

CORPORAL PUNISHMENT OF CHILDREN IN NIGERIAN HOMES

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DECLARATION

I, Julius Awah Azong, hereby declare that this dissertation is original and has never been presented in any other academic institution. I also declare that secondary information used has been duly acknowledged in this dissertation.

Student Julius Awah Azong

Signature

Date



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In the process of writing this research I would not have been able if God Almighty did not give me the strength to keep on moving even when I felt I was too tired .Throughout the study I kept on wondering if I will make it to the end but God continuously gave me the energy to keep on going I am very pleased because my God is a living God and answered my prayers when I needed most.

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LIST OF ABBREVIATIONS

ACPF	African Child Policy Forum
ACRWC	African Charter on the Rights and Welfare of the Child (1990)
CAT	Convention Against Torture (1987)
CEDAW	Convention on the Elimination of all forms of Violence and Discrimination against Women
CRA	Nigerian Child Rights Act (2003)
CRC	Convention on the Rights of the Child (1989)
CYPA	Children and Young Person's Act (1958)
NGO	Non Governmental Organizations
OAU	Organization of African Unity
UN	United Nations
UNICEF	United Nations Children Fund



TABLE OF CONTENTS

Declaration	i
Acknowledgement	ii
List of abbreviations	iii
Table of contents	iv
Key words	1

CHAPTER 1: INTRODUCTION 2

1.1.1 Background to the study	2
1.1.2 Definition of violence	4
1.1.3 Corporal punishment	5
1.2 Research question	6
1.3 Significance of study	6
1.4 Research methods	8
1.5 Limitations of study	8
1.6 Literature review	9



Chapter 2: STATE'S OBLIGATION PROTECTING CHILDREN AGAINST CORPORAL PUNISHMENT

2.1 Introduction	12
2.2 Convention on the Rights of the Child	13
2.2.1 Protection of children against violence	13
2.2.2 Best interest principle of the child	16
2.2.3 Protection of children against torture and other cruel punishment	17
	iv

2.3 General Comments No. 8 of the Convention on the Rights of the Child	18
2.3.1 Convention Against Torture	20
2.3.2 Committee Against Torture	20
2.3.3 Regional law	21
2.4 The African Charter on the Rights and Welfare of the Child	21
2.4.1 Protection against harmful traditional practices	24
2.4.2 Other international developments	27
2.5 The United Nation study on Violence against Children.	27
2.6 Conclusions	37
CHAPTER 3: THE COMPLEXITY OF THE NIGERIAN LEGAL SYSTEM AND THE APPROACH IN COMBATING CORPORAL PUNISHMENT	
3.1 Introduction	33
3.2 Background history of the Nigerian law	34
3.3.1 The influence of the English law on the Nigerian legal system	35
3.3.2 The Children and English law in Nigeria	36
3.4 The Nigerian System of law	37
3.4.1 The Constitution	37
3.4.1.1 Children, Corporal punishment and the Constitution	39
3.4.2 Sharia Law	40
3.4.3 Customary Law	42
3.5 The Implication of Nigerian Laws to Corporal Punishment by Parent	45
3.6 Analysis	46
3.7 Conclusion	50
CHAPTER 4: NIGERIA’S OBLIGATION TO PROTECT CHILDREN FROM CORPORAL PUNISHMENT	
4.1 Introduction	51
4.2 Contextual analyses of corporal punishment in Nigeria	51
4.3 Child protection in Nigeria prior to the Child Rights Act	52
4.3.1 Corporal punishment as a penal sentence prior to the Child Rights Act	53
4.3.2 Corporal punishment in homes before the Child Rights Act	54

4.3.3 Corporal punishment in schools before the Child Rights Act	54
4.4 National protection of children from corporal punishment	56
4.4.4 Criticisms faced by the Child Rights Act of 2003	58
4.5 Nigeria's International obligations to protect children from corporal punishment	61
4.6 Nigeria, corporal punishment and the Convention on the Rights of the Child committee	62
4.6.1 Protection of children against corporal punishment in Nigeria	65
4.7 Nigeria and the African Charter on the Rights and Welfare of the Child	66
4.8 Nigeria and the United Nations Study on Violence	68
4.9 Conclusion	71

CHAPTER: 5 CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion	73
5.2 Recommendation	75



1. Keywords

Corporal punishment

Children's Rights

Child Abuse

Child Protection

Parents

Convention on the Rights of the Child

African Charter on the Rights and Welfare of the Child

Committee of Experts

Child Rights Act

Constitution of the Federal Republic of Nigeria



1.1 Introduction

1.1.1 Background to the study

There is more and more emphasis across the world about the youths being the leaders of tomorrow. It is quite clear that, where children are able to think properly, their views and wishes must be given due weight.¹ Rwezaura supports the fact that better protection should be guaranteed for children.² In the world today, it is more and more evident and necessary that; decisions affecting children must not only be made by adults, but that children must also be involved as stated by the following observation:

‘Our children are tomorrow’s leaders, workers, scientist and parents. This means that their survival, health, nutrition education and protection must be seen as a key priority...’³

The Convention on the Rights of the Child (CRC) has laid the ground rules for the protection of the child, but nations have not done enough as to the protection of children against violence, seeing the large number of children suffering from violence.⁴

Africa has also responded favorably, through the African Charter on the Rights and Welfare of the Child (ACRWC). Some authors argue that, children’s rights in Africa remain very complex and only the African Charter on the Rights and Welfare of the Child has responded positively to suit the African context.⁵ According to certain reports children suffer tremendously from violence; it is reported that some forty million children under the age of 15 are victims of violence each year.⁶

¹ Convention on the Rights of the Child (1989)Art. 12 (1) CRC,

² B Rwezaura (1998) *The Duty to Hear a Child a View from Tanzania* Dartmouth Publishers: England p.57.

³ CJ Davel (1999) *Children’s Rights in a Transitional Society* Protea Book House: Pretoria p.18.

⁴ UN Report (2006) *Secretary General’s Report of the Independent Expert for the United Nations Study on Violence Against Children* 61st Session, United Nations General Assembly (A/61/299).

⁵ G Van Bueren (1998) *Childhood Abused, Protecting Children Against Torture, Cruel, Inhuman and Degrading Treatment and Punishment* Ashgate Publishers: England p.19.

⁶ D Kassan (2008) “The Protection of Children from All Forms of Violence-African Experience” in J Sloth-Nielsen (ed) *Children’s Right in Africa* Ashgate Publishers: England p.165.

The recent UN study undertaken by Professor Pinheiro on violence against children in the Convention on the Rights of the Child (CRC) under recommendation clearly shows that violence against the child exists in every country of the world, as seen in several aspects, including; culture, class, education, income and ethnic origin.⁷ With all the above information it is almost certain that violence is still a major threat to children in Africa, some of them which are even legalized as stated by the following report:

'In some countries children can be sentenced by a court to corporal punishment, most commonly flogging, The sentence is often carried out in public, and can cause severe pain and suffering, as well as permanent injury some children have been sentenced to hundred of lashes'.⁸

The African Child Policy Forum also supports the fact that ending violence against children is one of the most pressing challenges facing Africa today.⁹

Most African states are signatories to the CRC and have also ratified the treaty, and have domesticated the rules but still do not comply with these international rules as to safe guarding the rights of the child.

The Nigerian legal system is characterized by three different systems of law; that is the English common law, the Islamic Sharia law, and customary law¹⁰ which are its principal sources of law. In an attempt to recognize the international at the local level; Nigeria ratified the CRC in 1991, and has ratified other international instrument that affect the right of the child such as the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) 1979, the Convention against Torture and Other Cruel Inhuman or Degrading Treatment 1975 or Punishment and the Convention on the Elimination of All Forms of Racial Discrimination 1965.

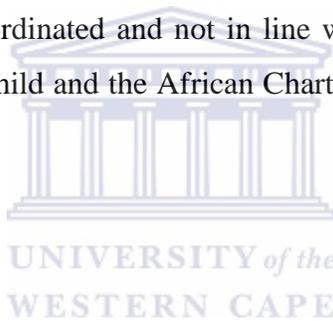
⁷ The UN Study on Violence (2006) p.5.

⁸ Amnesty International (2000) *Hidden Scandal, Secret Shame Torture and Ill Treatment of Children*: Amnesty International p.87.

⁹ The African Child Policy Forum (2006) *Born to High Risk: Violence Against Girls in Africa Prepared for Secondary International Policy Conference on the African Child* :<www.afrcan child policy forum.org.date>accessed 20 March 2010.

Report on the implementation by the Convention on the Rights of the Child by Nigeria Switzerland p.5.

The 1999 Nigerian Constitution allows the customary courts and the Sharia courts to cover various issues and jurisdiction.¹¹ Furthermore section 277 of the Nigerian constitution defines the sector of competence of Sharia law.¹² Another important thing not to be left out is the fact that; Nigeria has two separate codes, one applying to Southern Nigeria (Criminal Code) and one applying to Northern Nigeria (Penal Code). These are all essential documents when discussing corporal punishment in Nigeria because the various mentioned documents all influence the rights of the child in Nigeria. Nigeria is a suitable place, where study of violence can be carried out, because of its diverse internal laws, and more to that. As stated by the World Organization Against Torture 2005, Nigeria suffers severe lack of financial resources allocated to the promotion and protection of children's rights which are seriously detrimental to their well-being.¹³ The report also states that the mechanisms for the protection and promotion of children's right is not only weak, it is uncoordinated and not in line with Nigeria's obligations under the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.



1.1.2 Definition of violence

A suitable understanding of this study requires a good understanding of the term violence, which is very broad and exists in many forms; violence is generally considered to be a violation of certain rights that every human being should have, namely the right to life, security, dignity, and physical and psychological well-being.¹⁴ We need to understand the word violence in its general sense, since corporal punishment is classified as part of violence. Violence can take many forms; such as sexual violence, female genital mutilation, corporal punishment, just to name a few.

Violence against children is contrary to the best interest principle laid down by the CRC, and the African Charter on the Rights and Welfare of the Child. However considering the fact that violence is a very broad topic, my point of focus will be corporal punishment by parents.

¹¹ CLEEN Foundation Against Torture (2005) *Report on the implementation by the Convention on the Rights of the Child by Nigeria* Switzerland p.5.

¹² See section 277(1) (2) of the Nigerian Constitution defining competence of the Sharia law.

¹³ CLEEN Foundation Against Torture (2005) p.10.

¹⁴ The African Child Policy Forum (2006) p.11.

According to Kassan, most countries in Africa, though not all have taken steps to end corporal punishment, it has been difficult to prohibit the imposition of corporal punishment by parents, given the controversy over the debates, while some stand firm for corporal punishment and others are seriously against.¹⁵ Furthermore corporal punishment is still accepted by most parents and they believe that it is the right way to bring up a child.¹⁶ Soneson states in her report that despite corporal punishment being a contradiction to international law, it is in many instances still legalized and socially accepted form of violence against children. She also states that the low status of children in society and children's lack of power have prevented a complete prohibition of corporal punishment in many countries around the world.¹⁷

1.1.3 Corporal punishment

The definition of corporal punishment as stated in The United Nations Convention on the Rights of the Child General Comment No. 8 (2006) The Right of the Child to protection from Corporal Punishment and Other Cruel or degrading Forms of punishment CRC/C/8, is any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Corporal punishment takes many forms, the Committee has elaborated on many ways through which corporal punishment can be inflicted onto the child. This can be observed in the following description as stated in General Comment No. 8:

'Most involves hitting children, with the hand or with an implement - a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion'.¹⁸

Article 19 of the CRC affirms that states should take appropriate legislative measures to protect children from all forms of violence. The African Charter on the Rights and Welfare of the Child in its Article 16 with Article 19 of the CRC both ensure protection to the child against violence.

¹⁵ Kassan (2008) p.166.

¹⁶ U Soneson (2005) *Ending Corporal Punishment of Children in South Africa: Save the Children Sweden* p.23.

¹⁷ Soneson (2005) p.10.

¹⁸Convention of the Rights of the Child General Comment No.8 CRC/GC/8 2nd March 2007.

Though no mention is made about corporal punishment, the General Comment No. 8 of the CRC Committee throws more light on this emphasizing protection of the child against violence.

Since there are many forms of corporal punishment; this research will focus on physical or corporal punishment, it will also have a close look at the situation in homes, mainly because parents think it is the right way to treat a child. Corporal punishment may occur in homes, in schools, playgrounds, correctional facilities, work place, orphanage or religious institutions.¹⁹

The point of view, that corporal punishment is well present in Nigeria is supported by Uzodike, as she observes that parents and guardians have been noted to put hot pepper in the eyes or private parts of an ill-behaved child or to beat the child to an unconscious state in the name of corporal punishment.²⁰ Moreover, children are bearers of human rights from the moment of their birth, and they are entitled to physical integrity and human dignity in the same way as adults.²¹ Furthermore, children are human beings that are simply smaller and more fragile than adults.²²

1.2 Research question

The question to be addressed in this topic will take two dimensions. The first is what obligations exist under the CRC and ACRWC in protecting children from corporal punishment. The second part of the question is has Nigeria complied with these obligations to protect children from domestic corporal punishment?

1.3 Significance of the study

The situation of violence in Africa has been exposed by some authors and the international community but the African child still remains very vulnerable to violence in all its forms. Seeing the need for more security, states should not only sign, and ratify texts such as the CRC, it must be made locally binding .One cannot deny the fact that Nigeria is taking steps towards a better

¹⁹ A Armstrong (1998) *Consent and Compensation: The Sexual Abuse of Girls in Zimbabwe* Dartmouth Publishers: England p.129.

²⁰ E Uzodike (2000) "Child Abuse: The Nigerian Perspective" in M Freeman (ed) *Overcoming Child Abuse: a Window on a World Problem* Dartmouth Publishers: England p.331.

²¹ Soneson (2005) p.8.

²² Ibid p.9.

protection for the child; this can be observed in art.34 (1) of the Nigerian constitution where it is stated that:

*‘Every individual is entitled to respect for the dignity of his person and accordingly (a) no person shall be subject to torture or to inhuman degrading treatment’.*²³

Again, Article 5 of the Nigerian constitution also prohibits against inhuman cruel and degrading punishment of persons as well as prohibiting the use of corporal punishment. Nigeria has also signed the Convention against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment (CAT) on July 28, 1988 and ratified it on June 28, 2001. However, it has still not been turned in to domestic law.²⁴ The Nigerian Children’s Bill of Rights was finally adopted in September 2003 which has been considered by many as important step to the realization of children’s right.

However, there are so many challenges facing Nigeria when it comes to children’s rights. There is still a great deal of conflict of local laws, as stated by Eunice Uzodike,



*‘Under the Nigerian customary law, parents and guardians have the unconditional right to apply physical chastisement for the upbringing of their children.’*²⁵

Similar to the above, section 295 of the criminal code also gives authority to parents, guardians or school masters to discipline or correct a child under the age of 16 in his/her care who is guilty of misconduct.²⁶ This is equally made clear by Art.55 of the Penal Code South, which states that; corporal punishment will not amount to an offence if it does not involve any grievous harm. One can therefore conclude by saying that there is still a need to improve on laws prohibiting corporal punishment in Nigeria in particular and Africa as a whole, and to render the said laws much more effective, this study will examine how it can be done in one African country namely, Nigeria.

²³ Article 34 (1) of the Nigerian Constitution.

²⁴ CLEEN Foundation Against Torture p.8.

²⁵ E Uzodike (2000) p.332.

²⁶ Section 295 of the Criminal Code South of the Republic of Nigeria.

1.4 Research methods

Research for this dissertation will consist of desk top review. This will involve the reading of text books, journals, human right reports as well as internet sources. The main documents to be consulted will be the various articles of the Convention of the Rights of the Child in relation to corporal punishment, the various articles of the African Charter on the Rights and welfare of the Child, the 1996 Constitution of the Federal Republic of Nigeria and the Nigerian Child Rights Act of 2003. The two Nigerian codes that will also be frequently consulted are the criminal code (southern Nigeria) and the penal code (Northern Nigeria). There is little information available on corporal punishment in Nigeria so the research will be based mostly on reports and internet sources.

1.5 Limitations to the study

Violence exists in many forms, but my point of focus will be on corporal punishment. However corporal punishment too is also broad it can be found in schools, within the home or even in the form of judicial corporal punishment, so the research will be limited to one aspect of corporal punishment that is corporal punishment administered within Nigerian homes either by parents or by guardians.

As stated by the CLEEN Foundation against torture (2005) Nigeria just like many other African countries, has a background of conflicts and poverty that generally affects children's rights negatively, for that reason, some parents argue that states should focus on more pressing issues such as HIV-AIDS and not minor issues, such as the fact that parents have to discipline their children to put them straight.²⁷ Soneson supports the opinion that children need discipline especially self discipline, but she equally points out to the fact that corporal punishment is a very ineffective form of discipline.²⁸ The fact that parents and guardians rely on corporal punishment they are most often not aware of the negative impacts and thus believing that it is the right

²⁷ CLEEN Foundation Against Torture (2005) p.7.

²⁸ Soneson (2005) p.22.

channel for the upbringing of the child. Again, such children who experience severe corporal punishment tend to be very violent in life.²⁹

1.6 Literature review

Many authors have contributed towards children's right in Africa, but violence on children is still a cause for concern. The CRC will be the principal document of consultation, since it is the main foundation when it comes to children's rights.

The African Charter on the Rights and Welfare of the Child (ACRWC) is also essential since it was drafted in a way that suits the African context. Worthy of note too is the UN study on violence (2006)³⁰ that has contributed enormously by bringing the child's situation to light. The African Child Policy Forum cannot be left out because of its enormous contributions as well. The African Child Policy Forum (ACPF) report of (2006) *Born to High Risk; Violence Against Girls in Africa*³¹ gives an overview of the various forms in which girls suffer from violence in Africa.

There are many authors who have contributed towards corporal punishment or violence in general such as Julia Sloth-Nielson in her work *Children's Right in Africa*³² in which she looks at it from a legal perspective it also elaborates on most of the themes set forth by the CRC and the ACRWC in relation to the child.

Eunice Uzodike in her work *Child Abuse: The Nigerian perspective*³³ examines the abuse of children in Nigeria and how the law responds to children in relation to physical abuse, she has also been very instrumental when it comes to articles about physical abuse in Nigeria having written articles such as "Child Abuse and Neglect in Nigeria Socio-Legal Aspect" *International*

²⁹ Soneson (2005) p.22

³⁰ UN Study on Violence (2006) p.5.

³¹ The African Child Policy Forum (2006).

³² J Sloth Nielson (2008) *Children's Right in Africa* Ashgate Publishers: England.

