

**THE BOKO HARAM INSURGENCY AND THE CHILD'S RIGHT TO EDUCATION  
IN NIGERIA**

**SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE  
DEGREE OF MASTERS OF LAW (LLM (II)) IN INTERNATIONAL AND HUMAN  
RIGHTS LAW**

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**DATE: MARCH 2016**

## DECLARATION

I, **Aisosa Jennifer Isokpan** declare that '**The Boko Haram insurgency and the child's right to education in Nigeria**', is my work and has not been submitted for any degree or examination in any other University or academic institution. All sources and materials used are duly acknowledged and properly referenced.

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Date: \_\_\_\_\_

## DEDICATION

This work is dedicated to all the victims of the Boko Haram insurgency in Nigeria.



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## LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
AP1 AND AP2	Additional Protocols of 1977
CFRN	Constitution of the Federal Republic of Nigeria
CRA 2003	Child's Rights Act 2003
CRC	Convention on the Rights of the Child
CJTF	Civilian Joint Task Force
EFA	Education for All
GCIV 1949	Fourth Geneva Convention of 1949
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
IDPs	Internally Displaced Persons
ICC	International Criminal Court
JTF	Joint Task Force
MDG	Millennium Development Goals
MRM	Monitoring and Reporting Mechanisms
NPE	National Policy on Education
OOSC	Out-of-school Children
PTSD	Post-Traumatic Stress Disorder
SRSR-CAAC	Special Representative of the Secretary General on Children and Armed Conflict
SUBEB	State Universal Basic Education Board
UBE	Universal Basic Education
UBE Act	Compulsory, Free Universal Basic Education Act 2004
UDHR	Universal Declaration of Human Rights
UN	United Nations

UNESCO	United Nations Education, Scientific and Cultural Organisation
UNICEF	United Nations Children’s Fund
UNSC	United Nations Security Council



## ABSTRACT

Armed conflict impacts negatively on the child's right to education as the targeted attacks on schools, school children, teachers and school facilities can cause a drop in school enrolment and attendance as well as longer term effects on the standard of education provided. This study assesses the impact of armed conflict on the child's right to basic education in the context of the Boko Haram insurgency in Nigeria. Also, considering that the child's right to education protected in international and regional human rights instruments is not suspended during armed conflict, the study also assesses how well the Nigerian government in line with its international and regional human rights obligations has responded to the educational needs of children affected by the Boko Haram insurgency.



## **KEY WORDS**

Nigeria

Boko Haram

Insurgency

Armed conflict

Child's rights

Grave violations

Education

Child protection

Internal displacement

Humanitarian assistance

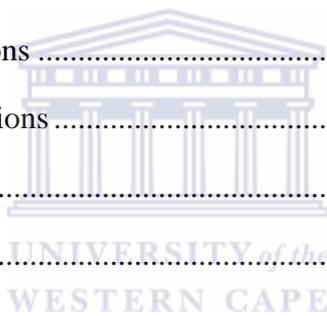


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## CHAPTER ONE

### 1 INTRODUCTION

#### 1.1 Background

The perception of children as a vulnerable group in need of protection motivated the preamble to the United Nations Declaration of the Rights of the Child adopted by the General Assembly of the United Nations (UN) on 20<sup>th</sup> November 1959 stating that ‘the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth’. The Convention on the Rights of the Child<sup>1</sup> (CRC) proclaimed that ‘childhood is entitled to special care and assistance’.<sup>2</sup>

Provisions have been made to secure the rights of every child both at the international, regional and national levels. Under the CRC, States Parties agree to secure the rights of the child to life, survival and development, non-discrimination, right to be heard and to have the child’s best interest as the primary consideration amongst others. These provisions form the basis of other rights in the CRC. The African Charter on the Rights and Welfare of the Child<sup>3</sup> (ACRWC) develops the rights further to suit the African child. In Nigeria, the Child’s Rights Act 2003<sup>4</sup> (CRA 2003) encapsulates these rights already formulated on the international scene. The protection afforded children in these instruments extends also to those in situations of armed conflict.

Armed conflict greatly impacts on the well-being of civilians as combatants have made targeting of civilians a strategic objective in disregard for humanitarian norms and the Geneva Conventions on the rules of war.<sup>5</sup> Many complex factors lead to armed conflict, one of which is the inability of governments to provide basic good governance and protection for the people, resulting in a struggle for power by a section of the population that has been excluded.<sup>6</sup> Ethnicity<sup>7</sup>, religious animosities, mass violations of human and minority rights as

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<sup>1</sup> Adopted by the UN General Assembly Resolution 44/25 on 20 November 1989 and entered into force on 2 September 1990.

<sup>2</sup> Preamble to the CRC para 4. See also para 5 of the preamble to African Charter on the Rights and Welfare of the Child (ACRWC).

