

## **A CRITIQUE OF THE LEGAL FRAMEWORK FOR THE PROTECTION OF CHILDREN'S SOCIAL WELFARE RIGHTS IN THE FACE OF ARMED CONFLICT IN NIGERIA\***

### **Abstract**

*Armed conflicts have left populations vulnerable to appalling forms of violence, including systematic rape, abduction, amputation, mutilation, forced displacement, sexual exploitation and genocide. The wide and yet covert availability of light, cheap arms has contributed to use of children as soldiers as well as high levels of violence even after conflict abates. The breakdown of social protection leaves girls vulnerable to unwanted/unplanned pregnancy and threatens all children with separation from their families, increased risk of sexually transmitted infections, disability and severe, long-term psychological complexities. An estimated 90 per cent of global conflict-related deaths since 1990 have been women and children. Nigeria has earned a notoriety of being one of the most violent countries in Africa and the world. This situation has led to fatal deaths due to oil, religious conflict, Boko Haram insurgency and more recently Biafra Agitation. This study explores a critical analysis of the legal framework for the protection of children's social welfare rights during armed conflicts in Nigeria through an examination of Governments commitment and capacity, critical analysis of available legislations and instruments, as well as enforcement of same, identification of attitudes, customs and practices that encourage abuse of social welfare rights of children during armed conflicts.*

**Keywords:** Children, Social Welfare, Human Rights, Armed Conflict, Sensitization

### **1. Introduction**

Children in states where armed conflicts exist are subjected to deplorable conditions such as physical, emotional and psychological trauma. Armed conflicts expose children to injury, truancy, separation from their families, exploitation, violence, deprivation of education as well as other social welfare rights and even death in extreme cases. They are also susceptible deprivation of food, medical assistance and education which have severe and lasting impact on their development<sup>1</sup>. Notwithstanding the extensive provisions by International Humanitarian Law and Human Rights law framework for protection of children from the consequences of conflict, armed conflicts all over the globe, continues to expose children to not only being targeted, but also used as human shields or child soldiers<sup>2</sup>. Vulnerability of children during armed conflicts has attained a shocking dimension. A number of United Nations agencies have over time, recorded that there are over 1 billion children living in countries affected by conflict, including 300 million under 5 years old.<sup>3</sup> For these children, the psychosocial, physical and mental consequences are devastating, with far-reaching negative effects on their development<sup>4</sup>. Legal and humanitarian responses concerning the protection, preservation and fulfillment of children's social welfare rights during armed conflict falls short of expected outcomes, thus, the menace is yet to abate. Child protection is undeniably about identification of grave violations of children rights during armed conflicts and complex emergencies, and the tools for protection of the rights.

### **2. Domestic Legal Framework on Social Welfare Rights of Children during Armed Conflict**

Nigerian domestic framework contains considerable provisions on promotion and protection of welfare rights of children during armed conflict. These provisions shall be discussed briefly hereunder:

#### **Constitution of Federal Republic of Nigeria 1999 (as amended)**

The Constitution of Federal Republic of Nigeria 1999 (as amended) is the *grundnorm* and contains fundamental provisions on human rights of all citizens. It contains provisions for preservation, promotion and protection of human rights of all Nigerians from violations. These include *inter alia*, their rights to life, human dignity, movement, freedom from torture and inhumane treatment, as well as granting freedom of religion and culture.<sup>5</sup>

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<sup>1</sup>International Committee of the Red Cross (ICRC), 'Children Affected by Armed Conflict and Other Situations of Violence', Workshop Report, Geneva 14-16 March 2011. P. 6

<sup>2</sup> F.B, Alexandros Iosif 'Protecting Children During Armed Conflicts; Balancing Between Existing Frameworks and Non-Compliance'. The Way Forward, Dissertation for Joint Master's Degree in International Humanitarian Action. NOHA, University of Dublin (2014), p.16

<sup>3</sup>European Commission Humanitarian Aid and Civil Protection; Strategic Planning and Management Document 2013, p. 13

<sup>4</sup> *ibid*

<sup>5</sup> Sections 33 -46, Constitution of the Federal Republic of Nigeria 1999 (as amended)

The constitution also empowers citizens whose rights have been or is likely to be violated to approach the court for redress.<sup>6</sup>

### **Criminal Code Act<sup>7</sup>**

The Criminal Code Act also provides for protection of the child and the preservation of his dignity. It exempts children of certain age bracket from criminal responsibility with conditions with respect to sex and age. Thus, a Child ‘under the age of seven years is not criminally responsible for any act or omission’<sup>8</sup>. A person under the age of twelve years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission, he had capacity to know that he ought not to do the act or make the omission. The criminal code act is limited in scope and application as it applies only to offences committed in Southern part of Nigeria. Thus, the provisions of the CCA does not protect welfare rights of children in other parts of Nigeria.