³³ E Uzodike (2000) "Child Abuse: The Nigerian Perspective" in M Freeman (ed) *Overcoming Child Abuse: a Window on a World Problem* Dartmouth Publishers: England p.331

journal of Law and Family 4 (1990),³⁴ in which she states that child abuse as a social problem has only recently gained the recognition and the attention of the Nigerian public.

There has also been valuable contribution from Welshman Ncube in his work *Law, Culture, Tradition, and Children's Right in Eastern and Southern Africa*³⁵ in which he looks at children's right in relation to the international instrument such as the CRC and ACRWC.

We also have significant contributions from Peter Newell in his work *Corporal Punishment as a Last Resort in Schools*³⁶ in which he seeks new ways of disciplining a child according to which physical punishment should appear only as a last resort.

Newell also participated in the preparation of the *Implementation Handbook for the Convention on the Rights of the Child*,³⁷ in which most of the terms of the CRC are elaborated on extensively. It helps governments, United Nations Children's Fund (UNICEF) and other United Nations agencies and international bodies, Non Governmental Organizations (NGOs) and others to investigate the implications of the article for law, policy and practice and to promote and evaluate progress towards implementation.

Murray Last in his work "Children and the Experience of Violence: Contrasting Cultures of Punishment in Northern Nigeria" *African Journal of the International African Institute*.³⁸ Where he makes an attempt to understand the different cultural views attached to corporal punishment. It will be a very long list to name all, reason why it will be limited to a few.

³⁴ E Uzodike (1990) "Child Abuse and Neglect in Nigeria Socio-Legal Aspect" *International Journal of Law and Family* 4 p.84.

³⁵ W Ncube (1998) *Law, Culture, Tradition, and Children's Right in Eastern and Southern Africa* Dartmouth publishers: England p.98.

³⁶ P Newell (1997) *Corporal Punishment as a Last Resort in Schools* Dartmouth publishers: England p.60.

³⁷ P Newell (2007) *Implementation Handbook for the Convention on the Rights of the Child* UNICEF: Switzerland p.2.

³⁸ M Last (2000) "Children and the Experience of Violence: Contrasting Cultures of Punishment in Northern Nigeria" *Journal of the International African Institute* Vol 70 No.3 p.359.

That said, many are still of the opinion that corporal punishment is still a major challenge in Africa,³⁹ especially Nigeria. This can be explained by the fact that the first Draft of the Bill of Rights introduced in the Nigerian Parliament to cater for the child's right and needs in 1993 was rejected in 2002 by the Parliament. The Draft Bill was rejected based on the fact that it was contrary to Islamic value, tradition and culture. Nigeria was highly criticized for the fact that the Draft Bill was rejected. It was finally approved in 2003, but very few Nigerian states have passed the Child Rights Act of 2003 into law so far.⁴⁰ The Nigerian legal system is very complex following the diverse system of law and no matter how hard the government fights, it is not always easy to guarantee the best interest of the child in a country like Nigeria.

The report by CLEEN Foundation is one that is quite important as concerns the reporting of the child's situation in Nigeria, so there is need for academic contribution not only towards Nigeria but, Africa in general.

Looking at the situation in South Africa, steps have been taken to put an end to corporal punishment by including a clause into the proposed draft of Children's Bill of 2002 that abolished the common law defense of reasonable chastisement that was available to parents.⁴¹ Kassan also states that this proposed clause did not contain an outright ban on corporal punishment by parents and that it had just an indirect effect. Kassan again indicates that the Children's Act 38 of 2005 passed in 2006, and the Children's Amendment Act 41 of 2007 no longer contains any prohibition clause. So it has moved back to the old position permitting parents to impose reasonable chastisement on a child, which chastisement may include physical punishment.

³⁹ *CRC (1996) Concluding Observations of the Committee on the Rights of the Child: Nigeria* CRC/C/15/Add.61 <[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.15.Add.61.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CRC.C.15.Add.61.En?OpenDocument) > date accessed 10 March 2010.

⁴⁰ UNICEF (2002) Integrated Regional Information Networks (IRIN), *Nigeria: Focus on the Challenge of Enforcing Children's Rights*, Available under <<http://www.irinnews.org/print.asp?ReportID=30878>> date accessed 10 March 2010.

⁴¹ Kassan (2008) p.176.

CHAPTER 2

STATES OBLIGATIONS PROTECTING CHILDREN AGAINST

CORPORAL PUNISHMENT

2.1 Introduction

States especially those that have ratified⁴² the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC) have an obligation under international law to protect children from all forms of violence including corporal punishment. Article 19 of the CRC and article 16 of the ACRWC offer specific protection to the child against violence. The United Nations Study on Violence (2006) that was undertaken upon the recommendation of the Secretary General (UN study on violence 2006) was carried out with the purpose of providing a global picture of violence against children and to propose a clear recommendation for the improvement of legislation, policy and programmes relating to the prevention of, and response to, violence against children for consideration by states for appropriate action.⁴³ States are expected to give full protection to all citizens including children, implying that:

'No violence against children is justifiable.' The study calls for a turning point whereby we must put an end to adult justification of violence against children whether accepted as *'tradition'* or disguised as a *'discipline'*.⁴⁴

Another report also states that African states should adopt a zero tolerance policy towards eliminating corporal punishment of children.⁴⁵ One important aspect that will be taken into

⁴² The only non-parties to the CRC in the world are the United States and Somalia, www.crin.org.

⁴³ D Kassan (2008) "The Protection of Children from all Forms Violence – African Experience" in J Sloth- Nielson (ed) *Children's Rights in Africa* Ashgate Publishers: England p.170.

⁴⁴ The UN Report (2006) *Secretary General's report of the Independent Expert for the United Nations Study on Violence Against Children* 61st Session, United Nations General Assembly (A/61/299) p.5

⁴⁵ Global Initiative to End All Corporal Punishment of Children (2007) *Ending Legalized Violence Against Children: Save the Children* Sweden p.3.

consideration is the United Nations Convention Committee on the Rights of the Child General Comments No.8⁴⁶ which deals specifically with corporal punishment since the CRC makes only a vague mention of corporal punishment. In this chapter I will highlight the obligations of State Parties to eliminate corporal punishment of children, with emphasis on the international community calling on states to put an immediate end to all forms of violence.

2.2 Convention on the Rights of the Child (CRC)

The CRC came into force in September 1990, with the aim of providing protection for children on a broad spectrum. The international community was determined to improve the legal status of children since the child in the past has been frequently regarded as an object of parents and guardians.⁴⁷ The preamble to the CRC states that it was drafted with the sole aim of providing better protection to the child, and it also affirms that; similar to any other international human rights treaty, it aims at securing the children's rights in all aspects of life⁴⁸ based on principles such as non discrimination as to sex, age and religion. With the coming into force of the CRC, children are expected to be placed in a much better position since governments are now expected to improve on legislation and policy that will affect sectors like corporal punishment, child trafficking and harmful traditional practices among others.

The following paragraphs will consist of discussion on how the CRC protects children from violence, particularly corporal punishment.

2.2.1 Protection from Violence

With respect to State Parties obligation to protect children against corporal punishment, Article 19 of the CRC provides

'States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence,

⁴⁶ United Nations Convention on the Rights of the Child General Comments No.8 (2006) *The Right of the Child to Protection from Corporal Punishment and other Cruel or Degrading Forms of Punishment* CRC/C/GC/8.

⁴⁷ Global Initiative to end all Corporal Punishment of Children (2007) p.9.

⁴⁸ Preamble of the CRC.

*injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child’.*⁴⁹

From the provision of Article 19 it is clear that countries that have signed and ratified the CRC are expected to offer legislative, administrative, social and educational measures to protect the child from all forms of abuse including corporal punishment. Art 19(2) describes the manner in which states are expected to provide such protection to the child.

*‘Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.’*⁵⁰

Sloth-Nielsen argues that, though the principles enshrined in the CRC are gradually seeping slowly into the sphere of judge-made laws, the potential of the CRC is limited by the fact that it will be used only as an indirect authority in the absence of domestic legislation of its principles.⁵¹ This could imply that; states have to enact local legislation in line with the principles of the CRC if they really want violence to become an issue of the past. More so, children are vulnerable and cannot continuously be regarded simply as subjects to their own national law, or as property to parents.⁵² Children should have a place in the international scene, growing up as world citizens.⁵³

⁴⁹ Art 19 of the CRC.

⁵⁰ Art 19(2) of the CRC.

⁵¹ J Sloth -Nielsen (2002) “Children’s Rights in South Africa Courts: An Overview Since Ratification of the UN Convention on the Rights of the Child” *The International Journal of Children’s Rights* Vol. 10 No. 2 p.137.

⁵² A Lloyd (2002) “A Theoretical Analysis of the Reality of Children’s Right in Africa: An Introduction to the African Charter on the Rights and Welfare of the Child” *African Human Rights Law Journal* Vol 2 NO. 1 p.16.

⁵³ J Sloth- Nielsen & B D Mezmur (2007) “Surveying the Research Landscape to promote Children’s Legal Rights in an African Context” *African Human Rights Law Journal* Vol 7 No. 2 p.331.

According to Newell, State Parties to the CRC are responsible for the prevention of all forms of violence against children whether perpetrated by states officials or by parents, other carers, teachers or other children.⁵⁴

The CRC is very explicit in trying to give assistance to states for complete elimination of violence against children. This view is explained by Newell who says that; the CRC has highlighted the fact that; all forms of violence against children, however light, must be prohibited by raising awareness, sensitization and training. Further to that he also states that this is a human rights obligation, and calls for non-violent relationships based on human rights of all within the family and schools.⁵⁵

Detrick also affirms that art 19 should be interpreted in terms of providing wide protection to the child and that where the safety of the child is not guaranteed the competent state authorities where necessary for the best interest of the child should determine whether the child be separated from his or her parents in cases involving abuse or neglect.⁵⁶

Furthermore, Van Bueren describes the CRC as a powerful, yet a peaceful agent of social change. She elaborates that the CRC has put in place guide rules for the well-being of the child and that if states have to put an end to violence they have to keep to the terms of the CRC at their various local levels.⁵⁷ She also asserts that after the entry into force of the CRC the main challenge for states is to build on the existing norms and utilize all means available for effective implementation.⁵⁸

⁵⁴ P Newell (2007) *Implementation Handbook for the Convention on the Rights of the Child* UNICEF: Switzerland p 250.

⁵⁵ P Newell (2007) p.250.

⁵⁶ S Detrick (1999) *A Commentary on the United Nations Convention on the Rights of the Child* Martinus Nijhoff Publishers: Netherlands p.319.

⁵⁷ G Van Bueren (2000) "The United Nations Convention on the Rights of the Child: An Evolutionary Revolution" in CJ Davel (ed) *Introduction to Child Law in South Africa* Juta \$Co LTD Lansdowne p.203.

⁵⁸ G Van Bueren (1994) *The International Law on the Rights of the Child* Martinus Nijhoff publishers: Netherlands p.12.

Additionally, Kassan states that the first steps should be the examination of the existing national framework law, including legislation and policy to see if they are in compliance with the principles of international law, and where they do not, these laws should be repealed or revised.⁵⁹

One can sum up the arguments by stating that Art. 19 of the CRC places an obligation on State Parties to take legislative, administrative, social and educational measures to ensure that no form of violence is accepted and that children should be protected from violence at all levels.

2.2.2 Best Interest Principle

The various arguments advanced above are an attempt to understand the obligations of states towards the child in relation to corporal punishment but it will be inadequate if mention is not made of the best interest principle contained in Art. 3 of the CRC as follows:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.⁶⁰

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Pinheiro, elaborating on the UN Study on violence affirms that the interpretation of the child's best interest must be consistent with the whole CRC, including the obligation to protect the child from all forms of violence. He points out that the best interest principle cannot be used to justify practices including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child's human dignity and right to physical integrity.⁶¹ Again, this could be interpreted to mean that corporal punishment which is against the best interest principle should be eliminated.

⁵⁹ Kassan (2008) p.168.

⁶⁰ Art 3(1) of the CRC.

⁶¹ P Sergio Pinheiro (2006) *World Report on Violence against Children* <www.unstudy.org> Date accessed 12 July 2010.

In addition to that, Bitensky argues that the best interest principle can be used as an approach that coincides with and advances one of the CRC's driving purposes of protecting the child from all violence.⁶²

2.2.3 Protection of Children Against Torture

Article 37(a) of the CRC also extends its protection to the child by providing protection against torture or other cruel, inhuman or degrading treatment or punishment.⁶³ States are thus expected to fulfill their obligation by securing protection for children against corporal punishment as required by the CRC.

As stated by Newel, protection is provided for the child against capital punishment, life imprisonment without possibility of release, unlawful or arbitrary deprivation of liberty, and any child in detention must be detained in conformity with the law and must be for the shortest time possible and only used as a last resort.⁶⁴ Art 37 could also be interpreted to imply a form of protection from judicial corporal punishment; like in cases where some countries sentence children to a court corporal punishment such as flogging,⁶⁵ the sentence is often carried out in public and can cause severe pain and suffering, as well as permanent injury as indicated by reports that some children have been sentenced to a hundred lashes or even more.⁶⁶

More so, it is evident that governments are obliged under international law to respect and to ensure the right of the child to be free from torture and ill treatment under all circumstances. Art 37 could also be interpreted as complementing Art 19 of the CRC since it offers protection to child that could have been omitted under art 19 of the CRC, which is also a clear message to states that children even in detention should be protected from corporal punishment. The CLEEN Foundation⁶⁷ Report also points out that it is contrary to international norms to inflict corporal punishment on children in detention facilities and that states should amend laws to abolish

⁶² S H Bitensky (2006) *Corporal Punishment of Children a Human Rights Violation*: Transnational publisher's p.72.

⁶³ Art 37 (a) of the CRC

⁶⁴ P Newel (2007) p.547.

⁶⁵ Amnesty International (2000) *Hidden Scandal, Secret Shame Torture and Ill Treatment of Children*: Amnesty International p.82.

⁶⁶ Amnesty International (2000) p.81.

⁶⁷ CLEEN Foundation (2005) *Report on the implementation by the Convention on the Rights of the Child by Nigeria* <<http://www.omct.org>> date accessed 10 March 2010 p.13.

corporal punishment of children in detention,⁶⁸ and the fact that it is in violation of Art19 of the CRC and Art 37 as well.

Again, the CLEEN Foundation report points out that the United Nations Commission on Human Rights resolution 1998/38 reminds governments that corporal punishment can amount to cruel, inhuman or degrading punishment or even to torture.⁶⁹ According to the CLEEN Foundation report, they also support the view that flogging, stoning and amputation are punishments of severe brutality and as such they belong within the '*legal parameters of the legal definition of torture*'....⁷⁰

2.3 The Committee of the Convention on the Rights of the Child General Comments No.8 (2007)

Art 19 of the CRC protects the child against violence, but the CRC Committee⁷¹ seeing how violence is widely accepted and practiced decided to come out with General Comments No.8 '*The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading forms of Punishment which*' was released on the 2nd of March 2007.

General Comments No.8 of the Committee laid ground rules on ways in which they expect states to operate, it affirms in its objective the intention of giving assistance to states by helping them understand the provisions of the CRC concerning the protection of children against all forms of violence, and it focuses on corporal punishment and other cruel or degrading forms of punishment which are widely accepted and practiced forms of violence against children.⁷²

More so, the Committee calls on states to enforce their legislative mechanisms so they can easily fight against corporal punishment and to eliminate outdated laws such as those which provide

⁶⁸CLEEN Foundation Against Torture (2005) p.18.

⁶⁹CLEEN Foundation Against Torture (200) p.16.

⁷⁰ CLEEN Foundation Against Torture (2005) (2005) p.15.

⁷¹ It should be noted here that Committee on the Rights of the Child refers to the body of independent experts that monitors implementation of the Convention on the Rights of the Child by its state parties. All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially two years after acceding to the Convention and then every five years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of "concluding observations" <<http://www.2ohchr.org/English/bodies/crc/members.htm>> Date accessed 15 august 2010.

⁷¹ Part 1 objectives of CRC/C/GC/2007.

⁷² Part V legislative Measures of CRC/C/GC/2007.

parents with a defense or justification for using some degree of violence just like the common law defense of reasonable chastisement that has been part of the English law for centuries⁷³.

The Committee also cautions states that one of the means through which corporal punishment can be fought is by awareness-raising, guidance and training. Again most states may not perceive what it means or the expense they incur to take care of children that have suffered from violence; this huge sum could be brought down through educating parents and guardians on positive forms of discipline, a good example is the case of the USA whereby services required for abused and neglected children cost more than \$500million every year.⁷⁴

The Committee also calls for additional provisions in the criminal code and family law enactment to provide protection to the child against corporal punishment.⁷⁵ The Committee calls on states to carry on extensive investigations concerning corporal punishment on children when reported and due action taken. Kassan precise that General Comments No. 8 particularly relates to the right of the child to protection from corporal punishment and other cruel or degrading form of punishment.⁷⁶ Again, she indicates that General Comments No 8 highlights the obligations of States Parties to move quickly to prohibit and eliminate all corporal punishment and all cruel or degrading forms of punishment of children. She also notes that it is very important to eliminate corporal punishment in the family, school and other settings, the burden of which does not lie only on the state but on the community as a whole.⁷⁷

The provision of Art 19 of the CRC does not refer explicitly to corporal punishment but General Comments No.8 came just in time to fill the gap and give to states details of what is required of them to protect the child against corporal punishment. It should also be noted that the CRC, like all human rights instruments, must be regarded as a living instrument, whose interpretation develops over time. Some states have adopted and modified the law in order to give the child better protection such as Finland and Iceland that have prohibited corporal punishment in all

⁷⁴ J E Dock (1994) "Child Abuse and Neglect: Art 19 CRC" *The International Journal of Children's Rights*.

⁷⁵ Part v (39) of the CRC/C/GC/2007.

⁷⁶ Kassan (2008) p.169.

⁷⁷ Kassan (2008) p.169.

settings that is the home, the school, in the penal system and alternative care settings⁷⁸ just to name a few.

2.3.1 Convention Against Torture (CAT) 1984

The Convention Against Torture is another international treaty dedicated wholly to fight against Torture and Cruel, Inhuman or Degrading Treatment or Punishment (CAT)⁷⁹ Most African states have ratified⁸⁰CAT indicating that it is a serious challenge on the continent and needs to be eradicated. Art 2 of the treaty lays down steps which state-parties should take in order to bring torture to an end. It obliges State Parties to take legislative, administrative, judicial or other means appropriate to prevent acts of torture or punishment.⁸¹ CAT gives no exception to states for the imposition of torture or other cruel degrading punishment not even in a state of war or threat to national security and instability.⁸² Not even an order from a superior public authority may be invoked as a justification for torture.⁸³ Art 4(1) ensures that all acts of torture should be criminalized and accorded the appropriate penalties.⁸⁴ Art16 of CAT applies to prohibition of all acts of torture, cruel inhuman degrading treatment or punishment just like Art 37 of the CRC, but it is true that Art 16 of CAT also covers protection against corporal punishment. Again this is to indicate that these international treaties complement each other in their various domains as to the protection of children against corporal punishment.

