

CHILD PROTECTION IN SCHOOLS AND THE ROLE OF LAW

Ivie Deborah Nwosu

ABSTRACT

Children are the substratum of the nation therefore; the right of every child should be protected. Child protection in school inexorably falls on the school authority since they play a central role when it comes to protecting children from violence under their tutelage. The purpose of this paper is twofold; to find out the rights of children in schools and the responsibility of schools in respect to the children in their custody in case of any problem such as: sexual abuse, accident, kidnapping, or demise of a child sent to school. The methodology applied in this paper is doctrinal with a resort to legal and non-legal materials, internet sources, newspaper and news reports, encyclopedias, journals, and other sources. This study revealed that there has been recorded failure to protect children in schools. It is recommended, that schools be made to sign liability form, and if found guilty of negligence in child protection should be penalized by law. In conclusion, there should be strict adherence to child's protection laws in school.

Keywords- Child's Right, Law, Protection, Safety, Schools.

INTRODUCTION

“Lo children are the heritage of the LORD; the fruit of the womb is his reward.”¹ Children have a right to a safe environment, anywhere they find

* LLB, BL, LLM, PhD, Lecturer, Department of Public Law, Faculty of Law, University of Benin, Benin City, Edo-State Nigeria. Email. deborahnwosu15@gmail.com. Tel: 08057301382

themselves, free from bullying and molestation from fellow students, teachers, domestic workers, and strangers. There is a popular proverb that says “the child is the father of the man.” The child is usually the most vulnerable person in a society and can be described as an “egg” a treasure that should be nurtured and channelled throughout his childhood and should not be destroyed at any stage of life. As long as children remain within the confines of the school, the school should assume full responsibility for their welfare and take the blame for any mishap encountered by children under its custody. According to Nelson Mandela, “we owe our children the most vulnerable citizens in society, a life free from fear and violence, and the true character of society is revealed in how it treats its children.” What pathetic and shocking news it would be for parents to send a child to a school under the guardianship of the school authorities only to receive reports of his/her mishap, disappearance or demise. Children are the light of the nation, the hope of tomorrow, they should be preserved, loved, and directed in order to enable them actualize their dreams of becoming worthy adults. “There is no trust than the one the world holds for the children, there is no duty more important than ensuring that the rights of children are respected, their welfare is protected, their lives are free from fear, want, and they can grow in peace.”² Children symbolise the future, social renewal, survival of the nation” or equivalent sentiment.³ Children are national asset, any nation that does not take the protection of its future leaders seriously risk leaving a great percentage of its population a liability.⁴ The plight of children in schools has become in many societies today a cause for concern. Consequently, it has become necessary to restate some laws and declarations that have been articulated for child protection in Nigeria. Globally up to one billion children (2-17 years) experience physical, sexual and/or emotional violence or neglect yearly.⁵ Anyone responsible for running an independent boarding school has

¹ Psalm 127:3, King James Bible.

² Kofi Annan, in "Foreword" to the State of the World's Children 2000. <https://quotes.yourdictionary.com/author/quote/590182> assessed May 10th 2022.

³ P Daniel and J Ivatts, *Children and Social Policy* (London: Macmillan Press Ltd, 1998) 1

⁴ AA Umar, An Appraisal of the Child's Right to Life and Health under the Child's Right Act, (2011) 2(2) *University of Ibadan Law Journal*, 1.

⁵ WHO, <https://www.who.int/news-room/fact-sheets/detail/violence-against-children>, (2019) accessed May 12th 2022.

to safeguard and promote the children's welfare while they are accommodated in schools.⁶ Stringent laws which provide specific punishment for child abuse should be enforced. In 1994, the federal government inaugurated the National Child Rights Implementation Committee (NCRIC) and gave it the mandate to popularize the various laws on Child's Right.⁷ These laws should be implemented to dissuade child molesters and abusers to desist from such actions. Generally, it should also address potentially fatal cases of child molestation, school abduction, bullying, and rape of children which are on the increase in recent times.⁸ Research has shown that violence is one of the reasons children do not go to school and some who go drop out from school.⁹ This violent trend should not be allowed to continue unchecked because a safe school builds a philosophy of security with awareness, vigilance, surveillance and confidence in the educational system.

DEFINITION OF TERMS

Child

A child is a minor who has not attained the age of adolescence, he/ she falls within the ages between birth and teenage years. In *Boniface Adonike v. State*,¹⁰ it was stated that a girl under the age of 11 is a child and not capable of consenting to sex. In the case of *Okem Benjamin v. State*,¹¹ A young person under the age of maturity was defined as a child. Above all the definition of

⁶ B Hoggets' *Parents and Children, the Law of Parental Responsibility* 4th edition (London: Sweet and Maxwell, 1993) 8.

⁷ BN Okpalaobi, 'United Nations Convention on Rights of a Child: Implementation of Legal and Administrative measures in Nigeria', available at, <https://www.ajol.info › naujilj › article>.

⁸ A Smiley et al, 'The negative impact of violence on children's education and well-being: Evidence from Northern Nigeria. (2021) 81 *International Journal of Educational Development*. p 9.

⁹ Premium Times, 'over 1 million Children Afraid of Returning back to School in Nigeria. <https://gdc.unicef.org/resource/over-1-million-children-afraid-returning-school-nigeria> accessed May 13, 2022.