### **Children and Young Persons Act (CYPA)<sup>9</sup>**

The Children and Young Persons Act was initially enacted as an Ordinance in 1943<sup>10</sup>. It has subsequently been amended through several legislation. Lagos State adopted the Act in 1970 and it remains the most important legislation in treatment of juvenile offenders<sup>11</sup>. The CYPL<sup>12</sup> is age sensitive and contains provisions for dealing with juvenile offenders.<sup>13</sup> It also recognizes three categories of children subject to child justice and contains provisions for legally accommodating these categories of children<sup>14</sup>. The first are children in conflict with the law, the second are children in need of care and protection, and finally children beyond parental control<sup>15</sup>. While the CYPL made provisions relating to children in conflict with the law and children in need of care and protection, it did not specifically set separate standards for the treatment of children in conflict with the law and the treatment of children in need of care and protection<sup>16</sup>. The result of the failure to distinguish between the treatment of children in conflict with the law and children in need of care and protection, is that the CYPL classified and processed social welfare cases as criminal cases<sup>17</sup>.

### **Child’s Rights Act 2003<sup>18</sup>**

The Child’s Right Act (CRA) appears to be a consolidation of all laws relating to children and an implementation of Nigeria’s commitment under international law to domesticate, recognize and enforce within its territory, the provisions of the Convention on the Rights of the Child (CRC)<sup>19</sup> and the African Charter on the Rights and Welfare of the Child (ACRWC)<sup>20</sup>. The CRA is on all fours with the fundamental rights provisions in Chapter IV of the 1999 Constitution, creates a host of other child rights as well as provides for specific rights for children in conflict with the law in sections 149-162<sup>21</sup>. The Act also provides for human rights of children including the right to survival and development, the right to a name, freedom of association and peaceful assembly, freedom of thought, conscience and religion, the right to private and family life, the right to freedom of movement, and freedom from discrimination.<sup>22</sup> Laudable provisions of the CRA notwithstanding, failure of some states in Nigeria to enact Child’s Right laws in some states of the federation constitutes a huge obstacle to the implementation of the provisions of the Act in such states. This leaves the rights of Nigerian children at the mercy of legislators who have refused to sign the Child’s Right Act mainly because of the opposition from the

<sup>6</sup> Section 46 (1), Constitution of the Federal Republic of Nigeria 1999 (as amended)

<sup>7</sup> CAP 77 LFN 1990 (as amended)

<sup>8</sup> Section 30, Criminal Code Act

<sup>9</sup> The Children and Young Persons Act CAP 26, 1970

<sup>10</sup> E.E.O Alemika et al, Rights of the Child in Nigeria; Report on the implementation for the Convention on the Rights of the Child by Nigeria’, *Nigeria* (Organization Against Torture Geneva, June 2004, p.21

<sup>11</sup> *ibid*

<sup>12</sup> Children and Young Persons Law, Laws of Lagos State (1970)

<sup>13</sup> E. Uche, Proportionality and Best Interests: Calibrating the Twin Pillars of Child Justice in Nigeria, University of Hesinki, Finland (2014). p.20

<sup>14</sup> M.U. Abubakar, ‘Criminal Law and the Rights of the Child in Northern Nigeria’ (2010) Legal Studies Research Paper No 2012-11, p.14

<sup>15</sup> Children and Young Persons Law, Laws of Lagos State (1970)

<sup>16</sup> M.U. Abubakar, ‘Criminal Law and the Rights of the Child in Northern Nigeria’ (2010) Legal Studies Research Paper No 2012-11, p.21