<sup>3</sup> Adopted by the Organisation of African Unity on 11 July 1990 and entered into force in November 1999 AU Doc. CAB/LEG/24.9/49 (1990).

<sup>4</sup> Laws of the Federation of Nigeria 2010.

<sup>5</sup> United Nations Report of the Secretary-General on the Work of the Organisation, Supplement No. 1 (A/54/1) 1999 para 2.

<sup>6</sup> Nigeria is an example having experienced civil unrests at different times from militant groups in the Niger Delta oil producing areas that feel marginalized despite being the source of a greater part of the country’s

well as economic mismanagement and decline can also result in armed conflict. The relative ease with which arms are trafficked around the world equally fuels the conflict.<sup>8</sup>

Armed conflict affects the entire populace but it has a special impact on children as a vulnerable group.<sup>9</sup> Children are made to pay the price for a war not of their making hence losing out of the beauty of childhood as they to grow up among families and communities torn apart by armed conflict, or even partake in the conflicts as child soldiers.<sup>10</sup> Children in situations of armed conflict are exposed to human rights violations as the conflict affects the provision of services, including food, health, education, infrastructure, and also affects adults who are relevant to the child such as fathers, mothers and siblings.<sup>11</sup> Children are separated from families and loved ones, left to face the harsh effects of conflict as refugees or internally displaced persons and equally suffer from starvation and disease as a result of war tactics of disrupting the supply of food.<sup>12</sup> They are also left to face the psychological, psychosocial and emotional distress from direct exposure to violence.

The impact of armed conflict on the rights of children was a major issue in the year 2014 leading to its declaration by United Nations Children's Fund (UNICEF) as a devastating year for children. According to Anthony Lake, UNICEF Executive Director:

'This has been a devastating year for millions of children. Children have been killed while studying in the classroom and while sleeping in their beds; they have been orphaned, kidnapped, tortured, recruited,

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revenue. See Oviasuyi PO & Uwadiae J 'The dilemma of Niger-Delta region as oil producing states of Nigeria' (2010) Issue 16 *Journal of Peace, Conflict and Development* 110-11, Ejibunu HT 'Nigeria's Niger Delta crisis: Root causes of peacelessness' (2007) Issue 7 *EPU Research Papers* 3.

<sup>7</sup> Smith D 'Trends and Causes of Armed conflict' (2004) Berghof Research Centre for Constructive Conflict Management 7 (hereafter Smith D (2004)).

<sup>8</sup> United Nations Office on Drugs and Crime 'A global problem: Illicit firearms as a threat to global security' available at <https://www.unodc.org/unodc/en/firearms-protocol/introduction.html> (accessed 18 December 2015).

<sup>9</sup> 'Six Grave Violations' Special Representative of the Secretary General on children and armed conflict available at <https://childrenandarmedconflict.un.org/effects-of-conflict/six-grave-violations/> (accessed 09 December 2015).

<sup>10</sup> Bellamy C *State of the World's Children 2005: Childhood under Threat* (2005) UNICEF 39 (hereafter Bellamy C (2005)).

<sup>11</sup> Brett R 'Child soldiers: Law, politics and practice' (1996) 4 (2) *International Journal of Children's Rights* 116.

<sup>12</sup> Cox ME 'War, blockades, and hunger: Nutritional deprivation of German children 1914-1924' (2013) available at [http://www.histproj.org/completed/COX\\_War,%20Blockades,%20and%20Hunger.pdf](http://www.histproj.org/completed/COX_War,%20Blockades,%20and%20Hunger.pdf) (accessed 25 November 2015).

raped and even sold as slaves. Never in recent memory have children been subjected to such unspeakable brutality.’<sup>13</sup>

This reflects the present situation of millions of children around the world suffering severe and worsening human rights violations as a result of armed conflict. This problem has continued into 2016 in States such as Iraq, Syria, Democratic Republic of Congo, Somalia, Sudan, Afghanistan and Nigeria.<sup>14</sup> This study focuses on the situation of children in Nigeria as a result of the Boko Haram insurgency.

## 1.2 Nigeria

Nigeria is nicknamed the giant of Africa mainly because of its massive population and its economic potential.<sup>15</sup> It has a population of 182 million people making it the most populous country in Africa and seventh most populous country in the world.<sup>16</sup> It has a wide geographical spread across thirty-six (36) states and a Federal Capital Territory.<sup>17</sup> The states are further divided into local government areas currently numbering 774 with each administered by a Local Government Council.<sup>18</sup> The country is divided into six geo-political zones namely, the South-South, South-East, South-West, North-West, North-Central and North-East. The North Eastern region, mostly targeted by Boko Haram is comprised of Borno, Adamawa, Yobe, Taraba, Gombe and Bauchi states. There are about 350 ethnic groups and almost 400 languages in Nigeria but the three major languages are Hausa, Igbo and Yoruba while English is the official language.