2.3.2 The Committee Against Torture

Article 17 of the treaty establishes a Committee Against Torture⁸⁵ with jurisdiction to carry out inquiries into alleged violations of the treaty by state parties. State parties under art19 shall submit their report through the Secretary General to the Committee.⁸⁶ The Committee studies the

⁷⁸ P Newell (2007) Briefing from Global Initiative to end all Corporal Punishment of Children p.2.

⁷⁹ Adopted and open for signature, ratification and accession by General Assembly Resolution 39/46 of 10 December 1984 and entered into force on 26 June 1987.

⁸⁰ There are 42 African Countries that have ratified CAT <<http://www2.ohchr.org>> date accessed September 9 2010.

⁸¹ Art 2 *of* CAT

⁸² Art 2(2)

⁸³ Art 2(3)

⁸⁴ Art 4(1)

⁸⁵ Art 17 of CAT

⁸⁶ Art 19 *if*. CAT

state parties report and suggests recommendations on how they may improve before forwarding the report back to states.

All signatories to the CRC are expected to keep to its terms, in order to guarantee unlimited protection to the child in Africa and the world over; against violence just like other international instrument this view is supported by J Gallinetti in her words:

*'The Committee on the Rights of the Child has indicated that the CRC requires a review of legislation to ensure that no level of violence is condoned and has particularly emphasized that corporal punishment in the family, school and other institutions or in the penal system is incompatible with the Convention.'*⁸⁷

The Committee on Torture has called upon Nigeria on several occasions to prohibit the use of torture in police custody. Children as young as the age of 15 are frequently tortured during interrogations under police custody. A call has been made to the Nigerian government to establish standardized mechanism to prevent such practices.⁸⁸

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2.3.3 Regional Law

2.4 The African Charter on the Rights and Welfare of the Child (ACRWC)

The African Charter on the Rights and Welfare of the Child (ACRWC) was Africa's recognition to the ideals of the CRC but drafted within the African context. It was adopted by the Organization of African Unity (OAU) November 1990. The ACRWC protects the rights of the African child, it calls on State Parties in its Art 1 to recognize the rights, duties and freedom enshrined in the Charter and to take constitutional and legislative steps to adopt and give effect to the provision of the Charter.⁸⁹

⁸⁷ J Gallinetti (2006) *Comment on South Africa's first Country Report on the Implementation of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*: University of the Western Cape.

⁸⁸ Amnesty International Report (2009) www.thereport.amnesty.org Date accessed 24February 2011.

⁸⁹ The African Charter on the Right and Welfare of the Child OAU Doc.CAB/LEG/249/49 entered into force Nov. 29 1990.

Bitensky in her work points out that; there is cumulative and convincing evidence that all corporal punishment of children, no matter by whom it is inflicted or how mild violates international human rights law.⁹⁰ It needs to be effective in order to achieve its goals, for that reason Lloyd affirms that such obligations do not lie only on the states but on all individuals and groups to provide the child with better protection.⁹¹ Considering importance of its provisions some authors have even argued that:

“...ACRWC is a fuller and more satisfying document than the CRC ...”⁹²

Gose on the other hand argues that the obligations of the African states are of universal importance for the wellbeing of the child and that their obligations are not well spelt out in the ACRWC to meet up with the specifically difficult African context.⁹³ Gose also goes further by elaborating that the ACRWC embraces western culture rather than genuine African spirit, he reiterates that it is not a bad initiative to learn from other cultures, but the best of it only should be extracted.⁹⁴

Art.4 of the ACRWC just like Art.3 of the CRC also states that any action taken, be it by private individual or public authority must reflect the best interest principle of the child.⁹⁵

The ACRWC is more explicit than the CRC when it comes to corporal punishment because it is much more specific and it protects children from all forms of physical and mental abuse, by prohibiting all forms of corporal and humiliating punishment of children.

Art. 16 of the ACRWC provide:

⁹⁰ S H Bitensky (2006) *Corporal Punishment of Children A Human Rights Violation* Transnational Publishers p.47

⁹¹ A Lloyd (2002) “A Theoretical Analysis of the Reality of Children’s Rights in Africa: An Introduction to the African Charter on the Rights and Welfare of the Child” *African Human Rights Law Journal* Vol. 2 No1 p.15.

⁹² J Ennew (1998) “Shame Physical Pain: Culture Relativity, Children Torture and Punishment” in G V Bueren (ed) *Childhood abused Protecting Children Against torture, cruel inhuman and degrading Treatment and Punishment:* Dartmouth publishers USA p. 7.

⁹³ M. Gose (2002) *African Charter on the Rights and Welfare of the Child* Community Law Centre p.30.

⁹⁴ Gose (2002) p.26

⁹⁵ Art 4 of the ACRWC .

'States Parties to the present Charter shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of a parent.'

African states that have signed and ratified the ACRWC are thus bound by the obligations laid down by the Charter. More to that, Art 16 (2) goes further to emphasize that the protective measures should include special monitoring for parent and guardians, and follow up and reporting of instances of child abuse and neglect. States-parties to ACRWC are therefore expected to curb down the existence of violence through their legislative provision and control as the prevalence of violence is still very high in Africa as indicated by the following report *[s]ome estimates indicate that as many as 38 million children in Sub Saharan Africa report to have witnessed violence in their own home.*⁹⁶

Soneson in elaborating on South Africa's international obligation in relation to corporal punishment rightly argues that in ratifying the CRC and the ACRWC, South Africa is obliged not only to prohibit by law all forms of corporal punishment of children in the family, schools care institutions and the juvenile justice system, but also to develop awareness and education campaigns to promote positive non-violent child-rearing practices in the country.⁹⁷

The African Committee of Experts in its 15th Session⁹⁸ reported that despite some nations passing laws⁹⁹ to fight against violence on children, most children in Africa are not under the protection offered by the national protective policies and mechanisms nor reaping the protective benefits of laws on protection from violence, abuse, inhuman and degrading treatment,¹⁰⁰ as such

⁹⁶ The ACPF (2010) p 3.

⁹⁷ Soneson (2005) p17.

⁹⁸ African Committee: *Special Session on Violence Against Children* (2010)

<<http://www.crin.org/resources/infoDetail.asp?.ID=22197&flag=news>> Date accessed 8 September 2010.

⁹⁹ A report presented during the session by African Child Policy Forum Indicated that some states have made progress in enacting comprehensive laws addressing one or more harmful practices, such as corporal punishment, Female Genital mutilation, early Marriage /forced marriage. These countries include Kenya, Togo, Nigeria, Ghana, Lesotho and the Gambia. < <http://www.crin.org/resources/infoDetail.asp?.ID=22197&flag=news>> Date accessed 8 September 2010.

¹⁰⁰ African Committee: *Special Session on Violence Against Children* (2010)

<<http://www.crin.org/resources/infoDetail.asp?.ID=22197&flag=news>> Date accessed 8 September 2010.

a call was made to the ACRWC to make use of its Committee by taking leadership role and to influence the behaviour and policy of the government and to make violence against children a particular area of concern.¹⁰¹

Chirwa maintains that; state parties' obligations cover economic, social and cultural rights and that state parties must endeavour to undergo constitutional amendments in order to implement the rules of the ACRWC.¹⁰² The rest of the countries in Africa are also expected to be in line with the rules of the ACRWC in relation to violence.

2.4.1 Protection Against Harmful Cultural and Social Practices

The ACRWC attempts to cover violence as widely as possible; in this regard Art 21 cannot be left out which also protects children against harmful social and cultural traditional practices.

Art 21 of the ACRWC provides:

*'States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular.'*¹⁰³

The Article requires that all customs and practices prejudicial to the health or the life of the child, or any other custom discriminatory to child on the grounds of sex or other status must be eliminated.¹⁰⁴

It should also be noted that this is one of the key Articles in the ACRWC as it deals with an issue which even though exist in other continents, is very common and more prevalent in Africa,¹⁰⁵ as a matter of fact; it is found in about 40 different African countries.¹⁰⁶

¹⁰¹ African Committee: *Special Session on Violence Against Children* (2010)

<<http://www.crin.org/resources/infoDetail.asp?.ID=22197&flag=news>> Date accessed 8 September 2010.

¹⁰² D M Chirwa (2002) "The Merits and Demerits of the African Charter on the Rights and Welfare of the Child" *The International Journal of Children's Rights* Vol. 10 no 2 p157.

¹⁰³ Art.

¹⁰⁴ Art 21 (1) § (2) of the ACRWC.

¹⁰⁵ The ACPF (2006) p.33.

¹⁰⁶ B Rwezaura (1998) *Female Genital Mutilation and the Rights of the Girl Child* Dartmouth Publishing p.249.

Kaime points out that the African approach to children's right might be quite complex, but Africa faces a challenge to implement children's rights in a culturally appropriate manner while at the same time ensuring that harmful traditional practices are not protected under the guise of cultural propriety.¹⁰⁷

Sloth-Nielsen provides that the ACRWC is instrumental in the fight against harmful traditional practices, and that states should adopt domestic measures to comply with the treaty obligations that will help to eliminate these harmful traditional practices.¹⁰⁸

Again, Bitensky is of the opinion that the cultural norm that says parents are morally obliged to hit children when necessary is probably the most fundamental reason why so many children are hit.¹⁰⁹ She also states that spanking children is a traditional practice in most cultures and that these traditional practices embrace corporal punishment which is prejudicial to children and their health.¹¹⁰

According to Lloyd most African states have been slower to ratify the ACRWC because they intend doing it with a reservation or to fit their own context of culture because they are not always very confident of the implication and that the ACRWC places a higher standard and deeper obligations on the OAU member states; as such making it more difficult to evade their obligations,¹¹¹ a good example is the case of Botswana, whereby the ACRWC was ratified with a reservation to Art.2 because they wanted it to conform with local standards.¹¹²

African states have taken tremendous steps to improve on the child's situation in Africa as Kassan reports that many countries are in the process of taking a review of their child protection legislation since what they have in place is hardly sufficient and not in conformity with the CRC and the ACRWC or that the legal provisions dealing with children are scattered throughout

¹⁰⁷ T Kaime (2005) 'The Convention on the Rights of the Child and the Cultural Legitimacy of Children's Rights in Africa: Some Reflections' *African Human Rights Law Journal* Vol 5 No 2 p.223.

¹⁰⁸ J Sloth-Nielsen & BD Mezmur (2007) p.331.

¹⁰⁹ S H Bitensky (2006) p.67.

¹¹⁰ Ibid p.68.

¹¹¹ A Lloyd (2002) "Evolution of the African Charter on the Rights and Welfare of the Child and the African Committee of Experts: Raising the Gauntlet" *The International Journal of Children's Rights* Vol 10 no 2 p182.

¹¹² A Lloyd (2002) p.182.

various pieces of legislation or even outdated.¹¹³ Kassan again acknowledges the fact that some African countries such as South Africa, Zambia, Uganda, Malawi, Madagascar, Ethiopia and Comoros in order to ensure protection and promotion of the right of children have included children's right provision in their constitutions.¹¹⁴

Violence is common in homes, but the exact extent of violence is very difficult to determine, as there is general underreporting of such evil, especially concerning violence within homes¹¹⁵ this makes it further difficult for the African states to fulfill their obligations as far as corporal punishment is concerned or violence in general towards children. The fact that some critics have argued that the ACRWC falls short of protecting the unborn child and that the monitoring committee of the ACRWC suffers from great financial handicap,¹¹⁶ has not affected its nonetheless being described in comparison with others as '*the most progressive of the treaties on the rights of the child*'.¹¹⁷ African states are also expected to take more positive action especially on violence within the homes because it is hidden from public view as highlighted by the following report:

*'Although some legislative measures have been taken to ban violence against children in schools, care institutions and penal systems, in many African states, not much has been done to end corporal punishment administered to children by their families, in their homes, where violence seems to be culturally accepted. In fact, thousands of homes have become real laboratories of violence against children and the media has reported many cases that are unacceptable.'*¹¹⁸

The African Committee of Experts has received 11¹¹⁹ reports from Member States. The first two Concluding Observations were issued to Nigeria and Egypt.¹²⁰ They have of recent issued

¹¹³ Kassan (2008) p.172.

¹¹⁴ Ibid p.172.

¹¹⁵ Ibid p.173.

¹¹⁶ D Olowu (2002) "Protecting Children's Right in Africa: A critique of the African Charter on the Rights and Welfare of the Child" *The International journal of Children's rights* Vol 10 No2 p.132.

¹¹⁷ D Olowu (2002) p.130.

¹¹⁸ Global Initiative to end all Corporal punishment of Children (2007) p.4.

¹¹⁹ These states include Nigeria, Egypt, Mali, Togo, Niger, Uganda, Rwanda, Kenya, Burkina Faso, Mauritius and Tanzania < http://www.crin.org/email/crinmail_detail.asp?crinmailIID=3276> Date accessed 8 September 2010.

Concluding Observations to Burkina Faso, Kenya, Mali, Tanzania and Uganda.¹²¹ In the various reports, violence is superficially mentioned, no detailed recommendation on how to deal with the issue of corporal punishment within homes.

2.4.2 Other International Developments

Another important point of focus will be on the United Nations Study on Violence which is of key importance for this research topic.

2.5 The United Nations Study on Violence (2006)

The United Nations Study on Violence 2006 is very instrumental in the study of violence since it was undertaken to provide a global picture of violence against children and to propose recommendations to prevent and respond to this issue. This in-depth study of violence provides us with a wide range of information on matters such as places where violence exists such as homes, schools, alternative care institutions and detention facilities, not forgetting the types of violence we can witness in our society. It should however be noted that there are two reports on the study of violence, one of which is a summary report.¹²²

As a result of the growing awareness of violence against children internationally, the United Nations General Assembly in 2001, requested the Secretary General to carry out an in-depth study on the question of violence against children in its resolution 56/38. Acting upon this recommendation, the Secretary General appointed Professor Paulo Sergio Pinheiro to lead this study. The study was prepared through a participatory process which included regional, sub-regional and national consultations, expert thematic meetings and field visits.¹²³ Questionnaires as to governments' approach to violence were circulated and children's involvement during each of

¹²⁰ African Committee: Special Session on Violence Against Children (2010) < <http://www.crin.org> > Date accessed 8 September 2010.

¹²¹ < <http://www.crin.org> > Date accessed 8 November 2010.

¹²² The summary report was adopted in the United Nations General Assembly in its resolution 60/231, on August 2006 while the full report in resolution 56/138 October 2006. Both reports can be found on the same website www.unstudy.org.

¹²³ Kassan (2008) p.170.

the regional consultations also secured.¹²⁴ The final report was presented to the UN General Assembly by Professor Pinheiro on 11 October 2006.

The UN report carried out extensive field work and came out with the final report in 2006 and acknowledged that violence is a global problem and that it is mostly hidden and unreported.¹²⁵

The study also reveals that in many countries around the world 70 to 98% of children suffer from physical punishment within their homes. The report can be described as a foundation stone towards protecting children against violence because it was thanks to the report that the world became aware of the reality of violence against children. The report also guides states and NGOs towards protecting children and we can hardly see any writer that writes on violence without making reference to the UN study on violence. Some of the key findings of the report indicate that majority of violence encountered by children are perpetrated by those whom are part of their lives such as parents, employers, school mates, teachers, boyfriends or girlfriends spouses and partners. More so it is also indicated that most of these violent acts go unreported mostly because of fear or that it has been perpetrated by a family member. The reports estimates that about 80-90 % of children suffer from corporal punishment, with a third or more experiencing severe physical punishment resulting from the use of implements.¹²⁶ The report states that the number of children whom experience sexual violence is 150 million for girls and 73 million for boys all under the age of 18 during the year 2002.¹²⁷ Again, according to the report it is estimated that; between 100 to 149 million girls and women across the world have undergone some form of Female Genital Mutilation.¹²⁸ Furthermore, the report also states that physical violence is often accompanied by psychological violence, insults, name-calling, isolation, rejection and threats and that all these forms of violence can be very detrimental to a child's psychological development and wellbeing, especially when it comes from a respected adult such as a parent.

¹²⁴ Ibid p.170.

¹²⁵ Secretary General's Report (2006) the *Independent Expert for the United Nations Study on Violence Against Children* 61st session, United Nations General Assembly (A/61/299). p. 8.

¹²⁶ The UN study on Violence (2006) p.8.

¹²⁷ Ibid p.8

¹²⁸ Ibid p10.

Marta Santos Pais, the recently appointed Special Representative on violence against children¹²⁹, in her first appearance before the United Nations General Assembly stated that her agenda would be built on the foundation provided by the UN Study on violence and that she will use it as her ‘*Navigation Chart*’¹³⁰ in combating violence against children.

The recent annual report of the Secretary General affirms that he is strongly committed to maintain momentum around violence prevention and responses, increasing visibility and renewed concern at the harmful effects of violence on children.¹³¹

As concerns recommendations by the UN Study to states, Nigeria will be discussed later in chapter 4.

The report concludes by stating that, while the implementation of these recommendations rest on the states, the participation of other actors is very important at the national, regional and the international level.¹³² This is a clear message that NGO’s, communities and individuals have to give assistance to states in order to achieve its objective of protecting children against violence so that no one might have any excuse for imposing violence on children.

The impact of the study has left some positive changes on children’s situation. It is the first global report to document the extent, causes and impacts of violence in homes, schools, communities, institutions and workplaces.¹³³ The report has brought to the attention of the world the wide range and extent of violence and through the report violence has been discovered to exist in every region of the world.¹³⁴ The report has given states a clearer picture of violence and the message has also gone through that states should act fast to bring an end to violence because of the harm it causes around the world. The report has called on states to prohibit all violence against children, prioritize the prevention of violence, to promote non violent forms of discipline and awareness-raising, to ensure participation of children to accessible and child friendly

¹²⁹ United Nations General Assembly GA/SHC/3952 (2009)
<<http://www.un.org/news/press/docs/2009/gashc3951.doc.htm>> Date accessed 8 September 2010.

¹³⁰ United Nations General Assembly GA/SHC/3952 (2009)
<<http://www.un.org/news/press/docs/2009/gashc3951.doc.htm>> Date accessed 8 September 2010.

¹³¹ United Nations General Assembly (2010) *Annual Report of the Special Representative of the Secretary General on Violence against Children* UNA/65/262.