¹⁰ [2015] 7NWLR pt. 1458, 237-436 p.237

¹¹ [2019] 15NWLR, 541

both male and female child in the Child's Right Child Act refers to any person under the age of eighteen years.¹²

Child Abuse

Child abuse is the violation of the most basic rights of children and adolescent, it manifests itself in different forms including aggression, rape and sexual abuse, and takes place in the home, in neighborhoods, at schools, at work and in child protection institutions. It is an overwhelming worldwide problem that is usually unreported.¹³ It involves subjecting a child to bodily or cerebral neglect or harm. This often takes the form of physical and/or mental aggression inflicted on a child and it could even include sexual abuse.¹⁴ A child abused is a jailbird of her childhood, attempting to create and re-create a new life, he/she re-encounters the torment as abuse of children influences and twists their natural sense of trust and love.

Child's Right

Child's rights are rights accorded to all humans with specific interest and reference to minors in the society for their special protection and care. These rights usually include: economic, social and cultural rights in general. These rights have become necessary to shield children from predators and marauders especially those found in the educational institutions. Protection accorded to minors is a matter of local, national, or international law.¹⁵ One of the basic child care principles is that children whoever they are and wherever they live, have the right to be protected from all forms of abuse neglect and exploitation.¹⁶

¹² Child's Right Act 2003 LFN Cap C59

¹³ S Larrain and C Bascunan, Newsletter on the progress towards the millennium Development Goals from a Childs Right Perspective. Child Abuse: A Painful Reality Behind Closed Doors. 9. (2009)

¹⁴ F Adler et al. Criminology Mc Graw- Hill, [1991] 237-238

¹⁵ Black's Law Dictionary (Mc Graw-Hill, 1991) 237-238

¹⁶ R Mays, *Child and Family Law; Cases and Materials*, (London: Sweet & Maxwell, 2001) p.122

School Safety

School safety refers to creating a safe environment for children while in the school. It involves putting in place adequate safety measures in the school facility. This includes safety from any kind of harm/abuse, violence and allied psycho-social issues. Emotional safety is especially important because it is often difficult for teachers and parents to detect emotional problems and difficulties in children. Bullying can cause victimized students to suffer from lower self-esteem and daily stress about their well-being. Children require a healthy and supportive environment to grow and develop efficiently. Children of our country Nigeria have constitutionally guaranteed fundamental rights to live with dignity and to have access to education in an environment that is safe, protective and conducive to growth and development. Everyone in school has a role to play in guaranteeing proper safety, healthy and secure environment within the school; be it proprietor, administrative staff, teachers, special needs assistants, visitors, contractors and students themselves.¹⁷ UNICEF's uses the term 'child protection' to refer to prevention and response to violence, exploitation and abuse of children in all contexts. This includes reaching out to children who are vulnerable to threats, especially those living without family care, on the streets or in situations of conflict or natural disaster.¹⁸

A. Responsibility of Schools in Protecting Children under their Tutelage

Every parent ordinarily believes that every child sent to school; either as a non-boarding or boarding school is properly cared for. Before a parent enrolls a child in any school, it is expected that a tour around the school is made and questions asked about the history of the school and its capability, in order to ensure that the environment is conducive and safe for the child. Most times,

¹⁷National Commission for Protection of Child Rights, Safety and Security of Children in Schools https://schooledn.py.gov.in/download/forms/Manual_School_Safety_Security, accessed May 12th 2022.

¹⁸ UNICEF, Child Protection Overview: UNICEF seeks to prevent and respond to violence, exploitation and abuse of children everywhere 2022, <https://data.unicef.org/topic/child-protection/overview>, accessed May 13, 2022.

the parents' judgment turns out to be wrong, as the beauty and serene environment does not always portray the reality of what goes on within the confines of the school.

The question is what goes wrong along the line? Is the school not bracing up to the responsibilities for which it was given a license to operate? Has the school admitted miscreants under the guise of students who cause others pain in the school? Are the employees who abuse these children not psychologically balanced to work in such a sensitive environment? Irrespective of what the case may be, it is the position of this researcher that the school management remains solely responsible for any incidence that occurs in the school. Accordingly, the school should be held liable for mishap, abuse and any negative incidence

Section 2(2) Child's Right Act states- that every person, institution, service agency, organization, or body responsible for the care or protection of children shall conform to the standards established by the appropriate authorities in the areas of safety, health, welfare, number and suitability of their staff, and competent supervision. The institution of learning for children can be considered as a home away from home, where the children should feel safe and guided and miss nothing much from being away from home. The key responsibility of a school is to safeguard children and young people in their care. In matters relating to safeguarding and child protection policies and processes, the best interest of the child must be considered as stated in the Child's Right Act:

In every action concerning a child, whether undertaken by an individual, public or private institution, a court of law, or administrative or legislative authority, the best interest of the child shall be the primary consideration.¹⁹ Everyone in education is expected to play a key role in safeguarding children from harms and abuse. All staff in a school, both teaching and non-teaching, have a responsibility to ensure the protection and welfare of children. This also extends to any volunteers who accept to work in the school during school hours when pupils are on the premises.²⁰ It is safe

¹⁹ Section 1 Child's Right Act Cap C56 LFN 2004.

²⁰ Department of Education, Safeguarding and Child Protection in Schools- A guide for Schools available at www.education-ni.gov.uk, accessed 17 May, 2022.

to state that a school owes a non-delegable duty of care to its students in ensuring that reasonable care is accorded to them.