Nigeria gained independence from British colonial rule in 1960 and became a republic in 1963 under a parliamentary system of government.<sup>19</sup> The first military coup of 1966 toppled this government and ushered in military rule which lasted from 1966 till 1999 with the only break being between 1979 and 1983 as well as the 3 months of an interim national

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<sup>13</sup> ‘2014: A devastating year for children’ (2014) UNICEF New York/Geneva available at [http://www.unicef.org/media/media\\_78058.html](http://www.unicef.org/media/media_78058.html) (accessed 25 January 2016) (hereafter UNICEF ‘2014: A devastating year for children’ (2014).

<sup>14</sup> Report of the Special Representative of the Secretary General for Children and Armed Conflict 20 July 2015. (hereafter SRSG-CAAC Report (2015).

<sup>15</sup> Adewale A ‘The political, economic and social dynamics of Nigeria: A synopsis’ 2011 Brief No. 39 *African Institute of South Africa Policy Brief 2* (hereafter Adewale A (2011).

<sup>16</sup> Population Reference Bureau ‘2015 World Population Data Sheet’ available at [http://www.prb.org/pdf15/2015-world-population-data-sheet\\_eng.pdf](http://www.prb.org/pdf15/2015-world-population-data-sheet_eng.pdf) (accessed 16 February 2016).

<sup>17</sup> United Nations Educational Scientific and Cultural Organisation ‘Action Plan Nigeria’ High Level International Round Table on Literacy 6-7 September 2012 Paris.

<sup>18</sup> Ojo EO & Adebayo PF ‘The politics of states’, local governments’ creation and Nigeria’s search for geo-political balancing’ (2008) 2(3) *African Research Review* 348.

<sup>19</sup> Falola T & Heaton MM *A History of Nigeria* (2008) 136.

government in 1993. Nigeria returned to democratic rule in 1999 with the first president being Olusegun Obasanjo. This change in leadership ushered in the Constitution of the Federal Republic of Nigeria 1999 (as amended) (CFRN 1999) which is the reference point for all laws and government actions throughout the country.

Under the constitution, Nigeria operates a federal system of government having the federal government at the national level, the state government piloting the affairs at the state level and the local government at the grass root. The functions and powers of each tier are provided for in the CFRN 1999. The arms of government consisting of the executive,<sup>20</sup> legislature and judiciary<sup>21</sup> also have their functions spelt out. The constitution distributes legislative powers between the national assembly, which has powers to make laws for the federation, and the Houses of Assembly of each of the 36 states of the federation having jurisdiction to make laws for their respective states.<sup>22</sup>

Nigeria has a tripartite legal system with English law forming the basis and customary and Islamic law largely in the realm of marriage and succession. As a result of British colonisation, English law has a large influence on the Nigerian legal system and it forms a substantial part of Nigerian law. The sources of Nigerian law are the Constitution, legislation, English law, customary law, Islamic law and judicial precedent.

Nigeria has enjoyed economic growth with the discovery of oil but this has not reflected in the standard of living of majority of the population, or engendered sustainable development due to corruption and mismanagement of resources.<sup>23</sup> Overtime, there has been an over dependence on crude oil as the mainstay of the economy,<sup>24</sup> leading to a dearth of development in others sectors like agriculture.<sup>25</sup>

One salient feature of Nigeria is its diversity brought about by the amalgamation of several independent and autonomous entities that till date cannot unite as one. Nigeria happens to be an artificial creation of the British to enable administrative convenience in serving their

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<sup>20</sup> Chapter VI of the Constitution of the Federal Republic of Nigeria 1999 (as amended) (hereafter CFRN 1999).

<sup>21</sup> Chapter VII of the CFRN 1999.

<sup>22</sup> Chapter V of the CFRN 1999.

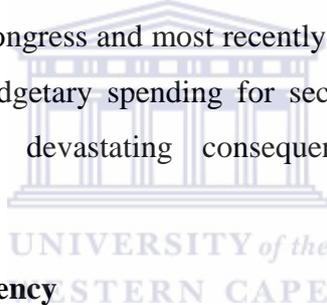
<sup>23</sup> Akinlo AE 'How important is oil in Nigeria's economic growth?' (2012) 5(4) *Journal of Sustainable Development* 165.

<sup>24</sup> Frynas JG *Oil in Nigeria: Conflict and Litigation Between Oil Companies and Village Communities* (2000) 1.