<sup>17</sup> *ibid* p.14

<sup>18</sup> Cap C50, Laws of Federation of Nigeria (L.F.N) 2003

<sup>19</sup> Convention on the Rights of the Child (CRC) 1989

<sup>20</sup> African Charter on the Rights and Welfare of the Child (ACRWC)1990

<sup>21</sup> O.S. Akinwumi, ‘Legal Impediments on the Practical Implementation of the Child Right Act 2003’, *International Journal of Legal Information*, vol. 37.3, p. 387

<sup>22</sup> Sections 3 – 20 of the CRA

Supreme Council of Sharia<sup>23</sup> and grounds of diversity of cultures and of religion as an excuse for failing to pass the appropriate legislation<sup>24</sup>.

#### **African Charter on Human and People's Rights (Ratification and Enforcement) Act 1990<sup>25</sup>**

The African Charter on Human and People's Rights (Ratification and Enforcement) Act contains ample provisions on enjoyment of the rights and freedom recognized and guaranteed therein without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status. The Act, though not 'child specific', is applicable to children by virtue of their humanness as well as citizens of Nigeria. Under the Act the family is recognised and shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and morals<sup>26</sup>. The safeguards contained in the Act has not militated against armed conflict posing an aggressive scuttle to rights of individuals, especially children during armed conflict. Children still experience separation from their families, their education is interrupted, and their health and welfare rights grossly eroded.

#### **Universal Basic Education Act 2004**

Universal Basic Education (UBE) Act came into force in 2004 and recognizes that child's right to education is a human right which ought to be protected.<sup>27</sup> It makes it mandatory for Nigerian government to provide free, compulsory and Universal basic education for every child of primary and junior secondary, school age.<sup>28</sup> The Act prescribes penalties where any parent or guardian contravenes provisions of the Act.<sup>29</sup> This Act notwithstanding, actualization of child's right to basic education is hampered by factors such as low enrolment of children in schools in some parts of Nigeria, especially as schools have become soft targets for bandits, poor infrastructure and high rate of truancy amongst children of school age.

#### **Safe Schools Declaration (SSD) 2019**

Safe Schools Declaration is an inter-governmental political commitment to protect students, teachers, schools, and universities from the worst effects of armed conflict; the importance of the continuation of education during armed conflict; and the implementation of concrete measures to deter the military use of schools. Nigeria ratified the Safe School Declaration on 20<sup>th</sup> March 2019.<sup>30</sup> Use of school as military base exposes such institutions to attack more than being a safe abode. 'Explicit protection of Schools from military use is now accepted norm worldwide. Out of the 49 Countries surveyed in 2011 by Human Right watch, 27 have adopted explicit protection of Schools from military use.' Nigerian Military and Para-Military Forces reminded of the need to bring Nigeria domestic law in line with her international obligation by explicitly protecting Schools from military use. The United Nations has consequently repeatedly called on all States to take concrete measure to deter the Military use of Schools in particular in Resolutions 2143, 2225 and most recently in Resolution 2427(2018)<sup>31</sup>

### **3. International Statutes and Instruments for Protection of Children's Welfare Rights During Armed Conflict**

The basic framework for the protection of children during armed conflicts under international law are; International Humanitarian Law and Human Rights Law. Notably, the legal framework protecting children during armed conflicts consists of the four Geneva Conventions of 1949 and Additional protocols of 1977, the 1989 Convention on the Rights of the Child and its Optional Protocol, the Universal Declaration of Human Rights of 1948, the International Covenant on Economic Social and Cultural Rights of 1966, the International Covenant on Civil and Political Rights of 1966, Customary International Law, the Statute of the International Criminal Court (1948) and International Labour law<sup>32</sup>. International Humanitarian law for protection of children's social welfare rights during armed conflicts are explored thus:

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<sup>23</sup> O.S. Akinwumi, 'Legal Impediments on the Practical Implementation of the Child Right Act 2003', International Journal of Legal Information, vol. 37.3, p.391

<sup>24</sup> *ibid*

<sup>25</sup> African Charter on Human and Peoples' Rights, (Ratification and Enforcement) Act (ACHPRA) CAP10 LFN (1990)

<sup>26</sup> Article 18 (1) and (2) The African Charter on Human and People's Rights (Ratification and Enforcement) Act, 1990