*In Woodland v. Swimming Teachers Association*²¹ the Supreme Court of the United Kingdom allowed the appeal by the claimant and set out the criteria that gave rise to the duty. First, the claimant was a child and therefore especially dependent upon the defendant's protection. Secondly, the parties had an antecedent relationship recognized that a school authority owes a non-delegable duty to its students within their custody, and the school environment should be safe. The major hindrance to achieving a safe environment includes the inability of children to reach out for help when in distress.²² There should therefore, be an organized system of complaint reviews which could be in the form of complaint boxes, or complaint lines. In such places, the or complainant/ students can reach out to those in charge on issues affecting them in the school and be encouraged not to bottle up or keep such traumatic experiences within but feel free to share their problems at such designated readily available places.

Children have a legitimate right to education and it is provided for in the Convention on the Right of the Child,²³ that recognizes the right of the child to education, and intends to achieve this right progressively and on another basis of equal opportunity. Every child has a right to free, compulsory and universal basic education, and shall be the duty of the government in Nigeria.²⁴ To provide such education, every parent or guardian shall ensure that his child or ward attends and completes his education.²⁵ Those legal instruments spell out the need for education and full completion by whatever means. It follows therefore that when children are sent to school, they are expected to complete their full course during their educational journey and any circumstance that thwarts completion of their education is at variance with the provisions of the Child Right Act. Their educational career should not be terminated by negative circumstances or occurrences in the school where of child abuse are on the increase.

²¹ [2013] UKSC 66

²²AE Adegbite and OO Olusegun "Nigerian Human Rights Regimes and Protection of Children in the Custody of Deities. (2019) 19 (1) *University of Benin Law Journal* p.96.

²³ Article 28, United Nations Convention on the Rights of the Child.

²⁴ Section 15(1) Childs Right Act 2003 cap (50) LFN 2005

²⁵ Section 15 (2) Ibid

For example in Delta State, the case of Obinna Odeze who attended Arise and Shine Nursery School in Asaba, a 19 months old toddler was purportedly flogged 31 strokes leading to his death in the school by the son of the proprietress on the 7th of March 2021.²⁶ Also, Oromoni allegedly died after being bullied and tortured by fellow schoolmates at Downen College Lekki²⁷. He was said to have died on the 30th of November, 2021 after he was beaten up by 3 boys with a belt, who trampled upon him and forced him to drink some substance. The Lagos State chapter of the Child Protection Network has called for a thorough investigation and justice on the death of Sylvester Oromoni. The coordinator of the Child's Rights groups Aderonke called on the State government and Nigeria police to ensure perpetrators of the demise of the student are brought to book.²⁸ A child protection policy should be mandatory for every school or place where children are kept and must be posted in a conspicuous place within the premises. In case of any mishap or abuse in the school's custody, the caregiver/teachers and support staff must be responsible and accountable for the children's' safety.

For instance, in Lagos State, the government sealed off a school in the Maza Maza area, called Unic Vilos Montessori's School where Cherish Ohamadike (Mon 7th, 2022) was allegedly abused. Also, a 2years old child was flogged with 24 lashes by her class teacher (Miss Joy). The child's mother Faustina testified.²⁹ Some other cases of child abuse in Nigeria include the followings: Don Davis Archibong, a JSS 1 student of Deeper Life High School, Uyo who was allegedly molested and abused sexually and almost starved to death. In this case, those involved have been made to face the law. In Abuja, Karen-Haucpph Akpagher a 14-year-old student of Premiere Academy, Lugbe, Abuja, was alleged to have died of an infection after a condom was found in her private parts³⁰ and in Edo State, Ugbowo axis, a parent lost a child in a

²⁶ Channels Television February 15, 2022, 19 months –Toddler dies after a legal flogging in school

²⁷ Arise News: <https://www.arise.tv/sylvester-oromoni-juniors-controversial-death-arise-special-report/> 2021 accessed May 20th 2022.

²⁸ F Ajumobi, <https://www.vanguardngr.com/2021/12/oromoni-cpn-demands-justice-compulsory-child-protection-policy-in-lagos-schools/> accessed May 21, 2022.

²⁹ Bukola Samuel-Wemimo, <https://www.channelstv.com/2022/02/18/lagos-govt-seals-school-over-flogging-of-two-year-old-student> accessed May 27, 2022.

³⁰ Omeiza Ajayi, <https://www.vanguardngr.com/2021/07/keren-happuch-how-my-14-year-old-daughter-was-raped-to-death-mom> accessed May 28, 2022 .

crèche from excess feeding and sheer carelessness by the caregivers. These and many more of such dastardly acts done to children are documented while many other cases are not reported.

Employers are liable because they are in the best position to determine the risk attached to their use of particular employees. Employers are in the best position to find out about the characteristics of their employees and retain, or ultimately dismiss employees who are unreasonably risky³¹ in that environment.³²

In vicarious liability, the employer who is not at fault is made responsible for the employee's default giving the injured party compensation from the person who is able to pay for the injury, namely, the employers.³³ The traditional criterion for distinguishing employees from the independent contractor is the degree of control.³⁴ In the case of *Argent v. Minister of Social Security and Anor*,³⁵ the appeal of the teacher to be accepted as an employed person was rejected instead he was referred to as an independent contractor, The school took this stand because he worked as a part-time teacher in a drama school and the school did not prescribe his syllabus or interfere with his teaching. Such categorization is important to know the class to place him in terms of responsibility and liability in cases of eventuality.