<sup>25</sup> Ugwu DS & Kanu IO 'Effect of agricultural reforms on the agricultural sector in Nigeria' (2012) 4(2) *Journal of African Studies and Development* 52.

colonial interest.<sup>26</sup> The attempts overtime at uniting the diverse cultural, religious, and social differences has not met with success. Many of the internal conflicts witnessed in the country are consequences of the lack of unity in diversity.<sup>27</sup>

Since the inception of Nigeria as a sovereign State, she has suffered many civil unrests and insurgences which at different times threatened the unity, stability and continued existence of the nation as a united sovereign entity.<sup>28</sup> One major threat to the unity of Nigeria was the Nigerian civil war, which lasted for thirty months, between July 1967 and January 1970. In that era, the Eastern Region, under the leadership of Colonel Odumegwu Ojukwu declared secession from Nigeria to form the independent State of Biafra. Since then, there has been an upsurge of several civil unrests spearheaded by different militant groups, mostly based on ethnic and religious sentiments, and conflicting socio-economic and political agenda.<sup>29</sup> Some of the militant groups are, Movement for the Actualization of the Sovereign State of Biafra,<sup>30</sup> Niger Delta Peoples' Volunteer Force, Movement for the Emancipation of the Niger Delta, Bakassi Boys, Oodua People's Congress and most recently, the Boko Haram insurgency. The resultant loss of lives, rising budgetary spending for security and destruction of valuable government facilities portends devastating consequences for sustainable economic development in the country.<sup>31</sup>



### 1.3 The Boko Haram insurgency

The group Jama'atu Ahlis Sunna Lidda'awati wal-jihad (people committed to the propagation of the prophet's teachings and jihad) popularly known as Boko Haram,<sup>32</sup> has caused havoc in Nigeria through a series of bombings, assassinations and abductions with the aim of overthrowing the government and creating an Islamic State governed by Sharia law. It seeks to end every activity, be it political or social, associated with Western society as well as the

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<sup>26</sup> See Coleman JS *Nigeria: Background to Nationalism* (1960) 41-63.

<sup>27</sup> Adewale A (2011) 3.

<sup>28</sup> Akanji OO 'Security crisis in Nigeria: Boko Haram insurgency and the prospects of peace' (2015) *Conflict Studies Quarterly* 60.

<sup>29</sup> Agbu O 'Ethnic militias and the threat to democracy in post-transition Nigeria' (2004) *Nordiska Africaninstitutet Report* No. 127 5.

<sup>30</sup> This is a secessionist movement with the aim of securing the resurgence of the defunct State of Biafra from Nigeria. See Nafziger EW & Richter WL 'Biafra and Bangladesh: The political economy of secessionist conflict' (1976) *Journal of Peace Research* 91.

<sup>31</sup> Adebakin MA & Raimi L 'National security challenges and sustainable economic development: Evidence from Nigeria' (2012) 1(1) *Journal of Studies in Social Sciences* 1.

<sup>32</sup> A direct phrase translated from Hausa as 'western education is a sin.'

total rejection of Western education.<sup>33</sup> In furtherance of its belief, Boko Haram has launched several targeted assaults against schools, pupils and teachers. The group believes that violence is not contrary to Islam, but a justifiable means to a pure end.<sup>34</sup> The organised attacks from the sect in the Northern part of the country besides making life difficult threatens the unity and corporate existence of Nigeria.<sup>35</sup>

The Boko Haram insurgency has led to loss of lives, properties and a large number of people including children have been displaced. Efforts by the government to address the insurgency have led to higher spending on security which has a ripple effect on other sectors including education.<sup>36</sup> The current state of insecurity equally has a negative impact on the economy as meaningful economic activities cannot take place in such state of insecurity and this has affected the influx of foreign investment on which Nigeria strongly depends.<sup>37</sup>

Children in Nigeria have had their fair share of the problem of insurgency ravaging the fragile North Eastern part of the country. Children have been killed, abducted, forcefully recruited, and internally displaced while others have sought refuge in neighbouring countries.<sup>38</sup> Throughout 2014, the armed conflict in North Eastern Nigeria was one of the world's deadliest for children.<sup>39</sup> Leila Zerrougui, the Special Representative of the Secretary General for Children and Armed Conflict (SRSG-CAAC), on her visit to Nigeria in 2015 noted the dramatic rise in violence, growing recruitment and use of children, sexual violence against girls as well as countless attacks on schools. In her words:

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<sup>33</sup> Chothia F. 'Who are Nigeria's boko haram Islamists?' BBC News (Africa) 4 May 2015 available at <http://www.bbc.com/news/world-africa-13809501> (accessed 24 December 2015).

<sup>34</sup> Campbell J 'Boko Haram: Origin, Challenges, Responses' Norwegian Peace Building Resource Centre October 2014 available at [http://www.peacebuilding.no/var/ezflow\\_site/storage/original/application/5cf0ebc94fb36d66309681cda24664f9.pdf](http://www.peacebuilding.no/var/ezflow_site/storage/original/application/5cf0ebc94fb36d66309681cda24664f9.pdf) (accessed 24 December 2015).

<sup>35</sup> Okpaga A, Chijioke US & Eme OI 'Activities of Boko Haram and insecurity question in Nigeria' (2012) 1(9) *Arabian Journal of Business and Management Review* 77.