¹³² The UN Study on violence (2006) p.32.

¹³³ United Nations General Assembly (2009) p.2

¹³⁴ P S Pinheiro (2006) *World Report on Violence Against Children*: United Nations p.3.

reporting systems, and to put in place services to ensure accountability and to put an end to the culture of impunity of acts of violence and to strengthened international commitment as well.¹³⁵ The report gives recommendations on how states could progress by creating more friendly laws and to strengthen national and local commitment and actions by developing multifaceted and systematic framework to respond to violence against children.¹³⁶

The report has also thrown more light on domestic corporal punishment. The fact that most of it remains unreported and hidden in the background scene. The reports also depicts that the greatest victims of Domestic corporal punishment are the smallest of children. It is estimated that at least 275 million children worldwide witness acts of domestic violence.¹³⁷ This is evidence that no society is immune from the pandemic of Domestic violence.

The report also spells out recommendations on how states should fight against corporal punishment seeing the vast number of children who suffer from violence in all its forms. Pinheiro points out that the recommendations advanced within the UN Study on violence are of key importance to states because no violence against children is justifiable, and that children should never receive less protection from violence than adults,¹³⁸ more to that he also states that all violence against children is preventable, that states have the obligation to ensure accountability in every case of violence, more so children have the right to express their views and have them given due weight in the planning and implementation of policies and programmes.¹³⁹

Furthermore, it is obvious that a child just like any other human being deserves his or her own space in society and should be treated with great care. States are aware of what is expected of them as such there is no justification for delaying law reforms and campaigning for it, since the fundamental reason for prohibition of corporal punishment is that children have a right to equal

¹³⁵ Pinheiro (2006) p.3.

¹³⁶ Kassan (2008) p.170.

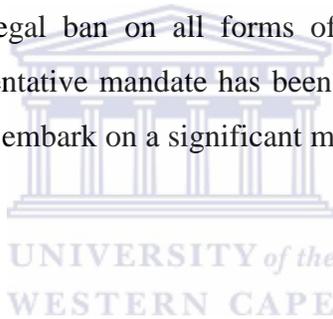
¹³⁷ United Nations Children Fund (UNICEF) (August 2006) *Behind Closed Doors: The impact of Domestic Violence Against Children* [http www.crin.org](http://www.crin.org)> Date accessed 10 march 2010.

¹³⁸ Pinheiro (2006) p.17.

¹³⁹ Ibid .

protection and governments are under an obligation to realize it.¹⁴⁰ The struggle to protect children against violence has gone a very long way, but the international community keeps working hard in trying to bring new measures to improve on the child's situation. The UN study on violence indicates that protection of children from violence is a matter of urgency. Children have suffered adult violence unseen and unheard for centuries. Now that the scale and impact of all forms of violence against children is becoming better known, children must be provided with the effective prevention and protection to which they have an unqualified right.¹⁴¹

The important recent development is the appointment of the Special Representative on violence against children. Marta Santos Pais from Portugal in her first appearance before the Committee stated that 500 and 1.5 billion children endure some form of violence each year.¹⁴² She went further to say that her immediate focus would be based on developing a national strategy in each state and the introduction of a legal ban on all forms of violence against children.¹⁴³ She explained that the Special Representative mandate has been established for a period of 3 years, and that within this period she will embark on a significant move on the fight against violence on children.



2.6 Conclusion

Violence against children violates their human rights and slows down the child's physical development and much more. International instruments like the CRC and the ACRWC have different settings, but they all aim towards the same point: securing protection for children. There might be differences between the two instruments, but they both share the same theme, as well the UN study on violence came out with a purpose; to protect children from violence. So the UN study on violence can be said to interrelate with the CRC and the ACRWC in that; they all aim at protecting children and thereby securing their best interest. This can only happen through the

¹⁴⁰ Global Initiative to End All Corporal Punishment (2009) *Campaign for Law Reform to Prohibit Corporal Punishment: Understanding the Need for Prohibition*. < www.endcorporalpunishment.org > date accessed 10 June 2010.

¹⁴¹ The UN study on violence (2006) p15.

¹⁴² <<http://www.un.org/news/press/docs/2009/gashc3951.doc.htm>> Date accessed 8 September 2010.

¹⁴³ African Committee: Special Session on Violence Against Children (2010) .

<http://www.crin.org/email/crinmail_detail.asp?crinmailID=3276> Date accessed 8 September 2010.

enactment of legislation to support these international instruments, but not only to enact but to find ways of implementing them.

This chapter has examined the obligations of African states in terms of violence against children, though the international instruments are in place, African states need to combine action together with the instrument to put the child in a much better position in relation to violence. African states need to improve on their legislation and policy towards child protection; this is the only means through which children's right could improve and corporal punishment will be kept under control and other positive means of discipline encouraged so parents and guardians will also have an alternative method to corporal punishment. Having looked at the African states obligation in relation to violence, the next chapter will examine domestic corporal punishment in one African country namely Nigeria.



Chapter 3

THE COMPLEXITY OF THE NIGERIAN LEGAL SYSTEM AND THE APPROACH IN COMBATING CORPORAL PUNISHMENT

3.1 Introduction

In order to examine and understand the imposition of corporal punishment in Nigeria it is necessary to take a general review of the Nigerian legal system and the origin of the various Nigerian laws that impact on corporal punishment. In this chapter, the research will focus on examining the origin of the Nigerian laws, taking into consideration the influence of the law such as the common law on corporal punishment as well as the Constitution and the impact of the Sharia law not leaving out Customary law.

During the colonial period the English system of law was introduced in Nigeria, in which the principles of common law and the doctrines of equity (such as good Conscience) were adopted. As a result of this, English law was given a prominent place in the Nigerian legal system. Under colonial rule, Nigeria the country was divided into two regions the northern and the southern part.¹⁴⁴

Within the period of the English rule of Nigeria, customary law was allowed to exist and was used for the purpose of local administration, but was kept under control by the English law to ensure that it was guided by principles of justice, equity and good conscience. The Sharia law on the other hand, was maintained in the northern region of Nigeria and was mostly used in conflicts among Muslims.¹⁴⁵

¹⁴⁴ CLEEN Foundation Against Torture (2005) *Report on the implementation of the Convention on the Rights of the Child by Nigeria* Switzerland p.5.

¹⁴⁵ V O Nmehielle (2004) "Sharia law in the Northern states of Nigeria: To Implement or not to Implement, the Constitutionality of the Question" *Human Rights Quarterly* Vol 26 No 3 p.731.

Nigeria later became independent in 1960 and a federal system of government was put in place and customary and Sharia law remained under the jurisdiction of the Nigerian federal system as a result, a secular constitutional legal system was formed in the spirit of mutual coexistence.¹⁴⁶

Having examined the obligations of African states in relation to corporal punishment in chapter two, chapter three will focus on the complexity of the Nigerian legal system in order to assess its obligation regarding the imposition of corporal punishment on children.

3.2 Background History of the Nigerian Law

Nigeria is located on the coast of western Africa and has a surface area of 923.678 square km. It is Africa's most populated country, with an estimated population of 170 million people.¹⁴⁷ The country consists of over 400 ethno-linguistic groups.¹⁴⁸

Nigeria is a Federal Republic composed of 36¹⁴⁹ states and one Federal capital territory that is Abuja. The states are further divided into 589 local government areas, and Nigeria operates a presidential system of government with an elected president, who is commander in chief of the arm forces, and a bicameral legislature comprising of a Senate and a House of Representatives.¹⁵⁰ It should however be noted that each of these states has its government, laws and judiciary.¹⁵¹

Nigeria's current political structure is based on the 1999 Constitution of the Federal Republic of Nigeria which was promulgated on 5/5/1999. Nigerian legal system is characterized by three different systems of law; that is the English common law, the Islamic Sharia law, and customary law of which the Constitution also grants the various laws powers to cover various issues and jurisdictions.¹⁵² The Nigerian legal system is based on the English legal tradition by virtue of colonization. As a result of this, English law has tremendous influence on the Nigerian legal system and the English law forms a substantial part of the Nigerian law.¹⁵³

¹⁴⁶ Nmehielle (2004) p.731.

¹⁴⁷ www.globalex.org Date accessed 20 February 2010.

¹⁴⁸ CLEEN Foundation (2005) p.5.

¹⁴⁹ Nmehielle (2004) p.732.

¹⁵⁰ CLEEN Foundation (2005) p.4.

¹⁵¹ Representing Children worldwide (2005) *how Children's voices are heard in Child Protective Proceedings* <<http://www.law.yale.edu/RCW/rcw/jurisdiction/afw/nigeria/frontpage.htm>> Date accessed 1 August 2010.

¹⁵² <www.globalex.org> Date accessed 20 February 2010.

¹⁵³ Y Dina (2005) *Guide to Nigerian legal Information* <www.globalex.org> Date accessed 20 February 2010. 34

3.3.1 The Influence of the English law on the Nigerian Legal System

Nigeria is a former British colony and its legal system is founded on the common law tradition, having been largely influenced by English law with slight modifications which were dictated by local circumstances existing before the British rule.¹⁵⁴ Britain started its colonization of Nigeria with settlement into Lagos. In 1886 Britain made Lagos a distinct colony and protectorate of Northern and southern Nigeria. The colony of Lagos and the two protectorates were amalgamated in 1914 in to the entity that is known as Nigeria.¹⁵⁵ Before the colonization of Nigeria the country was governed through customs that focused on the nature and background of the people. In the northern part, which consisted mostly of Muslims, the laws were based on Islamic principles.¹⁵⁶

After the British colonial hold was firmly established in Nigeria, English laws were then introduced into Nigeria in the form of common law, the doctrines of equity, and statutes of general application that were in force in England on the 1st January 1900.¹⁵⁷ As well, statutes that were enacted before independence on the 1st October 1960 and extended to Nigeria and not repealed were applicable. It is as a result of this that English law was given a prominent place in the Nigerian legal system. Others have described Nigeria's legal system as having several sub-systems and being complex,¹⁵⁸ this can be justified by arguments from scholars, as it is stated that at the national level, the federal system is applicable throughout the whole country, and at the state level each state has its own legal system while in some states, Sharia and customary laws are applicable, not leaving out the adopted principles of the English law.¹⁵⁹

¹⁵⁴ Nmehielle (2004) p.731.

¹⁵⁵ Ibid p.732.

¹⁵⁶ Ibid p.734.

¹⁵⁷ Ibid p. 734.

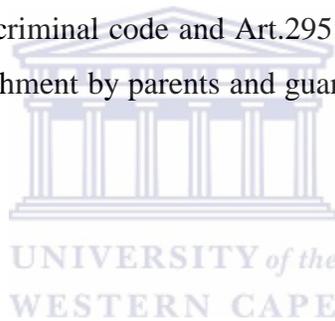
¹⁵⁸ Lyman (2004) p.2.

¹⁵⁹ Ibid p.2.

3.3.2 Children and English Law in Nigeria

It should be noted here that Nigeria is also one of the advocates of the common law defense of ‘*reasonable chastisement*’, a notion that was adopted from English law and used to discipline a child and also supported by the criminal code of Nigeria in section 295 as long as it does not amount to grievous harm.¹⁶⁰ More to that, prior to the 2003 Child Rights Act of Nigeria, child protection was defined by the Children and Young Persons Act (CYPA), as a law relating primarily to juvenile justice, it was originally passed by the British colonial government in 1943, the CYPA was later revised and incorporated into Nigeria’s federal laws in 1958.¹⁶¹

Considering some of the Nigerian laws that permit corporal punishment, one can add that English law forms the basis for the reluctance to do away with corporal punishment in the home, especially as Art.55 (1) (a) of the criminal code and Art.295 of the penal code which expressly authorize the use of corporal punishment by parents and guardians on children as long as it does not amount to grievous hurt.¹⁶²



3.4 Nigerian System of law

When Nigeria signs and ratifies international treaties such as the Convention on the Rights of the Child, it is only given effect when the treaty has been enacted by parliament.¹⁶³ Nigeria, operating a federal system of government has to enact the law in parliament before it becomes binding to all other states within the federation.¹⁶⁴

¹⁶⁰ Uzodike (2000) p.336.

¹⁶¹ Representing Children worldwide (2005) <http://www.law.yale.edu/rcw/jurisdiction/afw/nigeria/frontpage.htm>
Date accessed 1st August 2010.

¹⁶² CLEEN Foundation (2005) p.18

¹⁶³ Y Dina (2005) www.globalex.org date accessed 24 February 2011.

¹⁶⁴ Dina (2005) p.3.

3.4.1 The Constitution of the Federal Republic of Nigeria (1999)¹⁶⁵

As stated above the Constitution is the supreme body of all laws within Nigeria, since it guides and monitors implementation of all other laws such as the common law, Shariah and all other local enactment.¹⁶⁶ Section 230¹⁶⁷ of the Nigerian Constitution makes provision for the complete independence of the judiciary for dispensation of its duty, and more to that the Constitution of the Federal Republic of Nigeria regulates the distribution of legislative issues between the national assembly which has powers to make laws for the Federation and the House of Assembly.¹⁶⁸ In the following paragraph the research paper will examine the human rights protection provided by the Constitution of the Federal Republic of Nigeria.

Section 1(1) of the Nigerian Constitution states that the *Constitution is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria.*

Chapter four of the Nigerian Constitution offers a wide range of protection to fundamental rights of all citizens, including the right to freedom and security, and equality.¹⁶⁹ Nigeria being committed to guarantee basic human rights in various international contexts, chapter 4 of the Constitution protects most human rights.¹⁷⁰

Section 34(1) of the Nigerian Constitution guarantees the right to dignity of human persons, it states [e]very individual is entitled to respect for the dignity of his person..., while 34(1) (a) states *that no person shall be subject to torture or to inhuman or degrading treatment.*

Ogbu states that Section 31(1) of the Constitution has specifically mentioned acts which will be regarded as violation of human dignity, court of law will therefore always refer to the section in upholding human dignity.¹⁷¹

¹⁶⁵ Available at < <http://www.nigerianlaw.org/constitutionofthefederalrepublicofnigeria.htm>> Date accessed 10 January 2010.

¹⁶⁶ WOAT (2005) p.3.

¹⁶⁷ Section 230 of the Constitution of the Federal republic of Nigeria.

¹⁶⁸ Y Dina (2005) <www.globalex.org> Date accessed 20 February 2010.

¹⁶⁹ Section 17(2) of the Constitution of the Federal Republic of Nigeria

¹⁷⁰ R Peters (2001) *The Reintroduction of Islamic criminal Law in Northern Nigeria* University of Amsterdam p.32.

¹⁷¹ O N Ogbu (2003) *Punishment in Islamic Criminal law as Antithetical to Human Dignity: The Nigerian experience* University of Science and Technology Enugu.p.10.

One can however mention that these provisions in the Nigerian Constitution apply to every individual including children, since Section 17 (2) (a) provides that ‘*every citizen shall have equality of rights, opportunities and obligations before the law*’.

Section 4 recognizes the inviolability of human life and the right of everyone to respect for his life and person¹⁷² while Section 5 states that all forms of exploitation degradation of human particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.¹⁷³ Lyman points out that those fundamental human rights are widely covered in the Nigerian Constitution and that the right of a fair hearing is also incorporated in section 4 of the Constitution.¹⁷⁴ More to that, Idowu states that these fundamental human rights have always been of key importance to Nigeria, that is why human rights provisions featured in the 1963, 1979¹⁷⁵ and the 1999 Constitution.¹⁷⁶

In Nigeria all the members of the national and states executive as well as all the members of the national and state assemblies and the judiciary, have pledged oaths of allegiance to the Constitution. Equally, every Nigerian citizen is expected to defend and protect the Constitution in the dispensation of their duties at any given time.¹⁷⁷

It is rather unfortunate that, Nigeria a signatory to most human right treaties such as the African Charter on the Rights and Welfare of the Child (ACRWC) and the Convention on the Rights of the Child (CRC), has not included children’s right provisions in their constitution, like the case of South Africa, Zambia, Uganda, Malawi, Madagascar, Ethiopia and Comoros.¹⁷⁸

The Constitution also takes cognizance of all the other laws existing in Nigeria. Section 260 of the Constitution establishes and defines the competence of the Sharia courts of appeal, while section 265 defines and establishes the competence of the customary court of appeal.

¹⁷² Section 4 of the Nigerian Constitution.

¹⁷³ Section 5 of the Nigerian Constitution.

¹⁷⁴ P N Lyman (2004) *Reflections on the New Shariah law in Nigeria* Africa Policy studies p.27.

¹⁷⁵ The 1963 and 1973 Constitutions are those that earlier existed in Nigeria before the 1999 Constitution.

¹⁷⁶ A A Idowu (2008) “Human Rights Democracy and Development: The Nigerian Experience” *Research Journal of International Studies* issue 8 p.29.

¹⁷⁷ Lyman (2004) p.28.

¹⁷⁸ These countries have included children’s rights provisions in their constitutions. See D Kassan (2008) “The Protection of Children from all Forms of Violence-African Experience” in J Sloth Nielsen (ed) *Children’s Rights in Africa* Ashgate Publishers p.172.

3.4.1.1 Children, Corporal Punishment and the Constitution

In Nigeria most parents argue that it is part of their culture to discipline their children in a way that suits them and that the government has no right to interfere with parental discipline. According to them it is their ‘*God-given rights*’ to administer discipline to their children.¹⁷⁹ Uzodike once more supports the idea that intervening with parental rights of discipline will be met with serious resistance especially if it does not make sense to the culture in question.¹⁸⁰ Uzodike points out that in order to protect children from corporal punishment in Nigeria a child rights clause must be included in the Nigerian Constitution to help deter parents from the imposition of severe corporal punishment, because if that is not done, corporal punishment is likely to remain part of law and culture for a very long time to come.¹⁸¹

As concerns the Sharia law,¹⁸² it has continuously violated section 4 of the Nigerian Constitution protecting general human rights, which is incompatible with the right to human dignity guaranteed by the 1999 Constitution.¹⁸³ Critics have argued that Sharia law has degraded the rule of law in Nigeria and encouraged harsh and unfair criminal punishment and that the amendment of Sharia to include the criminal statutes undermines the legitimacy of the Nigerian Constitution and weakened the Federal state.¹⁸⁴ Sharia law advocates have in many instances pointed out that Sharia law is supreme over the Nigerian Constitution,¹⁸⁵ the Muslims argue that the Constitution can only be supreme to the extent that it does not infringe any commitment emanating from Allah’s injunctions.¹⁸⁶

¹⁷⁹ E Uzodike (1990) “Child Abuse and Neglect in Nigeria- Socio Legal Aspects” *International Journal of Law and Family* 4 p.87.

¹⁸⁰ Uzodike (1990) p.87.