In *Carmarthenshire Country Council v. Lewis*,³⁶ the Court of Appeal treated the council as vicariously liable for the teacher's negligence in allowing the boy to escape onto the highway, while the House of Lords treated the council as "personally negligent in allowing such an easy method of escape.

³¹ Risky here connotes persons with questionable character. In a school environment, pedophiles and dangerous students admitted should be fished out by proper scrutiny to make sure, the environment is safe for others

³² Hepple et al, *Cases and Materials* 5th edition (London: Butterworth's, 2000). 1017

³³ Markesinis and Deakin's *Tort Law* 5th ed. (New York: Oxford University Press, 2003) p. 571

³⁴ *Ibid*, *Honeywell and Stein Ltd v. Larkin Brothers Ltd* [1934] 1 KB 191. 196, *Performing Rights Society Ltd v. Mitchel and Booker* (Palais de Densé) Ltd [1924]

³⁵ [1968] 1WLR, 1758

³⁶ [1955] A.C 1 All ER 565

Employers are said to have a ‘personally’³⁷ or ‘non-delegable’ duty to their employees to provide and operate a safe system of work.

B. Duty of care expected for Children in Schools.

The issue for determination here is if a child disappears or abused, injured, or killed within a school environment or subsequently dies outside the school environment after being brutalized in the school the question is: who is liable for damages? United Nations Children’s Fund. [UNICEF} called for safety of learners in schools as the country Nigeria, marked the 8th anniversary of the abduction of 276 students at Government Secondary School Chibok in North East Nigeria by a non-state armed group.³⁸ A school authority owes a non-delegable duty of care to its students; a duty to ensure that reasonable care is taken when handling the students. In England, such matters are treated as a vicarious liability as earlier discussed. A person cannot discharge a non-delegable duty by merely taking reasonable care to select and supervise a third party to perform the duty, if the third party fails to take reasonable care of someone to whom the duty is owed, the person has breached his duty, *Burnie Port Authority v. Goval Jones Pty Ltd* (1994).³⁹

The duty arises because the school authority has undertaken the supervision and control of its students, who are vulnerable⁴⁰ and wholly reliant on the authority to care for them while under its control.⁴¹ In reality, the best persons to bring up a child are the natural parents. It matters not if the parents are wise or foolish, rich or poor, educated or illiterate: provided that the child’s moral and physical health is not in danger. Since education is an important socializing instrument that is critical for the social, emotional and psychological development of young people. It is also a vehicle for

³⁷ ‘Personally Liable’- School owners should be held personally liable at all times for wrongdoings of their staff and students and should not shift responsibility or escape liability for occurrences on the school premises

³⁸ Peter Hawkins, UNICEF.org/Nigeria/press_release/ UNICEF-calls-safety-learners-schools-encourage-girls-education in Nigeria

³⁹ [1994] 179 CLR 520, 550-1

⁴⁰ Vulnerable- susceptible and prone to attack in a world away from home and protection of their parents who invests to parents trust in the school authority to watch over and protect their “babies”

⁴¹ J Maxwell, Liability of Education Institution for Child Abuse (2019) 93 *Australian Law Journal* 477. P.2

transforming individual behaviours and inculcating positive social norms which kick against violence, gender in-equality and discrimination, children have to be allowed to go to school to be refined.⁴²

Therefore, for a parent to have to let go of such delicate responsibility by allowing the training of a child in any institution of learning is a hard decision. In this connection, parents would not be pleased to be fed with negative stories of the injury or demise of their children whom they have reluctantly parted with or entrusted in the hands of the school authority. Most of the boarding schools in Nigeria have become nightmare arena where so-called senior students perfect their barbaric skills on innocent junior students by turning them to slaves and engaging them in laundering of clothes, washing plates, making beds, fetching water and running errands. These junior students have little or no time to study, since some of the junior students are sometimes punished these so-called senior students who use these juniors as stools for resting their legs in the name of punishment postures. Unfortunately, this barbaric act taunts these Juniors by giving them psychological trauma. The “Seniors” go as far as threatening them with graver punishment should they attempt to report such incidence.

In Lister v. Hesley Hall, it was held by the House of Lords that a school authority could be liable for a teacher’s sexual abuse of his students.⁴³ All schools have a safeguarding responsibility towards the young people in their charge and should take responsibility and reasonable measures to safeguard and preserve them.⁴⁴ Schools are not only accountable but should collaborate with the community to provide a safe environment for its students.⁴⁵ The adults who work in the educational setting should make sure that the environment supports and promotes children’s dignity, development and protection. To protect the right of the child, the Federal Government of Nigeria ratified the United Nations Convention on the right of the child in March 1991, as well as the African Charter on rights and welfare of the child in February, 2003. However, out of 36 states of the federation, 11 states are

⁴² Federal Ministry of Education National Policy on Safety, Security and Violence-free Schools with the implementation Guidelines 2021.