<sup>36</sup> Olaniyan OD 'Effect of Boko Harm insurgency on the educational system' (2015) 24(2) *Journal of Research Development* 5 (hereafter Olaniyan OD (2015)).

<sup>37</sup> Bamidele O 'Boko Haram catastrophic terrorism: An albatross to national peace, security and sustainable development in Nigeria' (2012) 14(1) *Journal of Sustainable Development in Africa* 33.

<sup>38</sup> Child Alert 'Missing childhoods: Impact of armed conflict on children in Nigeria and beyond' UNICEF April 2015 (hereafter UNICEF Child Alert 'Missing childhoods' (2015)); 'UNHCR concerned about displaced Nigerians, calls on neighbouring countries to keep borders open' UNHCR 29 May 2013 available at [www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=51a602776&query=boko%20haram](http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=51a602776&query=boko%20haram) (accessed 1 February 2016).

<sup>39</sup> UNICEF Nigeria 'UN Special Representative for Children and Armed Conflict call for urgent action to protect children in the North East Nigeria' 16 January 2015 available at <https://childrenandarmedconflict.un.org/press-release/urgent-action-to-protect-children-in-north-east-nigeria/> (accessed 18 December 2015) (hereafter UNICEF Nigeria (2015)).

‘I witnessed people’s shock and disbelief at the devastation suffered by their communities. I saw trauma in children’s eyes. The scale of suffering is beyond what I expected to find. The people I met demand and deserve urgent protection.’<sup>40</sup>

A recent report of UNICEF declared that owing to the Boko Haram insurgency in Nigeria, over 1.2 million children with over half less than five years of age have been forced to flee their home and an additional 265 000 have been uprooted in Cameroon, Chad and Niger.<sup>41</sup> The targeted attacks by the Boko Haram sect on schools since 2009 have forced state governments in Northeast Nigeria to shut down some primary and secondary schools. Some schools record low attendance rates as children have stayed away for fear of being victims of the attacks.

On the 14<sup>th</sup> of April 2014, over 200 Chibok girls were abducted from their school dormitory at night by insurgents pretending to be guards and till date they have not been found except for some that are reported to have escaped.<sup>42</sup> This was the abduction that ignited an international outcry and led to the famous ‘#BringBackOurGirls’ campaign which stretched to the White House and continues till date.<sup>43</sup> Nobel Prize winners, Malala Yousafzai and Kailash Satyarthi equally joined the United Nations Special Envoy for Global Education, Gordon Brown, in the fight to free the girls and create more safe schools for education.<sup>44</sup>

Attacks on the schools which has left a sizeable number of teachers and other staff of schools dead<sup>45</sup> and injured,<sup>46</sup> has forced teachers to stay away from school out of fear while others

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<sup>40</sup> UNICEF Nigeria (2015).

<sup>41</sup> UNICEF Press Centre ‘Over 1.4 million children forced to flee conflict in Nigeria and region’ 18 September 2015 available at [http://www.unicef.org/media/media\\_85551.html](http://www.unicef.org/media/media_85551.html) (accessed 16 December 2015) (hereafter UNICEF Press Centre (2015)).

<sup>42</sup> UNICEF Child Alert ‘Missing childhoods’ (2015) 6; Bajekal N ‘Inside the search for the Chibok girls abducted by boko haram’ Time 23 April 2015 available at <http://time.com/3833024/chibok-boko-haram/> (accessed 27 December 2015).

<sup>43</sup> ‘#BringBackOurGirls: Events held around the world on anniversary of Chibok abductions’ A World at School April 14 2015 available at <http://www.aworldatschool.org/news/entry/chibok-girls-anniversary-events-held-around-the-world-1873> (accessed 27 December 2015).

<sup>44</sup> Office of the United Nations Special Envoy for Global Education ‘Nobel Prize winners join UN education envoy in kidnapped girls plea’ 6 April 2015 available at <http://educationenvoy.org/media-release-nobel-winners-join-un-education-envoy-in-kidnapped-girls-plea/> (accessed 27 December 2015).

<sup>45</sup> The Boko Haram sect attacked a teachers’ college in April 2014 where they killed 8 teachers. ‘Suspected Boko Haram gunmen kill eight teachers, 11 others in fresh Borno attacks’ Towncrier April 12 2014 available at <http://naijatowncrier.com/suspected-boko-haram-gunmen-kill-eight-teachers-11others-in-fresh-borno-attacks/> (accessed 29 December 2015).