<sup>27</sup> A. Danjuma and A John, 'The Political Will and Quality Basic Education in Nigeria', Journal of Power, Politics, and Governance, 2(2) 2014 p.78

<sup>28</sup> Section 2(1), UBE Act, 2004

<sup>29</sup> *ibid* Section 2(4) (a-c)

<sup>30</sup> SSI, Introducing the Safe Schools Initiative (SSI) in Nigeria, <http://Icn.pasclobservatory.org> 16/08/21

<sup>31</sup> <https://exponentmagazine.com.ng/2019/02/05/safe-school-declaration-essentials-for-improved-education-in-nigeria>, accessed 17/10/22

<sup>32</sup> F.B AlexandrosIosif, 'Protecting Children During Armed Conflicts; Balancing Between Existing Frameworks and Non-Compliance, The Way Forward', Dissertation for Joint Masters Degree in International Humanitarian Action (NOHA), University of Dublin 2014, p. 48.

**Fourth Geneva Convention 1949** - relative to the Protection of Civilian Persons in Time of War, chronicles a set of principles protecting civilians and children during armed conflicts. These principles specify that children should be protected as members of the civilian population. The principle regulating the rules relating to protection of children is not stated explicitly anywhere in that Convention. However, Protocol I fill this gap, by providing, that: ‘Children shall be the object of special respect and shall be protected against any form of indecent assault. The parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.’<sup>33</sup> The convention promotes protection of children from effects of armed conflict, establishment of hospital and safety zones. In the face of copious provisions of four Geneva Conventions on protection of civilian populations during armed conflicts, some gaps still existed with regards to child protection, which the Additional Protocols of 1977 fill reasonably by improving the protections that civilians are entitled to in wartime<sup>34</sup>

**Additional Protocols (AP) of 1977** - As provided by the Additional Protocol 1, ‘children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason’<sup>35</sup>. The Additional Protocol I, which regulates International Armed Conflict, initiated the provision on special protection of children, makes it obligatory on the parties to armed conflict to observe and respect the said provision<sup>36</sup>. As a result, children enjoy an important number of provisions, which are applied together with the Human Rights Instruments. However, non-compliance of some governments with International Humanitarian Law, with respect to provisions such as rules relating to ‘safety zones’ and ‘detention’, remains a lacunae in the International Humanitarian Law.

**Human Rights Law** - Although International Humanitarian Law is considered as the ‘Law of Armed Conflict’, thus having prevalence over Human Rights Law during hostilities, this latter corpus of law outlines extensive provisions in terms of child protection which could be applied during armed conflicts<sup>37</sup>. International humanitarian law and international human rights law are two distinct but complementary bodies of law. They are both concerned with the protection of life, health and dignity of individuals. While international humanitarian law applies during armed conflict, human rights law applies at all times, in peace and during hostility<sup>38</sup>. In connection to protection of civilians, one distinct feature between humanitarian law and human rights law is that the former focuses on protection of people in groups whereas the latter is concerned with particular individuals.<sup>39</sup> Some of the International Human Right Laws that make copious provision for promotion and protection of children during armed conflicts are - Universal Declaration of Human Rights, the International Covenant on Economic Social and Cultural Rights, the International Covenant on Civil and Political Rights, Convention on the Rights of the Child, the Optional Protocols to the Convention on the Rights of the Child and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. The impact of international human rights law in protection of children’s human and welfare rights during armed conflicts is hampered by failure of some countries to either domesticate or enforce its provisions during armed conflicts and whenever else human rights are violated.

**International Criminal Law** - The Rome Statute of 1998, which led to the creation of the International Criminal Court (ICC) lists as war crimes, the active involvement of children under 15 or their recruitment into national armed forces during both international and non-international armed conflict<sup>40</sup>. It also criminalizes rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and other forms of sexual violence as both war crimes and crimes against humanity<sup>41</sup> and the widespread or systematic enslavement, including trafficking in children.<sup>42</sup> The classification of armed conflicts is one of the contemporary legal challenges with

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<sup>33</sup> Article 77, Protocol Additional to the Geneva Conventions 1949, (Protocol I), 1977

<sup>34</sup>F.B. AlexandrosIosif, ‘Protecting Children During Armed Conflicts; Balancing Between Existing Frameworks and Non-Compliance’. The Way Forward, Dissertation for Joint Master’s Degree in International Humanitarian Action. NOHA, University of Dublin (2014), p.50