¹⁸¹ E Uzodike (2000) “Child Abuse: The Nigerian Perspective” in M Freeman (ed) *Overcoming Child Abuse: a Window on a World Problem* Dartmouth Publishers: England p.339.

¹⁸² For a fuller discourse of Sharia law see section 3.3.

¹⁸³ Ogbu (2003) p.1.

¹⁸⁴ E Richardson (2010) *Sharia Criminal Courts and the Nigeria’s Constitution* <www.globalex.org> Date accessed 20 February 2010.

¹⁸⁵ Idowu (2008) p.126.

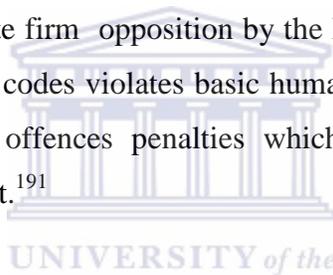
¹⁸⁶ Idowu *ibid* p.126.

3.4 .2 The Sharia law in Nigeria

The Sharia law is a system of law that is based on the principles of the Holy Koran and the teachings of the prophet Mohamed. In Nigeria this law is practiced in some states, mostly in the Northern part of Nigeria where the population is predominantly Muslim.¹⁸⁷

In 2001 twelve states¹⁸⁸ in northern Nigeria re-Islamized their legal system and introduced Sharia Penal Codes with provisions of Sharia criminal law,¹⁸⁹ though not permitted under the Nigerian Constitution, Nmehielle points out that this is gross violation of the Constitution in implementing the Sharia in Nigeria, since section 36 (12) of the 1999 Nigerian Constitution stipulates that any law that operates in Nigeria must be defined and written, it is contradiction by the Sharia law which is not entirely codified.

Sharia law was reintroduced despite firm opposition by the Nigerian authorities.¹⁹⁰ some critics have pointed out that Sharia penal codes violates basic human rights on several scores, and that these laws prescribe for certain offences penalties which must be regarded as torture or degrading and inhuman punishment.¹⁹¹



It is also worth mentioning the fact that; the Sharia courts may impose punishments, pursuant to the provisions of the Sharia penal code law that include death, imprisonment, fine, canning and amputation,¹⁹² not only do they violate section 4 of the Nigerian Constitution, but are contradictory to international human rights treaties like the Convention on the Rights of the Child, and the African Charter on the Rights and Welfare of the Child.

When interpreted; this could mean that Nigeria faces a Constitutional crisis, according to Muslims, the Constitution can only be supreme if it does not infringe any commitment emanating from Allah's (Koran) injunctions, and if not we must only talk of limited

¹⁸⁷ Dina (2005) <www.globalex.org> Date accessed 20 February 2010.

¹⁸⁸ These states have adopted the new Sharia legal system and they include Zamfara, Jigawa, Bauchi, Kaduna, Katsina, Yobe, Niger, Kano, Sokoto, Kebbi and Borno.

¹⁸⁹ Peters (2001) p.32.

¹⁹⁰ Nmehielle (2004)p.735.

¹⁹¹ Peters (2001) p.3.

¹⁹² Lyman (2004) p.4.

supremacy.¹⁹³ The question that comes in mind now is, how will Nigeria successfully fight against corporal punishment if the struggling over the issue of supremacy of the Nigerian Constitution continues.

This justifies the argument by other critics that; the adoption of the Sharia law in Nigeria is a violation of section 10 of the Nigerian Constitution which prohibits the adoption by the federation or the state of a state religion.¹⁹⁴

Furthermore, in the past Sharia law under the Nigerian legal system was limited only to the area of personal law, a position that has always been affirmed and reaffirmed by the courts including the Supreme Court in a number of cases,¹⁹⁵ but since 2000 it was extended by the Zamfara¹⁹⁶ states taking the lead to incorporate civil and criminal law, and with the harsh punishments provisions in the Sharia Penal Codes, it appears to be in conflict with the right to human dignity guaranteed by the 1999 Constitution of Nigeria.¹⁹⁷

Ogbu again points out that the punishment administered by the provisions of the Sharia penal codes are incompatible with the right to human dignity as guaranteed by the Constitution and the international human rights instruments and declarations applicable in Nigeria.¹⁹⁸ Iwobi also affirms that the severity of the Sharia Law raises doubts from the public, especially the non Muslims; he describes the Sharia law as being synonymous with punishment because of its harsh implementation, such as stoning, hanging and crucifixion.¹⁹⁹ This violates section 34 (1) of the Nigerian Constitution²⁰⁰ which protects human dignity of all citizens and human right treaties prohibiting the subjection of children to inhuman and degrading punishment.

Sharia law can therefore be looked upon as not only violating section 1(3) of the Constitution²⁰¹ affirming its superiority, it also violates the right to dignity of human persons stipulated in

¹⁹³ A U Iwobi (2004) "Tiptoeing Through a Constitutional Minefield: The Great Sharia Controversy in Nigeria" *Journal of African law* Vol.48 No.2 p. 128.

¹⁹⁴ Peters (2001) p.3.

¹⁹⁵ Ogbu (2003) p.2.

¹⁹⁶ Zamfara state is the first in Northern Nigeria to impose the use of Sharia penal code and the use of severe corporal punishment.

¹⁹⁷ Ogbu (2003) p.3.

¹⁹⁸ Ibid p.2.

¹⁹⁹ Iwobi (2004) p. 138.

²⁰⁰ Section 4 of the Nigerian Constitution.

²⁰¹ Section 1 (3) of the 1999 Constitution.

section 34(1) of the 1999 Constitution.²⁰² This can be justified by adding that the northern states of Nigeria are determined to enforce corporal punishment as part of their daily life when it comes to upbringing of children.

Corporal punishment in Nigeria is not only applied on children, Sharia prescribes corporal punishment to offences such as theft and even some men also use corporal punishment on their wives especially in the northern states of Nigeria.²⁰³ Sharia courts may also sentence culprits by imposing judicial corporal punishment for offences such as theft and failing to respect the Koran.²⁰⁴

The Nigerian government, as to their stand concerning Sharia law has firmly stated that the constitution is supreme and the government will ensure that the constitution remains superior and respected by all Nigerian citizens.²⁰⁵

The Former Nigerian president Olusegun Obasanjo commenting about Sharia reiterated that the Islamic legal system was subordinate to the constitution especially if it contradicted the federal document in theory and application, regarding criminal cases.²⁰⁶

The civil society civil society has also indicated that the government has not taken any clear stand surrounding the controversy over Sharia law and the constitution and that it is more of a political issue and that if the government is in doubt the issue should be debated in parliament for amendment.²⁰⁷

3.4.3 Customary law in Nigeria

Customary law can be described as the indigenous law that applies to the members of the different ethnic groups. Nigeria is made up of several ethnic groups each with its own variety of customary law. Customary law is a system of law that reflects the culture, customs, values and

²⁰² Section 34(1) of the 1999 Constitution.

²⁰³ Iwobi (2004) p.135.

²⁰⁴ Iwobi ibid

²⁰⁵ D Adeyanju (2000) *Nigerian News Weekly Highlights* No 8 www.outcrybookeview.com Date accessed 23February 2011.

²⁰⁶ T Kosoko (2000) *Nigeria News Weekly Highlights* No 8 www.outcrybookeview.com Date accessed 23February 2011.

²⁰⁷ Ibid P. 3.

habits of the people whose activities it regulates.²⁰⁸ Customary law has been described as a mirror of accepted usages and it is particularly dominant in the area of personal and family law relations such as marriage, divorce guardianship and custody of children and succession.²⁰⁹ The unfortunate thing about customary law is that it is not codified and as such uncertain and difficult to ascertain.²¹⁰

With time and evolution customary law has applied the use of corporal punishment on children, basing their facts that they were raised in a situation whereby canning was necessary and will have to maintain the culture by doing same to their children.²¹¹

The chiefs or the traditional rulers have been the undisputed leaders of the community and are till date considered as the custodians of customary law. Customary law is flexible and has the capacity to adapt to social and economic change without losing its character. Customary law in Nigeria is usually enforced in Customary courts, they are the lowest ranking courts in Nigeria in terms of hierarchy due to the fact that they are mostly presided over by non legally trained personnel, though higher courts are equally permitted to observe and to enforce the observance of rules of Customary law by their enabling laws.²¹²

Customary law was applied in Nigeria during and after the colonial period. It remained applicable, so long as they were not repugnant to the common law rules of equity natural justice, and good conscience.²¹³ Again, critics have also pointed out that enforcement of customary law has violated human rights since the judges are not legally trained personnel as such there are always instances of legislative interventions to modify and at times abrogate rules of customary law that violate section 4 of the Nigerian Constitution.²¹⁴ The imposition of corporal punishment by parents could also be seen as a constitutional weakness especially as the Constitution has not expressly prohibited the right of parents of the imposition of corporal punishment on children.²¹⁵

²⁰⁸ Dina (2005) <www.globalex.org> Date accessed 20 February 2010.

²⁰⁹ Iwobi (2004)p.129.

²¹⁰ Nmehielle (2004) p.734.

²¹¹ Ogbu (2003) p.2.

²¹² Dina (2005) <www.globalex.org> Date accessed 20 February 2010.

²¹³ Nmehielle (2004) p.733.

²¹⁴ Dina (2005) <www.globalex.org> Date accessed 20 February 2010.

²¹⁵ WOAT Report (2005) p.18.

Under the Igbo²¹⁶ customary law of Nigeria, offences such as incest are punished by selling the offender into slavery, because they consider such an offence as having polluted the land. Again, still in the Igbo clan, if caught for theft, the offender is tied for several days without food, and severely whipped, punishment that is equally applied to children. Again the implication for this is that it violates section 34 (1) of the Nigerian constitution,²¹⁷ by applying harsh and inhuman punishment which violates basic human rights.²¹⁸

More to that section 36 (12)²¹⁹ of the 1999 Constitution prohibits any implementation of a law that is not written and codified. Oraegbunam states that application of such laws that are not enacted into a written law by the appropriate legislative body is clearly unconstitutional and illegal, and difficult to control.²²⁰ In most cases, parents insist that it is part of custom and culture to use corporal punishment on children, and that no other law should be allowed to challenge such a position of the customary law.²²¹

In the case of *Teboh V. Nedu*, a parent argued that there is no good culture that does not make use of corporal punishment.²²² In the case the father was an electrical engineer, who apparently was a religious fanatic, insisted that his family observed a three-day fast imposed by his church for the purpose of warding off evil forces. His nine year old son, unable to bear the hunger any longer, was caught by the father looking for food in the refuse bin. He was dragged home beaten with an electric cable until he became unconscious. This came to the notice of some 34 of his classmates, who took him to the police station to lodge a complaint. The father was charged before a court and in the course of evidence it was revealed, on a previous occasion, he had pressed a hot iron on the boy's stomach, inflicting a wound which, when it eventually healed, formed large keloids. The child was constantly subjected to various kinds of assault. The father pleaded that his actions were motivated by the desire to correct, and that it is part of his culture to

²¹⁶ The Igbo clan forms about 40% of the Nigerian population and are mostly based in the southern part of the country.

²¹⁷ Section 34 (1) of the 1999 Constitution of Nigeria.

²¹⁸ D Olowu (2010) "Women Children and the Family Under the Nigerian Law: Developments After a Decade of Democratic Experiments" in B Atkin (ed) *The International Survey of Family Law* Jordan Publishing Limited p.258.

²¹⁹ Section 36 (12) of the 1999 Constitution of Nigeria.

²²⁰ I K Oraegbunam (2004) *Crime and Punishment in Igbo Customary Law: The Challenge of Nigerian Criminal Jurisprudence* University of Science and Technology Enogu p.16.

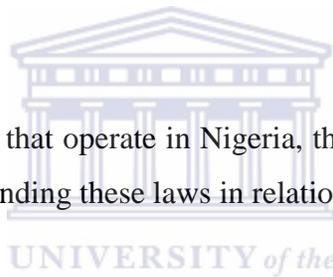
²²¹ E Uzodike (1990) "Child Abuse and Neglect in Nigeria" *International Journal of Law and Family* 4,p.91.

²²² T C Okeahialam (1984) "Child Abuse in Nigeria" *International Journal of Child Abuse* Vol 8 No4 p.77.

instill discipline, but the magistrate, while agreeing that children ought to be corrected, said that it should not be in the manner in which this father did it. She described the father's conduct as '*animalistic, wicked and fanatical*'²²³ and sentenced him to a term of three months in prison. He was also to receive 12 strokes of the cane and to undergo psychiatric examination to determine his mental condition. It was also found that the mother all along supported the father's treatment of the child. The court therefore ordered that the child be kept under the care of the police until a fit person was found to take care of him.²²⁴

From the facts of the case, it is apparent that some parents are ignorant of the meaning of culture and customs, a good custom should never treat children as slaves, besides, it is unconstitutional and violate basic human rights²²⁵ and besides customary law is not static, so government should always be there to educate and assist parents, so that the bad aspect of customs and culture be discouraged.²²⁶

Having examined the various laws that operate in Nigeria, the next paragraphs will focus on the discourse of the controversy surrounding these laws in relation to corporal punishment.



3.5 The Implications of Nigerian Laws to Corporal Punishment by Parents

Nigeria after ratification of the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC), in an attempt to domesticate these international instrument, the Child Rights Act was enacted in 2003 (CRA) The Act protects and promotes children's rights in Nigeria. The CRA incorporates chapter 4 of the 1999 Nigerian Constitution dealing with human rights protection. The CRA states that '*...any successive constitutional provisions relating to fundamental rights, shall apply as if these provisions are expressly stated in this Act...*'²²⁷

²²³ Okeahialam (1984) p.78.

²²⁴ Ibid (1984) p.78

²²⁵ J E Dock (1994) "Child Abuse and Neglect: Devastating and Complex" *The International Journal of Children's Rights* 2 p.89.

²²⁶ Nmehielle (2004) p735.

²²⁷ Article 3 of the Nigerian Child Rights Act (2003).

Section 1 of the Nigerian Constitution affirms its superiority over all laws, but some authors have posed the question if that is really the case, as Uzodike points out that in Nigeria there is a general attitude that children are the personal property of their parents and that no one has the right to interfere in the parental choice of mode employed in their children's upbringing.²²⁸

Despite Nigeria being a signatory to most human rights treaties, there is still gross violation of children's rights.²²⁹ The northern penal codes expressly express the use of corporal punishment and parents also affirm that government should not interfere, any government intervention is considered as sabotage on the culture in question²³⁰

Other parents believe that "*beating sense*" in to the child will help him know the seriousness of his offence and to deter him from repeating it.²³¹

Furthermore, some authors equally state that the legal provisions concerning violence and corporal punishment in Nigerian homes are for too vague and leave children without protection. Article 55(1) (a) of the Penal Code (North) stipulates that nothing shall be an offence which does not amount to grievous hurt upon any person and which is done by a parent or guardian for the purpose of correcting his child.²³² However, if Nigeria wants to give full effect to its international obligations, then they must start effective implementation of international treaties and the officially prohibit corporal punishment in all settings.

3.6 Analysis

As seen above, Nigeria has a federal secular constitutional legal system of mutual coexistence. These laws revolve around the Constitution in relation to English law, customary law and Sharia law. The Nigerian Constitution recognizes the existence of the Sharia law and Customary law, but the controversy lies in its application, especially as Sharia and Customary law sometimes

²²⁸ E Uzodike (1990) p.87.

²²⁹ Olowu (2010) p.257.

²³⁰ Uzodike (1990) p.87.

²³¹ Ibid (1990) p.8.7

²³² CLEEN Foundation (2005) p.18.

adopt harsh and inhuman punishment contrary to the Nigerian Constitution.²³³ Nigeria has to take cognizance of all these laws in fighting against corporal punishment. Despite the Constitution outlawing human rights violation, Nigeria still suffers from domestic violence because it is culturally accepted. Ose reports that violence in Nigerian homes is generally regarded as belonging to the private sphere and is therefore shielded from outside scrutiny.²³⁴

Uzodike questions the unconditional rights that parents and guardians have to apply physical chastisement for the upbringing of their children. She states that human rights obligation in the Nigerian Constitution must be respected because reasonable chastisement goes wrong most of the time causing more harm than was intended.²³⁵

Others argue that law enforcement officers do not take cases of domestic violence seriously which explains why many such cases are never prosecuted, rather they are seen as family matters.²³⁶ Ogbu argues that though the Nigerian criminal law still authorizes whipping, there is no constitutional validity for the imposition of corporal punishment and even the courts have held that; infringement of corporal punishment is an infringement of the right to the dignity of the human person.²³⁷ This can be seen in the case of *Teboh v. Nedu* where the courts held that it is unconstitutional to administer severe corporal punishment.²³⁸

As for Sharia law, there has been long term controversy over Sharia law and the Constitution, advocates of Sharia have strongly argued that Sharia embodies the will of Allah and as such eternally valid, immutable and not susceptible to review by any human agency.²³⁹ As well, section 10 of the Nigerian Constitution prohibits the adoption of any state religion, but was violated by the northern states when they adopted and implemented Sharia law in eleven northern Nigerian provinces. Iwobi points out that it undermines the Nigerian Constitution to

²³³ Peters (2001) p.31.

²³⁴ A Ose (2009) "Prevalence of Domestic Violence in Nigeria Implications for Counseling" *Edo journal of counseling* Vol 2 No1.

²³⁵ Uzodike (2000) p.340.

²³⁶ CLEEN Foundation (2005) p.18.

²³⁷ Ogbu (2003) P.10.

²³⁸ www.globalex.org Date accessed 20 February 2010.

²³⁹ Iwobi (2004) p.127.

impose Sharia law²⁴⁰ and contrary to the wish of the authorities since it was reinstated under strong pressure.²⁴¹

One of the most hotly debated, and so far unresolved, questions in relation to Sharia has been whether Sharia courts have jurisdiction to try criminal cases under the Nigerian Constitution; a question that the Nigerian government has avoided taking a clear position on, it has been left to lawyers, academics, and nongovernmental organization to debate the issue.²⁴² Meanwhile criminal cases have continued to be brought before the Shariah and people have continued to be sentenced.²⁴³ More so, there has also been intense argument whether state governors have the powers to extend the jurisdiction of the Sharia courts to criminal law or to create new courts.²⁴⁴ The Constitution makes provision of the Sharia state court of appeal in section 275-279²⁴⁵ but refers to their jurisdiction only in the area of civil proceedings involving question of Islamic personal law and does not make mention of the fact that they have powers to try criminal cases. The Sharia law has surpassed these limitations, and handling criminal matters, imposing punishment such as flogging and amputation to those who violates Sharia rules.²⁴⁶

Though the northern state governors have argued that they have power to try criminal cases, critics of Sharia have argued that it is unconstitutional for them to do so.²⁴⁷

Richardson is of the opinion that; the amendment of the Sharia to include criminal statutes²⁴⁸ does not only undermine the legitimacy of the Nigerian Constitution, but has trampled upon the secular intentions of the Constitution.²⁴⁹ He also points out that implementation of the Sharia law violates the Constitutional commitment to fair treatment because Muslims are subjected to

²⁴⁰ Ibid p.127

²⁴¹ R Peters (2001) p.3.