<sup>46</sup> The head master of a school and some teachers were shot just after the school had settled for academic activities in the morning. ‘Headmaster, three teachers shot in Kano’ Sahara Reporters 12 March 2013 available at <http://saharareporters.com/2013/03/12/headmaster-three-teachers-shot-kano> (accessed 29 December 2015).

have fled the region. Since 2012, Boko Haram has reportedly burnt down more than 300 schools depriving children access to education.<sup>47</sup> In such situations, not only the buildings but also teaching materials and children's school records are affected.<sup>48</sup>

The conflict has not only affected children and teachers physically, but has also affected them psychologically. The conflict has been traumatic for children as they are forced to flee from their homes under threat, leaving family, friends and their possessions behind, witnessing fighting and destruction and violence directed at their family members and the uncomfortable life as refugees or internally displaced persons.<sup>49</sup> War threatens both the physical and mental health of children<sup>50</sup> as they face several post traumatic disorders, depression, and fear, cognitive and emotional impairment which greatly affects their ability to learn.<sup>51</sup> The aftermath of this could affect the possibility of children reintegrating into their communities. This is the reason for the call by the Special Representative for programmes to address the psychological impact of the conflict and facilitate children's reintegration.<sup>52</sup>

#### 1.4 Literature review

Western education which has remained the bedrock of human and capital development in Nigeria is the worst hit by Boko Haram activities as the fight is directly against western education which is widely practiced in Nigeria.<sup>53</sup> Beyond being a right, education engenders human development by expanding opportunities and freedom, fostering peace and unity, economic growth and reducing poverty.<sup>54</sup> It is essential to the fulfilment of other rights,<sup>55</sup>

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<sup>47</sup> World Report 2014: Nigeria Human Rights Watch available at [www.hrw.org/world-report/2014/country-chapters/nigeria](http://www.hrw.org/world-report/2014/country-chapters/nigeria) (accessed 27 December 2015) (hereafter World Report 2014: Nigeria).

<sup>48</sup> 'Nigeria: 'Keep away from school or we will kill you': Right to education under attack in Nigeria' Amnesty International Report October 2013 available at <https://www.amnesty.org/download/Documents/.../afr440192013en.pdf> (accessed 2 February 2016) 12 (hereafter Amnesty International 2013).

<sup>49</sup> Yule W, Stuvland R, Baingana FK *et al* 'Children in armed conflict' in Green BL, Friedman MJ, de Jong JTVM *et al* (eds) *Trauma Interventions in War and Peace* (2003) 218 (hereafter Yule W, Stuvland R, Baingana FK *et al* (2003).

<sup>50</sup> See Betancourt TS & Khan KT 'The mental health of children affected by armed conflict: Protective processes and pathways to resilience' (2008) 20 (3) *International Review of Psychiatry* (hereafter Betancourt TS & Khan KT (2008).

<sup>51</sup> Barenbaum J, Ruchkin V & Schwab-Stone M 'Psychosocial aspects of children exposed to war: Practice and policy initiatives' (2004) 45(1) *Journal of Child Psychology and Psychiatry* (hereafter Barenbaum J, Ruchkin V & Schwab-Stone M (2004).

<sup>52</sup> SRSB-CAAC Report (2015) para 13.

<sup>53</sup> Oladunjoye P & Omemu F 'Effect of Boko Haram on school attendance in northern Nigeria' (2013) 1(2) *British Journal of Education* 4 (hereafter Oladunjoye P & Omemu F (2013).

<sup>54</sup> Ugwumba EU & Odom TC 'Boko Haram insurgency: A peril to the achievement of education for all in Nigeria' (2014) 3(1) *International Journal of Education, Learning and Development* 1.

<sup>55</sup> Coomans F 'In search of the core content of the right to education' in Chapman A & Russell S (eds) *Core Obligations: Building a Framework for Economic, Social and Cultural Rights* (2002) 219-20.

hence the UN has emphasised the importance of education in article 28 of the Universal Declaration of Human Rights (UDHR)<sup>56</sup> and article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>57</sup> and through its agencies.<sup>58</sup> The CRC<sup>59</sup> in particular guarantees the right to education and aims at promoting to the fullest potential, the child's personality, talent, physical and mental abilities, his respect for human rights and cultural values as well as preparing the child for a responsible life in a free society.

In addition, the ACRWC<sup>60</sup> directs education to the preservation and strengthening of positive African morals, traditional values and cultures; preservation of national independence and territorial integrity; promotion of African unity and solidarity; and the promotion of the understanding of primary health care. These provisions are aimed at building a total child that is useful to himself, his family and the society in general, hence the emphasis in both instruments on free and accessible primary and secondary education. In Nigeria, the principal law recognising the rights of children is the CRA 2003.<sup>61</sup> Section 15 of the Act provides that every child has the right to free, compulsory and universal basic education and it shall be the duty of the Government to provide such education.