<sup>35</sup> AP I, article 77

<sup>36</sup> AP I article 77 (1)

<sup>37</sup> F.B. Alexandros *ibid* p.53

<sup>38</sup> F. Goitom, ‘Protection of Innocent Civilians in Intrastate Armed Conflict under International Humanitarian Law,’ Darfur – Sudan, A paper on International Humanitarian Law, May 2012, p. 8

<sup>39</sup> C. Droegge, ‘Elective affinities; Human rights and humanitarian law’, International Review of the Red Cross, vol 90 (871), (2008) p. 521

<sup>40</sup> Rome Statute of The International Criminal Court (ICC),1998 article 8(2)(b)(xxvi), (e)(vii)

<sup>41</sup>article 7(1)(g), 8(2)(b)(xxii), (e)(vi) Rome Statute of The International Criminal Court (ICC),1998

<sup>42</sup> *ibid* article 7(1)(c), (2)(c)

application of international criminal law, as the application of IHL depends on existence of international or non-international armed conflict to determine its applicability<sup>43</sup>.

**International Labour Law** -In addition to the copious provisions of IHL, HRL and ICL, International Labour Law, makes provisions that could improve Child protection, especially during armed conflict. The International Labour Organization (ILO) Minimum Age Convention and Worst Forms of Labour Convention, emphasize on the minimum age in which a child can start working and underline the worst forms of labour, with the objective to limit exploitation of children. Akin to other international laws and treaties, international labour law provisions are applicable in member nations subject to domestication. Children in war zones where such domestication is yet to happen are prone to human right violations without redress.

#### **Human Rights Components of United Nations Peacekeeping Missions**

The United Nations systematically includes human rights components in Its peace missions established by the Security Council. These components, integral to the mission are required to respond to concerns of both international human rights law and international humanitarian law. By protecting children, who have often known nothing but war throughout their lives, peacekeepers can break the cycle of violence and lay the foundations for durable peace.<sup>44</sup> UN peacekeeping missions operate in the most dangerous and difficult environments in the world, dealing with conflicts – or their aftermath – which others cannot or will not address. However, the efficacy of U.N. peacekeeping efforts has drawn some serious criticism, however. Despite the good intentions of the international community toward resolving conflicts peacefully through the missions, history has shown that there are serious limitations to what they can accomplish. May 2000 headlines chronicled the abduction by a rebel force of more than five hundred international soldiers serving in the U.N. peacekeeping mission in the West African nation of Sierra Leone. Although most of the soldiers were released after a brief period of detention, some soldiers were reported to have been killed. Because so many were abducted, it became evident the peacekeeper role can be both ineffective and dangerous<sup>45</sup>.

#### **UNICEF**

United Nations International Children's Emergency Fund (UNICEF) is a global leader for child protection in emergencies.<sup>46</sup> UNICEF partners with governments, international organizations, and communities themselves to keep children from harm's way and support those who have experienced violence or abuse.<sup>47</sup> It also develops evidence-based technical standards, guidance and advocacy strategies to arm child protection workers on the ground. Interventions by UNICEF are not limited to times of war or armed conflict. There are however challenging international projects, where UNICEF had to deal with bureaucratic bottlenecks regarding supply of essential goods in developing countries. Some communities across many countries resist some of UNICEF ideas, stating that those stand against national or religious norms in views on child development<sup>48</sup>.

#### **4. Enforcement and Implementation of Children's Social Welfare Rights During Armed Conflict in Nigeria**

Nigerian government has considerably demonstrated positive action towards protection of children's social welfare rights during armed conflict by enacting, ratifying and domestication of relevant laws. As has been previously stated, the Nigerian Constitution contains ample provisions on fundamental human and social welfare rights of citizens, including children. However, some of the laws and treaties for the protection of children's social welfare rights have been found to contain derogations that render their applicability impracticable.