²⁴² Iwobi (2004) p.127.

²⁴³ Human Rights Watch (2004) "Political Sharia?" Human Rights and Islamic Law in Northern Nigeria" *Human Rights Watch* Vol.16 No 9(A) p.8

²⁴⁴ Nmeielle (2004) p.742.

²⁴⁵ See Section 275 to 279 dealing with establishment and competence of Sharia courts.

²⁴⁶ Human Rights Watch (2004) p.10.

²⁴⁷ Human Rights Watch (2004) p.12.

²⁴⁸ Section 275-279 stipulates that Sharia law should deal only with civil proceedings involving question of Islamic personal law and gives no provision to try criminal cases.

²⁴⁹ Richardson (2010) p.2.

torturous punishment under Sharia, but non-Muslims charged with the same crimes face much less severe punishment.²⁵⁰

Richardson again opines that under the Nigerian Constitutional principles just as it is improper for the southern states to dictate criminal punishment based on Customary law, Sharia should only be exercised by consenting parties in civil matters and should not be entangled in criminal affairs under the jurisdiction of the federal courts.²⁵¹

Nigeria as observed, is still battling with the problem of supremacy of the Constitution, in such a milieu, how can Nigeria, adequately protect children from domestic corporal punishment? The government of Nigeria reports that the Child Rights Act of 2003 supersedes all other legislation that have a bearing on the rights of the child,²⁵² how can that be said to be true if the Constitution is still involved in a supremacy battle?

Nigeria must stand firm to protect children from corporal punishment and above all they must ensure that no one challenges the Constitution and also ensure that Acts passed by the government should be fully respected, that will be a giant step towards challenging the imposition of corporal punishment in the Nigerian homes.

Nigeria as a nation has an obligation to ensure respect for human rights and the rule of law by any of its component states and in defending the Constitution.²⁵³ Nmehielle also rightly argues that any government must prevent the infringement of the Constitution because if that is permitted the Constitution becomes a mere paper and the country founded upon the Constitution collapses. He calls on Nigeria to end violations of the Constitution and to strictly protect human rights as stipulated in the Constitution.²⁵⁴

²⁵⁰ Ibid p.1.

²⁵¹ Ibid p.3.

²⁵² Federal Ministry Of Women Affairs (2006) Nigeria's *initial and first Country Periodic Report on the Implementation of the African Union Charter on the Rights and Welfare of the Child*. Child Development Department.

²⁵³ Nmehielle (2004) p.756.

²⁵⁴ Ibid p.756.

Iwobi on his part is of the opinion, that having formally accepted international human rights, government of Muslim countries²⁵⁵ are bound by these norms and are also subject to being judged by them. He further articulates that if government accedes voluntarily to a treaty or convention then Islamic principles as well as agreed norms dictate that it should adhere to its obligations under these treaties.²⁵⁶ If it is impossible due to conflict of these obligations with other norms, then it should make this clear and withdraw from those international treaties and conventions. Even though the Nigerian government has shown no inclination to withdraw from treaties prohibiting cruel and inhuman punishments which it has duly ratified, the operation of these treaties within the Nigerian context has been vigorously contested by the Muslim advocates of the Sharia reforms.²⁵⁷

3.7 Conclusion

The Nigerian legal system is very complex, though Nigeria is still struggling to address the issue of corporal punishment. This is evident from the issues discussed above which directly or indirectly influence the wellbeing of children. In an attempt to conform to international treaties protecting children, Nigeria enacted the Child Right Act of 2003, although not a solution in and of itself, a comprehensive legal frame work is a starting point towards alleviating this problem. Most of the existing provisions of the relevant frame work fall short of addressing the problem of domestic corporal punishment of children in Nigeria. The next chapter will try to address this problem and see if Nigeria has complied with her obligation to protect children from corporal punishment.

²⁵⁵ The author refers to the fact whether a Muslim or non Muslim country, any ratified treaty should be respected and the rules applied.

²⁵⁶ Iwobi (2004) p.140.

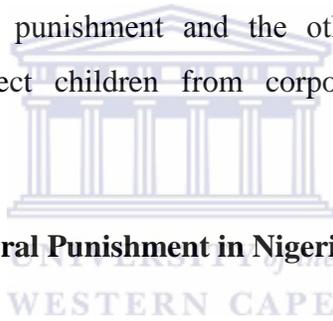
²⁵⁷ Ibid (2004) p.140.

Chapter 4

Nigeria's Obligation to Protect Children from Corporal Punishment

4.1 Introduction

In chapter 3, an assessment has been made of the Nigerian legal system regarding the imposition of corporal punishment on children and how the national laws function in relation to the Constitution. Chapter 4 will be based on a critical analysis on the legal protection of children from domestic corporal punishment. This chapter will deal with two issues, that is assessing if Nigeria, at the national level has successfully and effectively fulfilled its obligation to protect children from domestic corporal punishment and the other part will be based on Nigeria's international obligations to protect children from corporal punishment as stipulated by international treaties.



4.2 Contextual Analysis of Corporal Punishment in Nigeria

In Nigeria domestic corporal punishment has been an accepted aspect of life;²⁵⁸ it is only in recent years that it has started to be viewed as a criminal problem.²⁵⁹ Despite the changing attitudes towards domestic violence it is still culturally accepted in Nigeria.²⁶⁰ As a signatory to the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC), Nigeria is bound to protect children not only through signing and ratification but she is also expected to make positive changes at the national level. Nigeria in order to protect children from corporal punishment enacted the Child Right Act (CRA) of 2003, and government held that the Act supersedes all other legislation at the national level²⁶¹ having a

²⁵⁸ E Uzodike (2000) "Child Abuse: The Nigerian Perspective" in M Freeman (ed) *Overcoming Child Abuse: a Window on a World Problem* Dartmouth Publishers: England p.329.

²⁵⁹ A Ose (2009) "Prevalence of Domestic Violence in Nigeria: Implications for Counselling" *Edo Journal of counselling* Vol 2 No 1. P.2.

²⁶⁰ Ose (2009) p.1.

²⁶¹ Section 1 of the Nigerian Child Rights Act 2003.

bearing on the rights of the child including Sharia and Customary law.²⁶² With the Act in operation for the past seven years now, can children be said to be free from the imposition of corporal punishment?

Out of Nigeria's 40 million children it is estimated that over 25 million suffer from severe corporal punishment within Nigerian homes, the figures could be much greater but its limited due to the fact that most of the cases are never reported.²⁶³

4.3 Child Protection in Nigeria Prior to the Child Rights Act

Before the enactment of the CRA in Nigeria, child protection was defined by the Children and Young Person's Act (CYPA), a law relating mostly to juvenile justice originally passed by the British colonial government in 1943. It was later revised and incorporated into Nigeria's federal law in 1958.²⁶⁴ Even with the enactment of the CRA, the CYPA remains applicable, especially in states that have not passed the CRA into law²⁶⁵, discriminating against Nigerian children, while others benefit from the CRA²⁶⁶, other children will have to wait until their states enact the CRA into law.

Its legal provisions fell short of the rights stipulated in the CRC and the ACRWC and the United Nations Standard Rules for Administration of Justice. Art 9 of the CYPA defines a child as any person under the age of 14 years, an age limit contradictory to that of the CRC and the ACRWC. Another example is the Nigerian Labor Act of 1974 which defines a child as any one below the age of 15 years. Children were defined by various pieces of legislation till this was finally laid to rest by section 274 of the CRA.²⁶⁷

²⁶² Federal Ministry of Women's Affairs (2006) *Nigeria's Initial and First country Periodic Report on the Implementation of the African Union charter on the Rights and Welfare of the Child*. Child Development Department.

²⁶³ CLEEN Foundation Against Torture (2005) *Report on the implementation by the Convention on the Rights of the Child by Nigeria* Switzerland p.5.

²⁶⁴ Ose (2009) p.2.

²⁶⁵ Most of the Northern Nigerian states have not enacted the CRA into law, which imply that the old enactment such as the Children and Young Persons Act will remain applicable and as well as the Sharia law

²⁶⁶ Ibid (2009) p.3.

²⁶⁷ A F Akwara (2010) "Law and Children's Rights Protection, the Nexus for a Sustainable Development in Nigeria" *Canadian Journal of Social Science* Vol.6 No.2. p.30.

If all the states do not take fast and effective measures in enacting the CRA, not all the Nigerian children will benefit from protection against domestic corporal punishment.

The CYPA was largely juvenile justice administration biased and not necessarily child rights specific, this resulted to serious consequences on the Nigerian children; they ranged from physical abuse to child labour and harmful traditional practices.²⁶⁸ It would not be good position to render applicable the old enactments.

4.3.1 Corporal Punishment as a Penal Sentence Prior to the Child Rights Act

Article 9 of the CYPA allows for corporal punishment within a judicial setting,²⁶⁹ as well as Art 11(2)²⁷⁰ which also prescribes for judicial corporal punishment.²⁷¹ The interpretation of Art 18²⁷² of the criminal code may also imply; allowing whipping, depending on the courts discretion.²⁷³ Advocates of children's rights are seriously concerned about such provisions which are contrary to Art 19 of the CRC and Art.37 (a) of the CRC, as well as art 17 (3) of the UN Minimum Rules for the Administration of Juvenile Justice which prohibited the subjection of juvenile to corporal punishment.²⁷⁴

More to that, in penal institutions corporal punishment and other forms of torture and ill-treatment are inflicted on children deprived of their liberty.²⁷⁵ Studies carried out by CLEEN Foundation indicate that the common complaints from juvenile offenders are police brutality and severe corporal punishment and threats of long detention.²⁷⁶ Section 18 of the Approved

²⁶⁸ Ose (2009) p.2.

²⁶⁹ Article 9 of the CYPA states that where a juvenile charged with any offence is tried by the court, and the court is satisfied by his guilt, the court may order the offender to be whipped.

²⁷⁰ Art 11 (2) of the CYPA also stipulates that no young person shall be ordered to be imprisoned, if in the opinion of the court he can be suitably dealt with in any other way whether by probation, fine, corporal punishment committal to a place of detention or to an approved institution or otherwise.

²⁷¹ CLEEN Foundation (2005) p.19.

²⁷² It stipulates that wherever a male person who in the opinion of the court has not attained 17 years of age has been found guilty of any offence the court may, in its discretion, order him to be whipped in addition to or in substitution for any other punishment to which he is liable.

²⁷³ CLEEN Foundation (2005) p.17.

²⁷⁴ Ibid p.17.

²⁷⁵ Ibid p.18.

²⁷⁶ Ibid p.18.

Institution Regulation²⁷⁷ approves corporal punishment, and also makes provision for inmates to ensure discipline through corporal punishment which often leads to serious abuse of young offenders.²⁷⁸ This is to indicate that children do not suffer from corporal punishment only in homes but within detention institutions as well.

Besides, prison authorities also take advantage of Art.55 of the penal code and 11(2) of the CYP A which prescribe for corporal punishment. Children in other institutions are also highly molested as a result of the various applicable laws providing for corporal punishment.²⁷⁹

In order for children to enjoy their basic human rights, these laws have to be repealed or amended.

4.3.2 Corporal punishment in the homes Before the Child Rights Act

Article 55 (1) (a)²⁸⁰ of the penal code has seriously contributed to the use of corporal punishment on children. Most advocates of corporal punishment have relied on this section to defend the use of cruel inhuman and degrading punishment administered to children.²⁸¹ Beside these numerous provisions tolerating corporal punishment, children who attempt to lodge police complaints are never taken seriously, so they continue to suffer under such cruel conditions.²⁸² As a result of this, severe beatings of children with the hands sticks ‘*koboko*’ or horse whip resulting to bruises are common occurrences within Nigerian homes.²⁸³

4.3.3 Corporal punishment in schools Before the Child Rights Act

²⁷⁷ A code that regulates activities in the Nigeria prisons.

²⁷⁸ CLEEN Foundation (2005) p.19.

²⁷⁹ Ibid (2005) p.18.

²⁸⁰ It states that no action is an offence which does not amount to the infliction of grievous hurt upon any person which is done: by a parent or guardian for the purpose of correction his child or ward such a child or ward being under 18 years of age.

²⁸¹ Uzodike (2000) p.336.

²⁸² T Oyesina (2010) *Child rights Act and problem of Implementation* <http://www.tribune.com.ng/index.php/tribune-law/2242-chil-right> p.1.

²⁸³ E Uzodike (1990) “Child Abuse and Neglect in Nigeria Socio legal Aspects” *International Journal of Law and Family* p.87.

Article 55 of the penal code also extends authority to teachers; a teacher may also apply corporal punishment to pupils as long as it does not amount to grievous hurt.²⁸⁴ The term *grievous hurt* has been described as far too vague and limited. In addition this definition considers only the physical dimension of corporal punishment and fails to take the mental and emotional damage which corporal punishment has into account. The case of *Ekeogu V. Aliri* is a good example that strengthens Uzodike's argument against school corporal punishment.²⁸⁵ There the defendant/appellant was a teacher in a community primary school in a village in Nigeria. On the 2nd of December 1985, a thief was caught in the neighborhood of the school and, as usual the crowd which was gathered began to mete out instant justice by giving him a severe beating.²⁸⁶ The defendant ordered his pupil including the plaintiff, to go and witness how thieves were dealt with so they could learn a lesson from it. The children did so, but after a while the bell rang, summoning them back to the classroom they ran into the class the teacher hit each one of them with a cane. In the plaintiff's case, she was hit across the face and this resulted in a serious injury and loss of her left eye. Following a civil action which was instituted by the plaintiff, the defendant pleaded the protection of section 2 of the Public Officers Protection Law which rendered such action statutory, barred unless they were brought within 6 months of the commission of the harm. The trial judge held that, although the defendant was a public officer, his action in causing a permanent injury to the left eye of the child was felonious act and therefore not entitled to invoke the protection of the statute. On appeal, the Court of Appeal unanimously agreed with the trial judge and rejected the appeal. The defendant appealed to the Supreme Court.

The appeal was admitted at the Supreme Court, the judge held that the defendant/appellant was entitled to the protection of the statute since he was a public officer acting in pursuance of his public duty as a teacher to exercise discipline and control over his pupils. The judge giving his views on the power of the teacher to discipline his pupil, said that a teacher vis -a -vis his pupil stands *in loco parentis* to them and in that capacity he has the authority and duty to discipline them. The judge further went on:

²⁸⁴ CLEEN Foundation (2005) p.19.

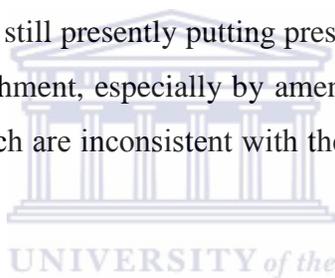
²⁸⁵ Uzodike (2000) p.336.

²⁸⁶ Ibid (2000) p.336.

'What happened in this case was nothing more than the appellant discharging his duty and it was only a sheer accident that the child was hit in the eye resulting in its damage. I cannot discern any criminal intention on the part of the teacher as all the pupils, one after the other, while returning to the class, were caned and none of them other than the respondent hit on the eye'.²⁸⁷

The teacher escaped liability, but a young girl has lost an eye in the process of physical chastisement, a serious disablement and disfigurement. In this case, no amount of damages, even if awarded could adequately compensate for the injury.²⁸⁸ Again, are not this incident and similar ones sufficient reason for banning physical punishment, at least in schools?²⁸⁹ Though banning is not easy many schools in Nigeria have refrained from corporal punishment as a result of strong opposition from parents.²⁹⁰

In addition, the CRC Committee is still presently putting pressure on the Nigerian government to outlaw all forms of corporal punishment, especially by amending the relevant provisions of the Criminal Code and the CYPA which are inconsistent with the state party's obligations under the CRA and the CRC.²⁹¹



4.4 Protection of Children from Corporal Punishment

The Nigerian Child Rights Act (CRA) of 2003 has been described as one of the most progressive enactments in terms of protection of children's rights in Nigeria; the CRA borrowed ideas from the CRC and the ACRWC in respect of the guiding principles for the promotion and protection of children's rights.²⁹² The CRA consolidates all laws relating to children in one single piece of legislation.²⁹³

²⁸⁷ Uzodike (2000) p.336

²⁸⁸ Ibid (2000) p.337.

²⁸⁹ Uzodike (2000) p.336.

²⁹⁰ Akinwumi (2009) "legal Impediment on the Practical Implementation of the Child Rights Act 2003" *International Journal of Legal information* Vol 37 Issue 3 p.389.

²⁹¹ CRC Committee on the Rights of the Child (2010) Concluding Observations Nigeria CRC/c/NGA/co/3.4.

²⁹² M T Tawfiq (2007) *The Child Rights Act, 2003 and the challenges of its adoption by State Government in the 19 Northern States*. Paper presented at a one day interactive forum for the Sokoto State House of Assembly legislation, organized by the Sokoto State Ministry of Women's Affairs and UNICEF p.1.

²⁹³ Tawfiq (2007) Ministry of Women's Affairs and UNICEF p.3.

Section 1 of the CRA, refers to the best interest of the child and that it would be of paramount consideration in all actions.²⁹⁴ The Nigerian government in lobbying support for the CRA indicated that steps have been taken to ensure that the best interest principle is maintained.²⁹⁵ They pointed out that measures have been put in place to combat harmful traditional practices which hamper the best interest principle of the child, such as section 24 of the CRA which prohibits tattoos and skin marks on children.²⁹⁶ The CRA in section 3 incorporates section 4 of the Nigerian Constitution protecting a wide range of human rights.²⁹⁷ Before the enactment of the CRA in 2003, Nigeria's legal framework for the protection of children's rights was described as weak and uncoordinated.²⁹⁸ Laws relating to children's rights did not properly take child's rights into consideration, nor did they make adequate provisions of children's rights,²⁹⁹ reason why many considered the CRA as a great development in protecting children's rights. Moreover, the Nigerian government also went further to postulate that in support of the CRA, they have also passed bills prohibiting Female Genital Mutilation in eleven states in northern Nigeria.³⁰⁰

Another important point with the CRA is the definition of the child as any one less than 18 years which conforms to the rules of the CRC and the ACRWC as such the CRA has been noted for being innovative and commendable.³⁰¹

It is therefore clear that since the CRA is superior to all other Acts governing the rights of the child, state laws inimical to the Act would have to be amended.³⁰²

The CRA 2003 in section 221(1) (b) provides that no child shall be ordered to be subjected to corporal punishment in the home, or in any other setting.³⁰³ Section 221 provides protection against domestic corporal punishment. It should however be noted that, under the Nigerian legal system, there is no specific provision for the punishment of those who administer corporal punishment to children. However, in light of the above provision of the CRA ,such an act now

²⁹⁴ Section 1 of the CRA.

