemezue, and C. A. Ojeih, (Ibid).

⁶⁵State of Hawaii, United States of America; *Enforcement*, 2023: <<https://ag.hawaii.gov/csea/enforcement>> accessed July 07, 2022

⁶⁶S.J. Grocki; *Child Support Enforcement 2020: Task force report of The Henry M. Jackson School of International Studies*<<https://www.justice.gov/article/criminal-ceos/child>> accessed July 07, 2022

⁶⁷ Section 33-46 under Chapter iv, CFRN, 1999.

⁶⁸ Fundamental rights Enforcement Procedure, Rules.

⁶⁹ *Ibid*.

⁷⁰ *Ibid*.