As much as the Boko Haram insurgency is a challenge to the political, economic and social progress of Nigeria, it has severely affected education and this has dire consequences for sustainable development.<sup>62</sup> The environment has an influence on development, on learning and other aspects of behaviour.<sup>63</sup> Thus, any society characterized by any form of violence will not be conducive for any social interaction in the form of teaching and learning. Olaniyan notes that the attacks by Boko Haram can also affect students' performance in school as insecurity constitutes a negative reinforcement due to the obvious fact that teaching and learning cannot successfully occur in an environment characterised by threats.<sup>64</sup> Olamilekan has noted that the Boko Haram insurgency has in no small measure affected the educational psychology of school children and teachers due to incessant and unexpected

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<sup>56</sup> Adopted by the UN General Assembly resolution 217 A (111) of 10 December 1948.

<sup>57</sup> Adopted by the General Assembly of the UN on 19 December 1966.

<sup>58</sup> UNESCO leads the Education for All movement aiming to meet the learning needs of children, youths and adults by 2015.

<sup>59</sup> Article 28 and 29 CRC.

<sup>60</sup> Article 11 ACRWC.

<sup>61</sup> It replaced the Children and Young Persons Act of 1943 enacted under the British colonial rule.

<sup>62</sup> Muraina MB, Uyanga UD & Muraina KO 'Historical antecedents of Boko Harm insurgency and its implications for sustainable and educational development in North Central Nigeria' (2014) 5(22) *Journal of Education and Practice* 60.

<sup>63</sup> Eke E *Child Development in a Changing Cultural Context* (2000) 43.

<sup>64</sup> Olaniyan OD (2015) 6.

attacks on schools.<sup>65</sup> A recent study carried out in Borno state revealed that the insurgency has affected basic education as school attendance has drastically reduced owing to attacks on schools which has left many children hurt in the process.<sup>66</sup>

Access to education is greatly threatened where there is insecurity; hence States in situations of armed conflict have the highest rate of out of school children.<sup>67</sup> The protection afforded children in various international, regional and national instruments is threatened in situations of conflict which puts development in reverse. The harsh effects of conflict, such as; displacement, loss of lives, families, communities and means of livelihood, as well as the psychological trauma greatly affects citizens and especially children in accessing education.

The CRC<sup>68</sup> and the ACRWC<sup>69</sup> have made provisions to secure the rights of children in situations of armed conflict as they require States to protect the civilian population in armed conflict and take all feasible measures to ensure protection and care of children who are affected which includes the displaced, abandoned, and orphaned or children who do not have access to health care or education. The ACRWC requires the protection of children even in situations of internal armed conflicts, tension and strife.<sup>70</sup> Nigeria is committed to fulfilling the obligations in these instruments having ratified the CRC on 16 April 1991 and the ACRWC on 3 July 2001. Section 34 of the CRA 2003 prohibits the recruitment of children into the armed forces of Nigeria and obliges the government and relevant agencies to ensure that no child is involved in military activities or hostilities.

The right to education contemplated under these instruments protecting the rights of the child is not suspended during armed conflict<sup>71</sup> as the Committee on the Rights of the Child has recommended that affected States seek ways to ensure the protection of the right.<sup>72</sup> As a party to the instruments, the efforts of the Nigerian government to protect children are being thwarted by the activities of Boko Haram insurgents against school children, teachers and

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<sup>65</sup> Olamilekan A 'A perusal analyses on Boko Haram crisis in Northern Nigeria and its implication on educational psychology of school children and teachers' (2014) 3(2) *Journal of Education and Human Development* 376 (hereafter Olamilekan A (2014)).

<sup>66</sup> Abdulrasheed O, Onuselogu A & Obioma UG 'Effect of insurgency on universal basic education in Borno state of Nigeria' (2015) 3(4) *American Journal of Educational Research* 490-94 (hereafter Abdulrasheed O, Onuselogu A & Obioma UG (2015)).

<sup>67</sup> For example, Iraq, Democratic Republic of Congo, Philippine, Myanmar.

<sup>68</sup> Article 38 CRC.

<sup>69</sup> Article 22 ACRWC.

<sup>70</sup> Article 22(3) ACRWC.

<sup>71</sup> Article 38 (4) CRC, Article 22(3) ACRWC.

<sup>72</sup> See CRC Committee Day of General Discussion on 'The Right of the Child to Education in Emergency Situations' 19 September 2008. See also Nikolai S *Education in Emergencies* (2003) 6.

learning facilities, especially in the North Eastern part of the country which ordinarily has the lowest rates of school attendance compared to the Southern part.<sup>73</sup> Children who are supposed to be in school have either sought refuge along with their families in neighbouring countries, internally displaced, abducted or have been forcefully recruited as child soldiers by Boko Haram. In situations such as these, the children many never return to school or complete their education even when the insurgency is over, thus diminishing their contribution to the society.<sup>74</sup>

The ability of the State to ensure the security of life and properties of its citizens is threatened in situations of armed conflict.<sup>75</sup> This is the current situation the Nigerian government is contending with, as efforts by the Nigerian security forces to suppress the group have been difficult as it keeps changing tactics and targets in complicated but organised manners.<sup>76</sup> For instance, its mode of operation through the use of suicide bombers which has recently featured children<sup>77</sup> has been a hard nut for the security forces to crack. The vulnerability of the country to incessant attacks from the Boko Haram sect, despite the huge spending on security poses a great challenge to security in Nigeria.<sup>78</sup>