The 1999 constitution for instance, contains categories of human rights under chapters two and four of the constitution. While the rights under the chapter 4 of the constitution are enforceable<sup>49</sup>, those contained in chapter 2 are not enforceable. This chapter is made up of 12 sections spanning from sections 13 to 24. It contains the political, economic, social, cultural and developmental rights of the citizens. However, this chapter is non-justiciable by virtue of section 6 (6) (c) of the same constitution. Examination of the implications of such non-justiciability show that citizens cannot obtain redress from the courts if denied their socio-economic,

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<sup>43</sup> R. Bartels, The Classification of Armed Conflicts by International Criminal Courts and Tribunals, International Criminal Review, 2020, p. 596

<sup>44</sup> [https://peacekeeping.un.org/en/Child protection](https://peacekeeping.un.org/en/Child%20protection) accessed 15/3/22

<sup>45</sup> <https://peacekeeping.un.org>

<sup>46</sup> [https://www.unicef.org/Protecting children in humanitarian action](https://www.unicef.org/Protecting%20children%20in%20humanitarian%20action) | UNICEF March 17 2022

<sup>47</sup> [https://www.unicef.org/Protecting children in humanitarian action](https://www.unicef.org/Protecting%20children%20in%20humanitarian%20action) | UNICEF March 17 2022

<sup>48</sup> <https://www.unicef.org/emergencies> accessed 19/10/22

<sup>49</sup> O.V.C Ikpeze, 'Non-Justiciability of Chapter II of Nigerian Constitution as an Impediment to Economic Rights and Development, ResearchGate, Vol.5, No.18, 2015, p. 48

developmental and other rights provided for in this chapter of the constitution<sup>50</sup>. It is therefore a formidable impediment to socio-economic development. Also, continuation of non-justiciability of Chapter II CFRN may result to lack of development and non-accountability by the Executive and Legislative arms of government, without any hope of a successful judicial challenge<sup>51</sup>. It also negates the principle of indivisibility of human rights and is undesirable.

Furthermore, the condition that international treaties are subjected to by section 12 of the 1999 constitution, which provides that '*No treaty between the Federation and any other country shall have the force of law except to the extent which any such treaty has been enacted into law by the National Assembly,*' also hampers speedy application of human rights of children especially during armed conflicts. Similarly, Section 45(1) of the 1999 Constitution, provides a veritable foundation upon which any law invalidating fundamental rights may be justified.<sup>52</sup> The section provides, inter-alia that: Nothing in sections 37, 38, 39, 40 and 41 of the constitution shall invalidate any law that is reasonably justifiable in a democratic society (a) in the interest of defence, public safety, public order, public morality or public health; or (b) for the purpose of protecting the rights and freedom of other persons. It is on account of such derogation clauses that the Supreme Court held in *Medical and Dental Practitioners Disciplinary Tribunal v. Emewulu & Anor*<sup>53</sup> that all freedoms are limited by state policy or overriding public interest.<sup>54</sup> In addition to the foregoing, articles 9 and 12 of Universal Declaration of Human Rights (UDHR), appears to contemplate permissible derogation of the rights contained therein, when it provides for freedom from arbitrary arrest without qualifying same.<sup>55</sup> UDHR also recognizes that rights and freedoms are to be enjoyed only within the limits permitted by the law.<sup>56</sup> The situation is however, different with the Covenant on Civil and Political Rights<sup>57</sup> and the Covenant on Economic, Social and Cultural Rights<sup>58</sup>. Both Covenants elaborated on the provisions of the Declaration. For instance, Article 4 of the International Covenant on Civil and Political Rights recognizes and provides for permissible derogations 'in time of public emergency which threatens the life of the nation',<sup>59</sup> it further prohibits derogation from Articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18.<sup>60</sup> Similarly, Article 4 of the International Covenant on Economic, Social and Cultural Right allows restrictions and limitations on the rights it guarantees. The Article provides that: enjoyment of rights provided State shall be within limitations as are determined by law and compatible with promoting the general welfare in a democratic society.<sup>61</sup> The African Charter on Human and Peoples Right, also contains derogation clauses as stated in Article 6 *inter alia* that 'no one may be deprived of his freedom except for reasons and conditions previously laid down by law' while Article 11, in limiting the right to assemble freely, permits 'necessary restrictions provided for by law.'<sup>62</sup> The practical and legal implication of these derogation clauses is simply that a state is permitted to limit, restrict, abridge, or suspend the enjoyment of these rights. While it may be inappropriate to contend that all the rights should be given in absolute terms, it is a matter of grave concern that the instances of permissible derogation are not well-defined and as such, susceptible to abuse.<sup>63</sup>