⁴³ [2002] 1AC 215, 227, (20), (25)

⁴⁴ Safeguarding and Child Protection in Schools. A guide for School. Department of Education UK. www.edu-UK.govt assessed on the June 2, 2022

⁴⁵ S Wood et al. School-Based Violence Prevention www.WHO assessed June 4 2022

yet to adopt the Child Right Act. This should not be the case as domestication of the law would increase child protection and reduce the chances of child abuse in the country.⁴⁶

C. Statutory Instruments on Child Protection in Nigeria

1. The 1999 Constitution of the Federal Republic of Nigeria

The Constitution makes provision for the protection of all human beings; adults and children. Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offense of which he has been found guilty in Nigeria.⁴⁷ Also, section 17 (3) (b) provides for the right of children, young persons and the aged to protection from any exploitation whatsoever. Every individual is entitled to respect the dignity of his person, and accordingly, no person shall be required to perform forced or compulsory labour.⁴⁸

The Constitution protects children from being dehumanized or killed wherever and by whosoever. They should not be subjected to inhuman treatment; as such treatment can lead to the death of the child. Snuffing life out of a child is a criminal offence whether committed in a school, or anywhere, as the dignity of their persons should be respected.

2. International Covenant on Civil and Political Rights.⁴⁹

Every human being has the inherent right to life, this right shall be protected by law, and no one shall be unreasonably deprived of his life.⁵⁰ All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.⁵¹ No one shall be subjected to torture or to cruel,

⁴⁶ Okon Basse, <https://www.thisdaylive.com/index.php/2022/01/19/eleven-states-yet-to-domesticate-the-child-rights-act/>

⁴⁷ Section 33(1) of the 1999 Constitution

⁴⁸ Section 33 (1) (C) of the 1999 Constitution

⁴⁹ International Covenant on Civil and Political Rights (1966)

⁵⁰ Article 6

⁵¹ Article 6 (5)

inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.⁵² In particular, every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth. The right to such measures of protection as are required by his status as a minor, and not on the part of his family, society and the State.⁵³

In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁵⁴

International Covenant on Economic, Social and Cultural Rights ⁵⁵

Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation.⁵⁶ The States Parties to the present Covenant, recognise the right of everyone to education. They agree that education shall be directed to the development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedom.⁵⁷ The States Parties to the present Covenant recognises that, with a view to achieving the full realization of this right (a) Primary education shall be compulsory and available free to all; (b) Secondary education in its different forms; including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education.⁵⁸

⁵² Article 7

⁵³ Article 24

⁵⁴ Article 26.

⁵⁵ International Covenant on Economic, Social and Cultural Rights (1966)

⁵⁶ Article 10(3)

⁵⁷ Article 13

⁵⁸ Article 13(2)

3. Child's Right Act⁵⁹

In every action concerning a child, whether undertaken by an individual, public or private, institution or service, court of law, or administrative or legislative authority, the best interest of the child shall be the primary consideration.⁶⁰ A child shall be given such protection and care as is necessary for the wellbeing of the child, taking into account the rights and duties of the child's parents, legal guardians, or other individuals, institutions⁶¹ services, agencies, organizations or bodies legally responsible for the child.⁶²

Every person, institution, service, agency, organisation, and the body responsible for the care or protection of children shall conform to the standards established by the appropriate authorities, particularly in the areas of safety, health, welfare, number, and suitability of this staff and competent supervision.⁶³ The provisions in Chapter IV of the Constitution of the Federal Republic of Nigeria 1999, or any successive constitutional provision relating to fundamental rights, shall apply as if those provisions are expressly stated in this Act⁶⁴

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

(a) Subjected to physical, mental, or emotional injury abuse, neglect, or maltreatment, including, sexual abuse;

(b) Subjected to torture, inhuman, or degrading treatment or punishment⁶⁵

Every person, authority, body, or institution that has the care or the responsibility for ensuring the care of children in need of special protection measures shall endeavour, within the available resources, to provide the child with such assistance and facilities which are necessary for his education...⁶⁶ Government requires that a person who is registered to run

⁵⁹ Child's Right Act (CRA, 2003)

⁶⁰ Section 1

⁶¹ Institution here refers to a school where children are left in the custody of the school authority

⁶² Section 2 (1)

⁶³ Section 2(2)

⁶⁴ Section 3(1)

⁶⁵ Section 11

⁶⁶ Section 16(2)

day-care should secure⁶⁷ the premises on which he or she looks after the children and the equipment used on those premises, are adequately maintained and kept safe.⁶⁸

The government may at any time cancel the registration of a child-minder if the care provided by that person when looking after, any child as a child-minder, is, in the opinion of the state government, seriously inadequate as regards to the need of the child.⁶⁹

No child shall be subjected to the criminal justice process or criminal sanctions, but a child alleged to have committed an act that would constitute a criminal offence if he were an adult shall be subjected only to the child justice system and processes set out in this Act.⁷⁰

When a child charged with an offence is tried by a court, and the court is satisfied that the child committed the offence, the court shall take into consideration how, or under the provisions of the Act, the case should be dealt with by dismissing the charge or placing the child under a care order. Utilizing a correction order to send the child to an approved accommodation or institution, and ordering him to participate in counselling.