²⁹⁵ The CRC Committee (2009) Nigeria's third periodic report to the Committee CRC/C/NGA/3-4.

²⁹⁶ The CRC Committee (2009) CRC/C/NGA/3-4.

²⁹⁷ Section 3 of the CRA.

²⁹⁸ A F Akwara (2010) "Law and children's Rights Protection, the Nexus for a Sustainable Development in Nigeria" *Canadian Journal of Social Science* Vol.6 NO.2. p.30.

²⁹⁹ Akwara (2010) p.30

³⁰⁰ CRC Committee (2009) CRC/C/NGA/3-4.

³⁰¹ Akinwumo (2009) p.391.

³⁰² *ibid* p.393.

³⁰³ 221 (1) (B) of the CRA

constitutes an assault or battery or causing grievous harm to the child.³⁰⁴ This could be made much more effective if the existing Criminal and the Penal Codes are reviewed to be consistent with the CRA, because if not some of these Codes will remain applicable especially in states where the CRA has not been enacted.³⁰⁵

With the enactment of the CRA in 2003, though considered as a great development child rights in Nigeria are still far from being respected, this will be analyzed in the following paragraph.

4.4.1 Criticisms faced by the Child Rights Act of 2003 in Failing to protect Children from Domestic corporal punishment

The Child Rights Act of 2003, though considered by many as the most progressive enactment in the protection of children's Rights in Nigeria, it has also been subjected to a lot of criticism from Nigerian scholars.

Section 221 of the CRA (2003) discusses domestic corporal punishment superficially, not much is mentioned about corporal punishment in homes. More so, the word '*violence*' is mostly used in Parts 111, IV, V and VI to address violence which can be interpreted to mean that corporal punishment in the homes is given less importance.

Section 4 of the 1999 Constitution of the Federal Republic of Nigeria which has been incorporated in section 3 of the CRA has been subject to criticisms. The section has been described as not being child right specific, and as such there was no need to include the section in the CRA since it provides no protection against domestic corporal punishment.³⁰⁶

In addition, Oyesina argues that the 1979 rules of the enforcement procedure stipulate that the fundamental rights guaranteed under Chapter 4 of the constitution³⁰⁷ can be invoked, since it demands that the applicant must be the actual person whose rights has been breached.³⁰⁸ The implication of this is that application could not be filed in name of another person, but that of the

³⁰⁴ Federal Ministry of Women Affairs (2004) *Country Report on Violence Against Children* p.6.

³⁰⁵ Federal Ministry of Women Affairs (2004) p.7

³⁰⁶ Tawfiq (2007) Ministry of Women's Affairs and UNICEF.

³⁰⁷ Section 4 of the 1999 Nigerian Constitution.

³⁰⁸ T Oyesina (2010) Child Right Act and Problem of Implementation < <http://www.Tribune.com.ng/index.php/tribune-law/242-child-right> >Date accessed 10 November 2010 p.1.

complainant. This means that a Nigerian child cannot enforce the rights under chapter 4 because of litigation, age and social handicaps.³⁰⁹ Again, where a child intends to enforce these rights through a parent or guardian, he may not be successful if the parent is financially constrained to do so and thus limiting children to carry on litigation against domestic corporal punishment.³¹⁰

Other critics have pointed out that the first draft of the CRA was prepared in 1990, but was passed into law by the national assembly in July 2003 due to opposition from religious groups. (Mostly the Sharia advocates). Again, since the passing into law of the CRA, only 15³¹¹ states domesticated the CRA out of 36 states. As a result, Akinwumo describes it as a wide gap between the '*promises of the Act and actual practice*'.³¹²

According to the Act a child is anyone below the Age of 18 years, but critics are concerned over some states in the northern region of Nigeria who do not accept the domestication of the CRA and other states who have passed such legislation, but have instead adopted a definition of the child which is not similar to that of the CRA and the ACRWC.³¹³ He also postulates that the absence of any provision on Female Genital Mutilation makes the Act ripe for amendment.³¹⁴

Many scholars³¹⁵ and international organizations have described the Act as inefficient and ineffective in the face of recent child abuse in Nigeria due to the fact that since it was passed into law 6 year ago, very little has been done to improve on the situation of the Nigerian children.³¹⁶

Nigeria operates a federal system of government in which each of the 36 states of the federation is autonomous and equal to each other. Each state has its legislative system, and until the CRA is enacted into law in each legislative system, it is not binding on the states; hence no court can prosecute violation of the CRA in states that have not enacted it.³¹⁷

³⁰⁹ Oyesina (2010) p.2

³¹⁰ Ibid p. 393.

³¹¹ These states include Abia, Anambra, Bayelsa, Ebonyi, Ekiti, Imo, Jigawa, Kwara, Lagos, Nasarawa, Ogun, Ondo, Plateau, River and Taraba.

³¹² Akinwumo (2009) p.391.

³¹³ Ibid p.392.

³¹⁴ Ibid p.396.

³¹⁵ Such as Akinwumi, Tawfiq and Ose.

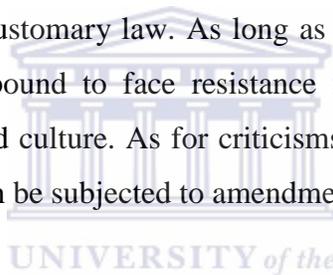
³¹⁶ Akinwumo (2009) p.392.

³¹⁷ Ibid p.393.

Many of these states have refused to sign the CRA advancing arguments that allude to the diversity of cultures and of religion as an excuse for failing to pass the appropriate legislation. The implication of this on children as advanced by Oyesina is that children in states where the CRA has not been enacted will continue to suffer from domestic corporal punishment.³¹⁸

Others have gone as far as describing, Nigeria as simple paying lip service to the implementation of the CRA.³¹⁹

Having examined some of the challenges of the CRA, a better approach should not only be enactment of the Act in the 36 Nigerian states, the government should ensure that the Act while passed in to law should automatically be superior and binding to all other laws regulating the rights of children within Nigeria. As a result, there will be no opportunity for any law to conflict with the Act, be it the Sharia or customary law. As long as the Act will depend on the various states to be enacted, it will be bound to face resistance from states who consider the Act conflicting to their local norms and culture. As for criticisms faced by the act, one can add that just like any other Act the CRA can be subjected to amendments.



The Nigerian government can also be credited for some positive reforms in protecting children's rights, for instance the government has also provided enabling environment and support for the Civil Society Organizations (CSO) by granting them subventions which will help for the prevention, protection and recovery of child victims of violence.³²⁰

In 2003, the Nigerian government also created the Child Rights Implementation and Monitoring Committee (CRIMC) at the national and at the sub national levels with the CSOs being active members, and they were called upon to establish rehabilitation centers for sexually abused victims.³²¹

In addition, the federal government, through the Federal Ministry of Women's Affairs is in charge with a massive sensitization campaign to educate parents about violence and the need for its

³¹⁸ Oyesina (2010) p.273.

³¹⁹ Africa Network for the Prevention and Protection Against Child Abuse and Neglect (2008) www.crin.org Date accessed 10 October 2010.

³²⁰ Federal Ministry of Women's Affairs (2004) Nigeria's, Report to the CRC Committee p12.

³²¹ Federal Ministry of Women's Affairs (2004) Nigeria's, Report to the CRC Committee p.13.

elimination.³²² As part of the sensitization campaign a simplified version of the CRC has been issued and translated in local languages, and distributed around the country and government is carrying out massive campaign on how to avoid domestic corporal punishment and to focus on other positive forms of discipline.³²³

4.5 Nigeria's International Obligations to Protect Children from Domestic Corporal Punishment

The United Nations Convention on the Rights of the Child (1989) (CRC) is an international Convention which covers specific rights of children under the age of 18 years.

Nigeria ratified the CRC on the 16/4/1991³²⁴, and has signed and ratified other international treaties such as the International Covenant on Civil and Political Right (ICCPR) on the 29/10/1993³²⁵, and the Convention Against Torture and other Cruel, and Inhuman or Degrading Treatment or Punishment (CAT) 28/06/2001, in 1960, Nigeria became a signatory of the United Nations Universal Declaration of Human Rights and by so doing has agreed to implement all obligations set out in these treaties as well as the CRC, such as protecting the right to life of all, and protecting all its citizens against cruel punishment, ill treatment and torture at all times.³²⁶

According to Zarifis, once an international treaty is ratified it must be implemented by the signatory state and there should be no justification for non compliance.³²⁷ In light of this, the federal government of Nigeria has the ultimate responsibility to ensure that human rights are respected in the territory, not even a state Sharia law may be invoked as a reason for non implementation of Nigeria's international human rights obligation.³²⁸

³²² Ibid p.12

³²³ Ibid p.14

³²⁴ World Organization Against Torture (2005) (WOAT) *Report on the Implementation on the Rights of the Child by Nigeria* www.omct.org date accessed 10 March 2010 p.9.

³²⁵ Amnesty International (2008) *Nigeria "Pragmatic Policing" Through Extra Judicial Executions* <<http://www.amnestyasa.org/page.de?>> Date accessed 10 August 2010,

³²⁶ Amnesty International (2008) <<http://www.amnestyasa.org/page.de?>> Date accessed 10 August 2010,

³²⁷ I Zarifis (2002) "Rights of Religious Minorities in Nigeria" *Human Rights Brief* Vol.10 Issue1p.22.

³²⁸ Zarifis (2002) p.22.

Nigeria, having ratified the CRC is expected to respect all the provisions especially Art 19 of the CRC which protects children from all forms of physical and mental violence,³²⁹ not leaving out Art 37 which protects children from torture, cruel, inhuman or degrading treatment or punishment.³³⁰ The CRC also prohibits capital punishment and life imprisonment without possibility of being released for offenses committed by persons below the age of 18 years.

At the international level Nigeria is still battling with the issue of the protection of children's rights. Nigeria still faces criticisms for human rights violations and the imposition of corporal punishment on children. The European Union has on several occasions condemned the flogging of underage girls in the northern Zamfara state of Nigeria, girls who involve in premarital sex are sentenced under the Zamfara state legislation, when found guilty of the offence, they are usually summoned in a public area like the market where the sentence is executed, which is usually twenty to a hundred strokes. This punishment serve as an inspiration to parents who also administer severe corporal punishment at home to children who involve in premarital sex.³³¹ The European Union condemned such act, since it is a violation of international human rights law,³³² in particular the CRC which Nigeria is a signatory to, and also contravenes Art 5 of the Universal Declaration of human Rights and Article 7 of the International Covenant on Civil and Political Rights, which prohibits the subjection of anyone to torture, inhuman or degrading treatment or punishment.³³³

4.6 Nigeria, corporal punishment and the Convention on the Rights of the Child Committee (CRC Committee)

Under Article 44 of the CRC States Parties are expected to submit to the CRC Committee, through the Secretary-General of the United Nations, reports on the methods they have adopted which gives effect to the rights recognized in the CRC and on the progress made on the

³²⁹ Art.19 on the Convention of the Rights of the Child

³³⁰ Art. 37 of the CRC.

³³¹ www.lawguru.org Date accessed 20 July 2010.

³³² The European Union (2001) *European Union Presidency Declaration on Corporal Punishment in Nigeria* <[http://www eu-un europa.eu/home/index-en.htm](http://www.eu-un.europa.eu/home/index-en.htm)> Date accessed 10 July 2010.

³³³ The European Union (2001) <<http://www eu-un europa.eu/home/index-en.htm>> Date accessed 10 July 2010. 62

enjoyment of those rights.³³⁴ It is therefore of utmost importance to examine some of Nigeria's reports to the CRC Committee and the concluding observations issued to Nigeria.

The 1995 report³³⁵ submitted by Nigeria³³⁶ to the CRC Committee on July 1995 whereby the Nigerian government argued that the 1979 Constitution³³⁷ protected the fundamental rights of all citizens, '*adult and children alike*'. They went further by stating that chapter 4 of the Nigerian Constitution of 1979 contained a wide range of rights, such as the right to life, dignity, personal liberty, freedom of thought, conscience and religion, expression, and the right to freedom from discrimination,³³⁸ which enabled a better protection of children's rights. The same report also states that the best interest of the child existed in section 23(1) of the Area Court Edict of 1968, which indicated that the welfare of the child shall be of the first and paramount consideration.³³⁹

The 1995 report in my opinion was very discouraging because no mention was made by the Nigerian government about violence, and corporal punishment. The CRC Committee in its concluding observation, based on the 1995 report submitted by Nigeria stated that the Nigerian government has only started to address the problem of violence against children and that physical abuse of children is common in the family, schools as well as in the community and the society, and that the mechanisms put in place to fight them are insufficient.³⁴⁰ The Committee pointed out that; the provisions of national legislation which permits sentencing to capital punishment are incompatible with the provisions of Art 37 (a) of the CRC. Though the CRC Committee spoke superficially about violence, nothing was also mentioned about corporal punishment in Nigeria.

Nigeria's report of July 2004 talked about the enactment of the Child Rights Act of 2003 into law, and the passing of the Ebonyi state law No. 010 of 2001 which abolished harmful traditional

³³⁴ Art 44 on the Convention of the Rights of the Child.

³³⁵ CRC Committee (1995) Consideration of State Parties Report Submitted by Nigeria Under Art.44 of the Convention.

³³⁶ It should be noted here that the present Constitution that was in operation was the 1979 Constitution of the Federal Republic of Nigeria.

³³⁷ The 1979 Constitution of the Federal Republic of Nigeria..

³³⁸ CRC Committee (1995) Consideration of Nigeria's first periodic Report Submitted by Nigeria under Art.44 of the Convention.

³³⁹ CRC Committee (1995) Concluding *Observations* of Nigeria's Report.

³⁴⁰ The CRC Committee (1996) concluding observation Nigeria, adopted by the Committee on the Right of the Child at its 343rd meeting(thirteenth session)

practices³⁴¹ in the state.³⁴² The Nigerian Government also raised arguments that the Sharia penal Codes of the northern region also protect children against various forms of physical and psychological violence.³⁴³ Another important point raised in the 2004 report is the fact that it created a National Child Rights Implementation Committee.³⁴⁴

The Concluding Observations of April 2005³⁴⁵ in response to the second report was much better in that some new developments came up, the Committee acknowledged the Child Rights Act enacted in 2003 and the establishment of the child's parliament in Nigeria. The CRC Committee also commented about the situation of corporal punishment in Nigeria.³⁴⁶ Though remarkable progress was made, the CRC Committee pointed out that customary law does not comply with the principles and provisions of the CRC.³⁴⁷

The CRC Committee was impressed with Art 221 of the Child Rights Act (CRA) that prohibits corporal punishment in judicial settings and the ministerial notes that were dispatched to schools notifying them of the prohibition of corporal punishment in schools. The CRC Committee also stated that the efforts were still not sufficient as there is wide practice of corporal punishment in penal system as a sanction, in the family, in schools and in other institutions.³⁴⁸

The CRC Committee also considered Art 9 and 11(2) of the Children and Young Persons law which provides for the sentencing of juvenile offenders to whipping and corporal punishment. Mention was also made of Art 18 of the Criminal Code which provides for corporal punishment, as well as Art.55 of the penal code which leaves room for the use of physical corrective measures³⁴⁹ a point that has appeared in almost all concluding observations to Nigeria, yet very little has been done to remedy the situation.

³⁴¹ They include acts such severe flogging of children as young as 10 years suspected of whichcraft.

³⁴² Federal Ministry of Women's Affairs (2004) p.20.

³⁴³ Ibid p.15

³⁴⁴ Ibid p.18.

³⁴⁵ CRC Committee on the Rights of the Child (2005) Concluding Observations Nigeria CRC/c/15/Add.257

³⁴⁶ Ibid

³⁴⁷ CRC Committee (2005) CRC/c/15/Add.257.

³⁴⁸ Ibid

³⁴⁹ CRC Committee (2005) CRC/c/15/Add.257.

Furthermore, the Sharia legal codes were also criticized, especially sections prescribing corporal punishment to children such as flogging, whipping, amputation, which are sometimes applied to children and the legal provisions that tolerate, if not promote corporal punishment at home like Art. 295 of the penal code.³⁵⁰

Between the year 2006 to 2009,³⁵¹ Nigeria submitted two more reports to the CRC Committee known as the third and fourth periodic report. Not much was mentioned in the report; the government laid more emphasis on the Child Rights Act claiming it is effective in protecting children against violence.

The concluding observations of the third and fourth periodic report³⁵² issued by the CRC Committee calls on Nigeria to prohibit torture or other cruel inhuman or degrading treatment or punishment in all settings, especially as it is widespread in police custody and that children as young as 11 years of age have been held in custody in inhuman conditions in the criminal investigation department.³⁵³

The CRC Committee again criticizes Nigeria, as little or no action has been taken or is planned for, by the State Party to follow up on its earlier recommendations concerning the outlawing of corporal punishment, especially by amending the relevant provisions of the criminal code and the Children and Young Persons Act, (CYPA) which are inconsistent with State Parties' obligation under the CRA and the CRC.³⁵⁴

As observed from the above reports and concluding observations, though Nigeria's progress appears to be slow³⁵⁵ one can nonetheless not underestimate the efforts that Nigerian is making to improve on children's rights.

In addition the Committee has also criticized Nigeria about its non compliance with the UN Study on Violence, which will be discussed later in section 4.8 of this chapter.

³⁵⁰ Ibid

³⁵¹ It should be noted that most of Nigeria's reports were always late. Nigeria ratified the CRC in 1991, initial report was due in 1993, and the periodic reports should have followed in 1998, 2003 and 2008.

³⁵² CRC Committee on the Rights of the Child (2010) Concluding Observations Nigeria CRC/c/NGA/co/3-4.

³⁵³ CRC Committee (2010) CRC/C/NGA/co/3-4.

³⁵⁴ Ibid

³⁵⁵ CRC Committee (2010) CRC/C/NGA/co/3-4.

4.6.1 Protection of Children Against Corporal Punishment in Nigeria.

Having discussed Nigeria's international obligation to protect children against corporal punishment, the following paragraph will be based on Nigeria's regional obligations to protect children from corporal punishment.