### 5. Impact of Armed Conflict on the Social Welfare Rights of Children in Nigeria

Armed conflict affects children's welfare rights in devastating ways. Many children are forced to flee their homes for safety. More than 1.5 million people have fled their homes due to the violence. This includes 1.2 million displaced inside Nigeria and around 200,000 who have crossed into neighbouring Cameroon, Chad and Niger after their villages were attacked threatened<sup>64</sup>. Some of these children who stay within their own national borders are considered 'internally displaced persons (IDPs)', while those forced to flee to other countries become 'refugees'.<sup>65</sup> Displacement is disruptive, dangerous and often disentitles children of the safety enjoyed within

<sup>50</sup> *ibid*

<sup>51</sup> *ibid*

<sup>52</sup> J. A. Dada, 'Impediments to Human Rights Protection in Nigeria,' Annual Survey of International & Comparative Law: Vol. 18: Iss. 1, Article 6 (2012), p. 76

<sup>53</sup> 2001] 3 S.C.N.J. 106

<sup>54</sup> *ibid*

<sup>55</sup> Article 9 and 12, Universal Declaration of Human Rights (UDHR) 1948

<sup>56</sup> *ibid*, article 29(2)

<sup>57</sup> International Covenant on Civil and Political Rights (ICCPR) (1966)

<sup>58</sup> the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966)

<sup>59</sup> Article 4(2) International Covenant on Civil and Political Rights

<sup>60</sup> J.A. Dada *ibid* p.75

<sup>61</sup> *ibid*

<sup>62</sup> See Articles 12, 13 and 14 of African Charter on Human and Peoples Right Act, on further derogations.

<sup>63</sup> D. J. Abiodun 'Impediments to Human Rights Protection in Nigeria,' Annual Survey of International & Comparative Law: 2012, Vol 18, Iss 1. p. 75

<sup>64</sup> *ibid*

<sup>65</sup> *ibid*

their community, traditional support structure and exposes them to an array of dangers<sup>66</sup>. Grave violations are committed against children. Six grave violations against children have been identified during armed conflict and they include: Recruitment and use of children as soldiers, Killing or maiming of children, Sexual violence against children, Attacks against schools or hospitals, Abduction of children and Denial of humanitarian access.<sup>67</sup> Some other impacts of armed conflicts on children include – exposure to torture, extreme violence and abuse<sup>68</sup>. Such situation of terror and horror often leads to post-traumatic stress disorder (PTSD).<sup>69</sup> The psychosocial impact of armed conflict affects emotion, behaviour, thoughts, memory, learning ability, perceptions and understanding of children<sup>70</sup>. Their relationship with their families is altered by death, separation, estrangement and other losses. In the areas worst affected by the violence in Nigeria, less than 40 per cent of health facilities remain operational.<sup>71</sup> Health workers flee, leaving families with limited access to health services such as routine immunization and maternal and child care, and increasing the risk of malaria, measles, diarrhoea and other threats of disease outbreaks.<sup>72</sup>

## **6. The Dilemmas of Combating Armed Conflict in Nigeria**

Security of life and properties is not spared from the corruption that is ravaging every aspect of Nigeria. Reports have it that corruption exists among top-ranking security personnel, bureaucrats and politicians in the fight against insurgency/armed conflict in Nigeria.<sup>73</sup> Many top-ranking military officers are reported to be complicit in corrupt practices involving the money budgeted for fighting insurgency in the Northeast.<sup>74</sup> Low Motivation of the Security Personnel has also been pointed out as one of the setbacks in combating armed conflict. Security personnel lack both financial and material resources needed to efficiently suppress insurgency. Their lack of zeal to fight is often borne out of the fact that the insurgents are better equipped than them, their allowances are delayed, absence of welfare package and not paying salaries/allowance in full.<sup>75</sup> Nigeria is one of the countries in the world with a large geographical size, different climatic terrain and porous border particularly in the North where it has the largest size with neighbourhood of more than four countries including – Cameroon, Niger, and Chad.<sup>76</sup> These are the three countries that share the border and the menace of insurgency with Nigeria and most of these borders are porous with uncountable entry and exit points.<sup>77</sup> The insurgents have easy route to stage their criminal activities and escape without trace. Porous borders facilitate easy importation of weapons, logistics, and escape routes for the perpetrators of armed conflict.<sup>78</sup> Absence of cooperation among the security personnel and agencies is a major challenge that has continued to prolong the fight against armed conflict in Nigeria. There is tension, rivalries, hostilities and discord among the military, police and DSS.<sup>79</sup> There is failure to coordinate and design strategic and tactical designation of responsibilities and operations among them.<sup>80</sup> Countries plagued by armed conflicts also lack synergy to coordinate and build a common front in the fight against armed conflict.<sup>81</sup> It has further been noted that hostilities from the host communities<sup>82</sup>, lack of adequate weapons and other logistics needed to fiercely confront the insurgents, and the politicisation of the war against insurgency in Nigeria have posed a major challenge to ending armed conflicts in Nigeria.<sup>83</sup>