4. Criminal Code⁷¹

The criminal code allows for a blow or force that does not extend to a wound or grievous harm, which may be justified for correction of children.⁷² No correction is justified which is unreasonable in kind or degree, regarding the age, physical and mental condition of the person on whom it is inflicted. No correction can be justified in the case of a person who is of tender years or otherwise, is incapable of understanding the purpose for which the punishment is inflicted.⁷³ The proprietor's son at the Arise Shine School in Delta State discussed earlier had no moral justification for flogging a toddler, a child who did not understand the purpose for which he was being corrected

⁶⁷ This also means that a person should make sure that apart from the premises, the persons working with him to take care of the children are persons properly fit to take care of children

⁶⁸ Section 165 (b),

⁶⁹ Section 166 (b)

⁷⁰ Section 204

⁷¹ Criminal Code 1990 Cap C 38 LFN 2004

⁷² Section 295(1)

⁷³ Section 295 (6)

and died as a result of the flogging. It is unlawful to kill any person, unless such killing is authorized or justified or excused by law.⁷⁴ Except as hereinafter set forth, any person who causes the death of another, directly or indirectly, by any means, whatever is deemed to have killed that person.⁷⁵

When a person causes a physical injury to another from which death results, it is immaterial that the injury might have been avoided by proper precaution on the part of the person injured, or that his death from that injury might have been prevented by a proper cure or treatment.⁷⁶ This is the case of Sylvester Oromoni, the injuries allegedly inflicted on him by other students led to his death. Whether or not he did not die immediately or that the injuries had been attended to timely is irrelevant as those involved remain culpable for the offences.

Subject to the provision of these sections, any person who commits the offence of murder shall be sentenced to death.⁷⁷ Where an offender who in the opinion of the court had not attained the age of seventeen years at the time of the offence was committed has been found guilty of murder, such offender shall not be sentenced to death but he shall be ordered to be detained on the pleasure of the president.

5. Rivers State Schools Right (Parents, Children, and Teachers), 2005

The School Right was enacted by the House of Assembly of Rivers State of Nigeria as follows:

5(1) Every child has the right to clean, uncrowded, well-lighted classrooms and other instructional spaces with adequate ventilation, reasonably maintained, and free of vermin, and other health hazards.

8(1) A right to a safe and supportive school environment, protection from harassment or abuse of any kind, from any person, including a person whose duty is to provide security in the school.

8(2) (1) Any person in school who causes a female child to be pregnant commits an offence and conviction is liable for two (2) years imprisonment or to a fine of fifty thousand naira (N50, 000.00).

⁷⁴ Section 306

⁷⁵ Section 308

⁷⁶ Section 312

⁷⁷ Section 319(1)

6. Universal Declaration of Human Rights⁷⁸

Everyone has a right to life, liberty, and security.⁷⁹ No one shall be subjected to torture or cruel, inhuman, or degrading treatment or punishment⁸⁰ All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.⁸¹ Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedom. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.⁸²

7. United Nations Convention on the Right of the Child⁸³

For the present convention, a child means every human being below the age of eighteen years, unless, under the law applicable to the child, the majority is attained earlier.⁸⁴ States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.⁸⁵

In all actions concerning children, whether taken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, the best interest of the child shall be a primary consideration.⁸⁶

State parties shall ensure that the institution's services and facilities responsible for the care or protection of children shall conform to the standards established by competent authorities, particularly in the area of

⁷⁸ Universal Declaration of Human Rights (UDHR) 1948

⁷⁹ Article 3

⁸⁰ Article 5

⁸¹ Article 7

⁸² Article 26(2)

⁸³ United Nations Convention on the Right of the Child (1989)

⁸⁴ Article 1

⁸⁵ Article 2

⁸⁶ Article 3(1)

safety, health, the number and suitability of their staff as well as competent supervision.⁸⁷

State parties' recognise that every child has an inherent right to life.⁸⁸ State parties shall ensure to the maximum extent possible the survival and development of the child.⁸⁹

State parties shall take all appropriate legislative, administrative, social, and educational measures to protect the child from physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse while in the care of parents (3), legal guardians) or any other person who has the care of the child.⁹⁰ It also recognizes the child's right to education.⁹¹ No child shall be subjected to torture or other cruel inhuman or degrading treatment or punishment.⁹²

There are three key principles;

(a) That all the rights guaranteed by the convention must be available to all children, without discrimination of any kind.

(b) That the best interest of the child must be the primary consideration in all actions concerning children.

(c) That children's views must be considered and taken into account in all matters affecting them with respect to the principle of representation and participation in decision making.

Article 12 is seen as the lynchpin of the convention where children who are capable of forming their views, have the right to express those views freely on relevant matters. The child shall be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly or through a representative or an appropriate body in a manner consistent with the procedural rules of national laws.

The principle that all rights shall apply to all children without exception, and the state's obligation to protect children from any form of discrimination; The state must not violate any rights and must take positive steps and action to promote them.

⁸⁷ Article 3 (3)

⁸⁸ Article 6 (1)

⁸⁹ Article 6 (2)

⁹⁰ Article 19

⁹¹ Article 28

⁹² Article 37

The United Nations development goals recognize quality education for children as the goal aims at achieving inclusive and quality education for all, reaffirming the belief that education is one of the most powerful and proven vehicles for sustainable development.⁹³ Any child, therefore, sent to school should be protected properly to guarantee completion of education and not to be cut off in their prime by bullying or life-threatening of circumstances occasioned in the school.