4.7 Nigeria and the African Charter on the Rights and Welfare of the Child (ACRWC)

Nigeria ratified the African Charter on the Rights and Welfare of the Child on the 23rd of July 2001³⁵⁶ and by implication, Nigeria is under the obligation to submit periodic reports and to give account on the results of implementation of the ACRWC as stipulated by art.43 of the ACRWC.³⁵⁷ Article 43 of the ACRWC also states that the initial report should be submitted within two years.³⁵⁸ Nigeria's initial report was expected in 2003, but unfortunately it was only submitted in 2006.

During the presentation of Nigeria's first country report to the Committee of African Experts, Nigeria pointed out that in order for them to better protect children's rights, they were making sure implementation was effective, in such a way that their legal framework protected children such as the 1999 Constitution, The Child Rights Act (CRA) of 2003, the criminal codes, the Sharia codes, as well as the penal codes.³⁵⁹

³⁵⁶ Federal Ministry of Women's Affairs (2006) *Nigeria's Initial and first Country Periodic Report on the Implementation of the African Union on the rights and Welfare of the Child*. Child Development Department.

³⁵⁷ Art 43 of the African Charter on the Rights and Welfare of the Child.

³⁵⁸ Ibid

³⁵⁹ Federal Ministry of Women's Affairs (2006) *Nigeria's Initial and first Country Periodic Report on the Implementation of the African Union on the rights and Welfare of the Child*. Child Development Department p.97.

More to that, Nigeria also raised arguments that there are no discrepancies between the provisions of the ACRWC and the Sharia laws with regards to the rights of children.³⁶⁰ Furthermore, the Nigerian government pointed out that Section 237 of the Zamfara state Sharia Criminal Procedure Code law of 2000, No.1 Vol 4 provides that there shall be no sentencing of young offenders to harsh punishment. Nigeria in an attempt to give credibility and popularize the ACRWC translated it into several local languages and made it accessible to all.³⁶¹ One other important point is that the Nigerian government pointed out that, children also participated in the drafting of the 2006 report.³⁶²

Finally, Nigeria stated in the report that the CRA supersedes the provisions of all other enactments relating to children.³⁶³

The African Committee of experts (the Committee) in response to Nigeria's first country report stated that the federal government has the overall responsibility of ensuring full implementation of ACRWC in all states in a coherent manner.³⁶⁴

The Committee regretted that the CRA is not a statute of general application throughout the country. They also criticized the fact that out of 36 states only 19 have re-enacted the CRA. The Committee calls on Nigeria to focus on getting the remaining states to adopt the CRA.³⁶⁵

As for violence, the Committee noted the prevalence of violence against children, especially gender based violence. The Committee also affirms the lack of adequate machinery to combat and prevent violence against children. Finally the Committee calls on Nigeria to address the issue of violence in Nigeria and that all the perpetrators prosecuted and punished.³⁶⁶

The Committee of experts made no remarks about corporal punishment; it is rather unfortunate that corporal punishment that was dealt with in detail in the UN study on violence 2005 does not

³⁶⁰ Federal Ministry of Women's Affairs (2006) p.126.

³⁶¹ Ibid p.76.

³⁶² Ibid p.122.

³⁶³ Ibid p.123.

³⁶⁴ Concluding Observations by the African Committee of Experts (2006) The Recommendation on the Nigerian Report on the state of Implementation of the African Charter on the Rights and Welfare of the Child.

³⁶⁵ Concluding Observations by the African Committee of Experts (2006)

³⁶⁶ Concluding Observations by the African Committee of Experts (2006)

feature anywhere in the concluding observations of 2006 by the African Committee of Experts to Nigeria.

Furthermore, the Committee of African experts did not make any mention of the Sharia law. The previous chapter noted the controversy Sharia law has had with the Nigerian constitution in terms of human rights violation and its application of harsh cruel and inhuman punishment, but unfortunately nothing was said about the sharia law in the concluding observations.

Beside the Nigerian case the committee paid attention the situation in Egypt; the response to the Egyptian report by the African Committee of expert was only in three pages and corporal punishment was only superficially mentioned asking the Egyptian government to take measures to put an end to the practice.³⁶⁷

The Committee of African Experts has recently released concluding observations to BurkinaFaso, Kenya, Mali, Tanzania and Uganda.³⁶⁸ From their concluding observations, it is only in Kenya where the Committee makes mention of corporal punishment and it's very brief showing that there is very little interest shown by the Committee on corporal punishment, another issue which is beyond the scope of this study.

As far as the Committee's general approach to corporal punishment is concerned, the various concluding observations issued so far, fall short of addressing the issue of violence, they are very scanty and inadequate, if the African Committee of Expert intends helping African countries, they will have to follow the example of the CRC in its concluding observations.

4.8 Nigeria and the United Nation Study on Violence (2005)

The CRC Committee of Experts has acknowledged Nigeria's devotion in the fight against corporal punishment by the adoption of a state legislation prohibiting acts of violence against girls and women in support of the federal draft law.³⁶⁹ The CRC Committee noted that the UN

³⁶⁷ Concluding Observations by the African Committee of Experts (2006) The Recommendation on the Egyptian report on the state of implementation of the African Charter on the Rights and Welfare of the Child.

³⁶⁸ Recent release of concluding observations <www.crin.org> Date accessed 5 November 2010.

³⁶⁹ CRC Committee (2010) CRC/C/NGA/CO/3-4.

Study on Violence is very instrumental in the fight against violence and that Nigeria should put its recommendations into use. It should also be added here that the UN Study on Violence was aimed at eliminating all corporal punishment of children by 2009.³⁷⁰

According to the response of the 2004 governmental questionnaire of the UN Secretary General Study on violence against children, aimed at assessing the level of protection provided by government against violence. The Nigerian government pointed out that since the ratification of the CRC and the ACRWC and other relevant international instruments, Nigeria has instituted various legislative and institutional measures at both the federal and state levels, aimed at addressing various forms of violence against children,³⁷¹ such as the Ebonyi state law No. 010 (2001) on the abolition of harmful traditional practice against women and children, Edo State Female Genital Mutilation Prohibition (2002), Cross River State Girl Child Marriages and Female Circumcision Prohibition Law (2002), more to that the government also stated that the Sharia penal codes of Zamfara, kano, kebbi, Kaduna, and Sokoto³⁷² states of Nigeria equally protect children against various forms of physical and psychological violence.³⁷³

Finally, the government advanced that prior to the CRA, there was no specific provision for the punishment of those who administer corporal punishment to children, but presently the CRA of 2003 in section 221(1) (b) prohibits act of corporal punishment on children. However, in light of the above provision of the CRA such an Act now constitutes an assault or battery or causing grievous harm to the child.³⁷⁴

The government claims to have prohibited corporal punishment in all settings,³⁷⁵ but that point of view is not shared as it is indicated that it is lawful in schools throughout Nigeria and both the penal code (Art 55) and the criminal code (Art295) explicitly recognize the rights of parent and others to discipline their children.³⁷⁶

³⁷⁰ P Newell (2007) Briefing from Global initiative to End all Corporal Punishment of Children <www.crin.org. Date accessed 10 September 2010 p.3.

³⁷¹ Newell (2007) p.4.

³⁷² These Sharia penal codes are modeled after the code of the Zamfara state. The other northern states who copied enactment of the Sharia into law basically adopted the same codes, but it is not exactly the same as some of them have made slight modification in their various states.

³⁷³ P Newell (2007) p.3.

³⁷⁴ Akinwumi (2003) 389.

³⁷⁵ Newell (2007) p.3.

³⁷⁶ Ibid p.3

The UN Committee,³⁷⁷ commenting on Nigeria's response to the questionnaire they, called on Nigeria to pay attention towards corporal punishment which is still widely practiced in the penal system as a sanction, as well as in the family, in schools and in other institutions.³⁷⁸ The Committee was particularly concerned about Art.9 and 11 (2) of the Children and Young Persons Law which provide for the sentencing of juvenile offenders in to whipping and corporal punishment.³⁷⁹ They also did express concern over Art.18 of the criminal code which provides for whipping and Art.55 of the penal code which provides for the use of physical corrective measures.³⁸⁰ Furthermore, the Sharia legal codes were criticized for prescribing penalties and corporal punishment such as flogging, whipping, stoning, amputation which are sometimes applied to children.³⁸¹

They also showed concern over section 95 of the Sharia penal code which can subject a person aged 7 – 18 years to punishment of confinement in a reform institution or 20 strokes of cane, or with fine or both.³⁸²

The CRC Committee (CRC Committee) has also firmly criticized Nigeria for not taking into consideration the UN Study on Violence. The Committee pointed out that Nigeria must take steps to implement the Recommendations of the UN study of violence against children.³⁸³ Again, Nigeria has admitted taking into consideration the recommendations of the UN Study on violence, but at the level of implementation it is far from doing that.³⁸⁴

The CRC Committee reiterated that the UN Study on Violence is of key importance to fight against violence and State Party should pay particular attention to the recommendations such as prohibiting all forms of violence against children,³⁸⁵ strengthen national and local commitment

³⁷⁷ The special body that was delegated to handles the questionnaires.

³⁷⁸ Global Initiative to End Corporal punishment of Children (2007) *Ending legalized Violence against children* Global Initiative.p.14

³⁷⁹ Global Initiative (2007) p.15

³⁸⁰ Ibid p14

³⁸¹ Ibid p13

³⁸² Ibid p12.

³⁸³ The CRC Committee (2010) CRC/C/NGA/co3-4.

³⁸⁴ Newell (2005) p.3.

³⁸⁵ The CRC Committee (2010) CRC/C/NGA/co3-4.

and action, promote non violent actions and awareness raising, and to enhance the capacity of all who work with and for children and to ensure accountability for all acts of violence.³⁸⁶

The committee also calls on Nigeria to use the recommendations of the Study as a tool for action in partnership with civil society in particular, with the involvement of children to ensure that all children are protected from all forms of physical, sexual and psychological violence and to gain momentum for concrete and time –bound actions to prevent and to respond to such violence and abuse.³⁸⁷

The Committee also calls on Nigeria to be in accordance with the CRA, though the CRA prohibits corporal punishment of children in all settings, the provisions of the penal code (Art 55) and the criminal code (Art 295) which are inconsistent with the State Party's obligation, should be repealed or modified.³⁸⁸

Nigeria was also highly appreciated by the Committee, especially as section 221 of the CRA completely prohibited the subjection of any child to death penalty and section 221(1) a and b which completely prohibited the use of corporal punishment on children and that these provisions were in accordance with the principles of the ACRWC and the CRC.³⁸⁹

The Nigerian CRA, though has also faced criticisms, many saw it as a great development that will bridge the gap that Nigeria has been facing in the implementation of the ACRWC and the CRC.

4.9 Conclusion

Nigeria, in protecting children's right has adhered to the international community by becoming signatory to the two most important treaties protecting children that is the CRC and the ACRWC. In an attempt to domesticate these treaties Nigeria responded with the CRA in 2003 and has undertaken serious campaign and education for states to understand the importance of the CRA

³⁸⁶Ibid

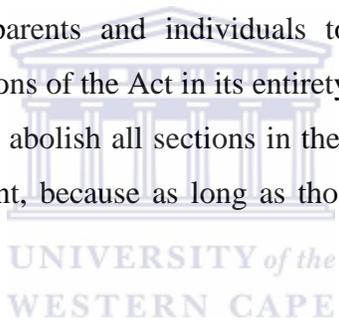
³⁸⁷ Ibid

³⁸⁸ Ibid

³⁸⁹ Federal Ministry of Women's Affair (2006) p.3.

in protecting children from corporal punishment. Though 19 states have enacted the CRA, Nigeria still has the duty to make sure that the remaining 21 states do the same.

Implementation of the CRA in Nigeria is more of a political problem due to the fact that it is causing serious resistance. Nigeria's reports to the CRC Committee and the African Committee of Experts indicate that the Nigerian government is not facing any resistance from Sharia advocates, whereas in practice it is the contrary. Nigeria is facing serious resistance at the level of implementation especially in the northern region where Sharia operates. If Nigeria is willing to solve this problem, they will have to admit the difficulties and include areas of difficulties in their periodic reports and start looking for means to overcome them. According to Akinwumo *'no law can be better than its implementation'*³⁹⁰.... There is urgent need for quick and effective implementation. The Nigerian government will have to take initiative and call on nongovernmental organizations, parents and individuals to give their support for the full realization embodied in the provisions of the Act in its entirety. More to that Nigerian will have to abolish all sections in the criminal and the penal codes law that encourage corporal punishment, because as long as those laws exist parents are bound to abuse them.³⁹¹



³⁹⁰ Akinwumo (2009) p.393.

³⁹¹ Uzodike (2000) p.

CHAPTER 5

Conclusion and Recommendations

5.1 Conclusion

The study above analyzes the issue of violence of children in Nigeria, in a reminder of Nigeria's international obligations to protect children from corporal punishment, the study has briefly analyzed the obligations of African states under the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC). The research depicts the expectations that the international community require from African states to effectively combat violence implemented against children in the different settings.

The study has also examined the various different laws existing in Nigeria and its approach used to prevent and protect children against corporal punishment. Nigeria in an attempt to adhere to the rules of the CRC and the ACRWC to prevent and protect children against corporal punishment, and to reconcile the complex nature of the Nigerian legal system in relation to corporal punishment responded with enactment of the Child Rights Act (CRA) 2003, an Act which supersedes the provisions of all other enactment relating to children rights³⁹²

The CRA has been considered by many as one of the most progressive enactment in the protection of children's rights in Nigeria.³⁹³ The CRA as seen in the study has consolidated all laws relating to children into one single piece of legislation.

³⁹² Federal Ministry of Women's Affairs (2006) *Nigeria's Initial and first Country Periodic Report on the Implementation of the African Union on the rights and Welfare of the Child*. Child development department p.97.

³⁹³ M T Tawfiq (2007) *The Child Rights Act, 2003 and the challenges of its adoption by State Government in the 19 Northern States*. Paper presented at a one day interactive forum for the Sokoto State House of Assembly legislation, organized by the Sokoto State Ministry of Women's Affairs and UNICEF p.1.

The CRA, however has also been a subject of much criticism, the fact that enactment is necessary at the state level before being considered binding to these states.

Nigeria, just like other African states should not focus only on ratification of human right treaties, they should as well focus on implementation because it is key to protection of children's rights.

Various reports around the world have shown that as many as 40 million children in the world are victims of violence each year,³⁹⁴ a number that can be brought down if nations work together respecting rules of the CRC and the ACRWC and to take into account the United Nations Study on Violence 2006.

Another important issue realized in the course of the study, is that there is general reluctance on the part of the Nigerian government to protect children from corporal punishment. An example could be based on the proposed draft Bill of the CRA presented in parliament in 1993 but was only passed into law in 2003.

Ten years for the CRA to be enacted into law that's a lot of time in a child's life to be left without adequate protection.

As seen from the CRC reports, the UN Study on Violence, and the Committee of Experts recommendations, Nigeria needs to deal with the effective implementation of laws protecting children's rights and to target a zero tolerance policy towards violence. The UN Study on Violence is very illustrative and contains good recommendations and very practical, that Nigeria will just need to pave the way for the recommendations to be included into local policies rather than neglect the studies as observed from their reports

Finally, there is always room for improvement, if Nigeria wants to obtain better results, they should focus on implementation and enforcement on legislation governing the protection and promotion of children's rights.

³⁹⁴ UN Report (2006) *Secretary General's Report of the Independent Expert for the United Nations Study on Violence Against Children* 61st Session, United Nations General Assembly (A/61/299).

5.2 Recommendations

African states and Nigeria in particular, should develop a multifaceted systematic framework to respond to violence against children which should be integrated into national planning.

The African Charter on the Rights and Welfare of the Child (ACRWC) should be more illustrative in its concluding observations to states, giving them detail information about their performances, and emphasis should also be laid on domestic violence which is highly unreported. This is particular to Nigeria but could also be useful in other African States. Furthermore, it is very strange that 40 million children under the age of 15 are victims of violence each year,³⁹⁵ yet, the African Committee of Experts has been very superficial in their concluding observations to Nigeria's first periodic report.

The committee has to play the role of a watch dog to assist Nigeria obtain its objective so that violence against children can become an issue of the past.

As concerns Nigeria, the Nigerian government should focus on educating parent and guardians on friendly and positive forms of discipline. This is so because most parents who intend to avoid harsh corporal punishment often do not know about any other alternative methods to discipline. A massive campaign should be lunched to educate the population of the setbacks of violence. Parents should be thought that the use of corporal punishment does not guarantee positive behaviour for children that harsh corporal punishment will only encourage children to be violent in return.

More so, the Nigerian government should try and focus on research that will expose domestic corporal punishment and data should be made available to researchers so they can easily report on the situation of violence in Nigeria. Government should give a helping hand to scholars, reporters and NGOs wherever necessary and a friendly environment should be secured where they can easily carry out research and publish reports about the exact situation on the field.

³⁹⁵ D Kassan (2008) "The Protection of Children from All Forms of Violence-African Experience" in J Sloth-Nielsen (ed) *Children's Rights in Africa* Ashgate Publishers: England p.165.

Again, the criminal and the penal codes should be codified and enacted into one code that will be uniform and applying to the entire nation with sections encouraging corporal punishment repealed or revised. Again the Constitution of the federal republic of Nigeria should firmly define the establishment and competence of the Sharia and customary law so it should in no instance interfere with the superiority of the Constitution.

Government should also adopt policies capable to have positive effects, even in the most remote areas of the country; in order to put an end to corporal punishment on children, because children in such areas are more often neglected than those in urban areas, and teaching them about their rights will help deter the practice of violence in such areas.

Another pertinent issue is to take legislative measures for the CRA to be binding on all states in Nigeria, even when not passed into law by the state in question. This can help prevent the challenging of the CRA especially in the northern part of Nigerian. It could also help put an end to the practice of FGM that is considered as culture especially in the northern region of Nigeria.

Finally, the federal government of Nigeria should ensure that all acts of violence on children be criminalized and perpetrators punished accordingly this can happen only through policies, training, community awareness and human rights awareness.

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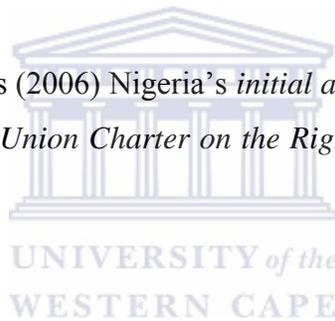
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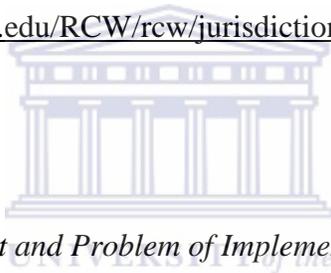
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