## **7. Conclusion and Recommendations**

The critique of the legal framework for protection of social welfare rights of children who are or have been victims of armed conflict, clearly raises primary concerns such as the stark fact that, protection provided by the

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<sup>66</sup> G. Machel 'The Impact of Armed Conflict on Children; A critical review of progress made, and obstacles encountered in increasing protection for war affected children', International Conference on War, Winnipeg, Canada, 2020, p.2

<sup>67</sup> <https://watchlist.org/deinial-of-humanitarian-access-...> accessed 12/01/22

<sup>68</sup> UNICEF <https://www.unicef.org/education/emergencies> accessed 23/03/22, p.7

<sup>69</sup> R.L. Frounfelker, et al, 'Living through war: Mental health of children and youth in conflict- affected areas', <https://www.cambridge.org/core/journals/international-review-of-the-red-cross/article/>, accessed 23/02/22

<sup>70</sup> *ibid*

<sup>71</sup> *ibid*

<sup>72</sup> *ibid*

<sup>73</sup> B. Sule *et al* 'The Challenges of the Fight Against Insurgency in North-eastern Nigeria', *Journal of Techno Social* vol. 11 No. 1 (2019). P. 11

<sup>74</sup> *ibid*

<sup>75</sup> B. Sule *et al* *ibid* p 13,

<sup>76</sup> *ibid* p.12

<sup>77</sup> <https://oldnaija.com/2015/12/07/boundaries-borders-of-nigeria/>.. Accessed 19/1/22

<sup>78</sup> *ibid*

<sup>79</sup> J. Zenn, 'Boko Haram Dangerous Expansion into Northwest Nigeria' *Combating Terrorism Centre at West Point* (CTC Sentinel) 2010 5(10), p.5

<sup>80</sup> *ibid*

<sup>81</sup> *ibid*

<sup>82</sup> M.D, Sulaiman, 'Centenary of Failure? Boko Haram, Jihad and the Nigerian Reality' *ARAS* 35(2) 2014 p.71.

<sup>83</sup> *ibid*

Nigerian legal framework on armed conflict, is hampered by weak enforcement, lack of skilful synergy and is also uncoordinated. Also, little or no attention is geared towards international and statutory legal norms to protect, rehabilitate and socially reintegrate a child victim of armed conflict, into an environment which promotes good health, self-respect and dignity of the child, where emergency measure, legal regimes or military efforts are introduced. It is recommended that Domestic and international laws and instruments that contain ambiguous provisions, promoting permissible derogations of human rights of children especially during armed conflict should be amended to avoid further curtailment of enjoyment of social welfare of children. There is need to emphasize that human rights are inter-related and inter-connected and the provisions of chapter 2 and 4 of the 1999 constitution (as amended) which seems to have made a distinction between economic, social, and cultural rights, on the one hand and civil and political rights on the other needs to be equally justiciable to ensure a holistic approach in implementation of the human rights of children in Nigeria during armed conflicts. Also, international treaties on human rights that are ratified or assented to by a state should be directly enforceable within the municipal system. It is further recommended that psychosocial multi-approach system of support to families and communities that is delivered at different levels of social and health systems should be emphasized. Finally, security apparatus of the Nigerian state should be overhauled in order to meet the current security challenges confronting the state.