8. Lagos State Law on Child's Right⁹⁴

A child must be given protection and care as necessary for the wellbeing of the child, taking into consideration the rights and duties of the child's parents, legal guardians, individuals, institutions, services, agencies, organisations or bodies legally responsible for the child.⁹⁵ (2) Every person, institution, service, agency, organisation and body responsible for the care or protection of children must conform to the standards laid down by the appropriate authorities, particularly in the areas of safety, health, welfare, and suitability of their staff and competent supervision.⁹⁶

Every child is entitled to respect and the dignity of person, and accordingly, a child shall not be— (a) subjected to physical, mental or emotional injury, abuse, neglect or maltreatment, including sexual abuse; (b) subjected to torture, inhuman or degrading treatment or punishment; (c) subjected to attacks upon the child's 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 having authority for the care of the child.⁹⁷

Every child has the right to free, compulsory and universal basic education and it is the duty of the Lagos State Government to provide such

⁹³ Sustainable Development Goal (UNDP) in Nigeria. <https://www.ng.undp.org> accessed June 6, 2022

⁹⁴ Lagos State Laws on Child's Right 2007

⁹⁵ Section 1

⁹⁶ Section 2

⁹⁷ Section 10(1)

comprehensive education. (2) Every parent or guardian must ensure that his or her child or ward attends and completes basic school education.⁹⁸

Every child who is in need of special protection measures has the right to such measure that is appropriate to physical, social, economic, emotional and mental needs and under conditions which ensure the child's dignity, promote the child's self-reliance and active participation in the affairs of the community (2) Every person, authority, body or institution having the care or the responsibility for ensuring the care of a child in need of special measure of protection must endeavour within the available resources, to provide the child with such assistance and facilities which are necessary for the child's education, training, preparation for employment, rehabilitation, and recreational opportunities, in a manner conducive to the child's achieving the fullest possible social integration, individual, cultural and moral development.⁹⁹

9. Organisation of African Union Declaration on Child Welfare and Rights¹⁰⁰

Definition of a child for the purposes of this Charter, a child means every human being below the age of 18 years.¹⁰¹ Non-discrimination, every child shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this Charter irrespective of the child's or his/her parents' or legal guardians' race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status.¹⁰²

In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration.¹⁰³ Every child has an inherent right to life. This right shall be protected by law. State Parties to the present Charter shall ensure, to the maximum extent possible, the

⁹⁸ Section 14

⁹⁹ Section 15(1)

¹⁰⁰ Organization of African Union on Child's Welfare and Rights adopted in 1990 and entered into force in 1999 (OAU)

¹⁰¹ Article 2

¹⁰² Article 3

¹⁰³ Article 4

survival, protection and development of the child.¹⁰⁴ Every child shall have the right to education.¹⁰⁵ The education of the child shall be directed to:

- (a) The promotion and development of the child's personality, talents and mental and physical abilities to their fullest potential
- (b) Fostering respect for human rights and fundamental freedoms with particular reference to those set out in the provisions of various African instruments on human and peoples' rights and international human rights declarations and conventions
- (c) The preservation and strengthening of positive African morals, traditional values and cultures
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, tolerance, dialogue, mutual respect and friendship among all peoples, ethnic, tribal and religious groups
- (e) The preservation of national independence and territorial integrity
- (f) The promotion and achievement of African Unity and Solidarity
- (g) The development of respect for the environment and natural resources
- (h) The promotion of the child's understanding of primary health care.¹⁰⁶

After a careful purview of the laws on the rights of a child, the paramount consideration in decision making and taking in the best interest of the child as highlighted in the case of *Okobi v. Okobi*¹⁰⁷ appears to suffice in all the laws. All the laws make provision for the protection of the child's right to life and advocates that he/she should not be intentionally deprived of their life. Discrimination of children irrespective of their background whether rich or poor, black or white is not acceptable by any of the laws discussed. The right to having sound education is recognised by the laws and the government, and parents are enjoined to make basic education for every child compulsory. The protection of the child from external and internal forces of abuse by parents, individuals, and institutions is upheld. Children have a right to a safe and

¹⁰⁴ Article 5

¹⁰⁵ Article 11(1)

¹⁰⁶ Article 11(2)

¹⁰⁷ [2020] 1NWLR PT 1705

supportive home and school environment free from any kind of abuse or torture, and equal rights before the law irrespective of their status as children. Finally, the welfare and dignity of the child should not be tampered with by anyone in the society irrespective of their social standing as children should be allowed to maximise their full potential. In summary, all the laws and policies discussed have one main aim and that is the protection of the children from all form of molestation and abuse within and outside the confines of the school. No school should have any excuse whatsoever for not taking necessary steps to protect children within their confines; since such school (s) were not forced to establish such educational centres, having portrayed themselves as equipped and ready to run such school (s) before the Ministry of Education issued license for operation. Such readiness to operate the school comes with responsibility which cannot be eluded or delegated to escape liability.

10. Federal Ministry of Education National Policy on Safety, Security and Violence-free Schools with its Implementing Guidelines¹⁰⁸

The purpose of the policy is to use an all-hazard free approach which builds on existing school safety and security laws and policy initiatives to identify and put mechanisms in place. This will help to address all kinds of hazards, including natural, man-made, structural and non-structural hazards that affect the wellbeing of learners, teachers, school users and the school community, in order to ensure the safety and security of schools in Nigeria. Most importantly, the policy also responds to the needs of children and the violence that affects them in and around schools. In Nigeria, non-teaching staff, teaching staff, parents, stakeholders, and community members have responsibility of identifying, discouraging, reporting and dealing with possible cases of violence or abuse against children;

The objectives of the policy are:

- a. to create a safe learning environment for school users;

¹⁰⁸ <https://education.gov.ng/wp-content/uploads/2021/09/National-Policy-on-SSVFSN.pdf>
accessed June 15, 2022

- b. to highlight specific actions to be taken by different stakeholders within the Safe Schools Declaration Framework towards School Safety and Security;
- c. to build capacity of learners, teachers, school personnel and government officials for child protection, school safety and security;
- d. to create awareness among school administrators, teaching and non-teaching staff;
- e. to develop procedures within the school to be followed in addressing cases of suspected abuse;
- f. to mainstream school safety content in existing government schemes and policies;
- g. to design programmes and activities for the prevention of all forms of violence in schools;
- h. to strengthen coordination among relevant institutions of child's care.

International Dimension on Child Protection

Since 2008, UNICEF'S approach seeks to provide protection in a holistic manner fully consistent with child's rights wherever they find themselves whether in school, at home, in public places or wherever. The vision of the UNICEF Child Protection Strategy is a world where all the children are free from violence, exploitation, abuse, neglect and harmful practices. The economic cost of violence against children is estimated at \$7 trillion per year. The purpose of this strategy is to provide a clear vision and strategy framework for UNICEF's work in child protection for the decade to 2030 to meet this challenge.¹⁰⁹ Also created in line with the international protection of children was the International Society for the Prevention of Child Abuse and Neglect (ISPCAN). This was formed by Henry Kempe in 1977 working assiduously for over 40 years to reduce preventable tragedy of child abuse and exploitation. Data has it that about 5 children die daily from child abuse menace, over 1 billion children worldwide experience violence annually.¹¹⁰ Millennium sustainable goals have also spelt out modalities for child

¹⁰⁹ UNICEF, Child Protection Strategy 2021-2030. Available at www.unicef.org/documents/child-protection-strategy accessed June 15, 2022.

¹¹⁰ <https://www.end-violence.org/members/international-society-prevention-child-abuse-and-neglect-ispcan> accessed on June 17th 2022.

protection and care Sustainable Development Goal 1 (poverty eradication), Sustainable Development Goal 2 (Hunger eradication), Sustainable Development Goal 3 (health promotion), Sustainable Development Goal 4 (sound education) Sustainable Development Goal 5 (gender equality). These factors affect children and goal 16 seeks to promote peace, justice and strong institutions and has twelve targets amongst which is target 16.2. The focus of this target is to promote protection of children from abuse, exploitation, trafficking and violence (Violence against children).¹¹¹

Violence against children cuts across all nations and boundaries irrespective of race, tribe education, income, culture and others. Sadly, it takes place in institutions designed to take care of these children. Sustainable development goals give opportunity to place children protection at the heart of the policy actions of every nation to build a world where all the children everywhere enjoy freedom from fear and from violence in all forms especially when they are in school.

CONCLUSION

The tragic reality is that many helpless children are dying from molestation and abuse “occurring,” perhaps in schools. In Nigeria, a total of 11,536 schools have been closed down since December 2020 due to abduction, negative reports, and security issues. These school closures have impacted negatively on the education of approximately 1.3 million children in the 2020/2021 academic session,¹¹² The right to education for every child cannot be over-emphasized and those who are privileged to go to school should be allowed to learn and improve themselves in a serene and secured environment that promises their safety to final graduation from these schools. This beautiful dream of the children and their parents should not be truncated by anyone. Children should feel safe in school and no child should be afraid of the classroom and no parent should be afraid to send their children to school.¹¹³ It is in consideration of child protection in school that Lagos State

¹¹¹ <https://sustainabledevelopment.un.org/topics/violenceagainstchildren> accessed July 9, 2022.

¹¹² UNICEF Isaiah Benjamin available at <https://allafrica.com/stories/202204180107/> School closure accessed on the 19th of July 2022

¹¹³ UNICEF, <https://www.unicef.coorg/nigeria/stories/international-day-education-2022-amid-covid-concerns>, accessed on the July 20, 2022.

Government adopted and established a Safeguarding and Child Protection Policy, which mandated all agencies, organisations, and community members to give priority to the protection of children as a shared responsibility.¹¹⁴

It is further concluded that despite various international and national laws on child protection, the negative trend seems unabated. This is primarily because the criminal justice system is soft-peddling rather than being tough on criminal-minded elements who perpetrate such acts.¹¹⁵ Therefore it is confirmed that measures put in place are not strict enough thus indicating that, firmer action needs to be taken against child abusers.

RECOMMENDATION

- Every school should have a designated teacher and at least two members responsible for child protection.
- Staff should be trained on child handling and management.
- The school management should be made to fill and sign a form of liability with the government agency of the state to ensure that the child left in their custody is well protected, taken care of, and safe. This should be endorsed in the court.
- Those found culpable in such offenses should not be spared; they should be made to take full responsibility for their actions.
- Children should always be trained to speak up when facing challenging situations in the school or when under pressure or duress from fellow students or teachers.
- Inspectors from the Ministry of Education and the Commissioner for Education should go on school inspection regularly.
- School safeguard team should be constituted to keep children safe from harm and abuse.
- The anti-bullying policy should be put in place and reviewed at intervals, for emphasis and maximum effect.

¹¹⁴ G Edema, Quack Responsible for Child Abuse in Schools- Teachers Registration Council of Nigeria (TRCN) 2022, <https://punchng.com/quacks-responsible-for-children-abuse-in-schools-tren/> accessed July, 22

¹¹⁵ Asare and Asare, <https://dailypost.ng/2022/05/27/increased-cases-of-child-abuse-worrisome-group-warns-parents-teachers> accessed on the 22th July 2022.