In 2013, the Nigerian government declared a state of emergency in Bornu, Yobe and Adamawa, the states in Nigeria worst hit by the insurgency. This was after a failed attempt at negotiation which has been described by Akpan, Ekanem and Olofu-Adeoye as defective, rather the government should take active steps to combat the insurgency treating the sect like terrorist and not like freedom fighters.<sup>79</sup>

The federal government has not effectively handled the situation and the counter-insurgency measures have been carried out in disregard for human rights. The humanitarian response has

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<sup>73</sup> 'Accelerating Progress to 2015: Nigeria' A report series to the United Nations Special Envoy for Global Education (2013) available at <http://educationenvoy.org/wp-content/uploads/2013/07/NIGERIA-UNSE-FINAL.pdf> (accessed 14 January/2016) 4 (hereafter Accelerating Progress to 2015: Nigeria).

<sup>74</sup> O'Mally B 'The longer-term impact of attacks on education systems, development and fragility and the implication for policy responses' Background paper prepared for the Education for All Global Monitoring Report (2011) UNESCO 2 (hereafter O'Mally B (2011)).

<sup>75</sup> Ogbonnaya UM & Ehigiamusoe UK 'Niger Delta militancy and the Boko Haram insurgency: National security in Nigeria' (2013) 4(3) *Global Security Studies* 1.

<sup>76</sup> Akanji T 'Insurgency in Nigeria: The "Boko Haram" dimension' (2013) 7 *Kas International Report* 89

<sup>77</sup> UNICEF Child Alert 'Missing childhoods' (2015).

<sup>78</sup> Achumba IC, Ighomereho OS & Akpo-Robaro MOM 'Security challenges in Nigeria and the implications for business activities and sustainable development (2013) 4(2) *Journal of Economics and Sustainable Development* 79.

<sup>79</sup> Akpan F, Ekanem O & Olofu-Adeoye A 'Boko Haram insurgency and the counter-terrorism policy in Nigeria' (2014) 10(2) *Canadian Social Science* 152.

been slow, fragmented and unable to meet the fast growing needs of those affected.<sup>80</sup> The lack of standard operating procedures to manage children affected by conflict, and limited emergency response planning to address the continuous attacks on schools also limits government alertness. Several factors are responsible for the government's inability to manage the situation. Some of these factors are, the force-based approach adopted by the security agencies; lack of proper intelligence gathering; high level of illiteracy and poverty in the North Eastern part of Nigeria; corruption; lack of cooperation from the communities; Nigeria's porous borders; low level of facilities for forensic investigation of crime.<sup>81</sup>

### **1.5 Research questions**

The incessant attacks against schools by the Boko Haram insurgents have put the child's right to education in Nigeria under threat. The study considers the effect of the attacks by insurgents on children's school attendance and learning facilities. The study also seeks to consider whether the steps taken by the Nigerian government to address the Boko Haram insurgency in Nigeria have been effective and well-targeted at alleviating the plight of children whose right to education has suffered a severe setback.

Specifically, the study seeks to answer the following research questions;

1. What is the impact of armed conflict on the right to education?
2. What is the impact of the Boko Haram insurgency on children's right to education in Nigeria?
3. Considering its obligations under international and regional legal framework, how effective are the steps taken by the Nigerian government in securing children's right to education affected by the insurgency?

### **1.6 Significance of study**

Much of the research done with respect to the Boko Haram insurgency has treated the problem as a social issue. Considering that children have rights that need to be protected even in situations of armed conflict, this study is undertaken with the intention of approaching the

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<sup>80</sup> Watchlist on Children and Armed Conflict "Who will care for us?" Grave Violations against children in armed conflict' September 2014 available at [www.watchlist.org/wordpress/wp-content/uploads/2111-Watchlist-Nigeria\\_LR.pdf](http://www.watchlist.org/wordpress/wp-content/uploads/2111-Watchlist-Nigeria_LR.pdf) (accessed 5 February 2016) 4 (hereafter Watchlist on Children and Armed Conflict 'Who will care for us?' (2014).

<sup>81</sup> Uzoigwe JC 'The constraints of government security agencies in tackling terrorism in Nigeria: A case study of Boko Haram' available at [http://www.academia.edu/4210854/The\\_constraints\\_of\\_Government\\_security\\_agencies\\_in\\_tackling\\_terrorism\\_-\\_A\\_case\\_Study\\_of\\_Boko\\_Haram](http://www.academia.edu/4210854/The_constraints_of_Government_security_agencies_in_tackling_terrorism_-_A_case_Study_of_Boko_Haram) (accessed 20 December 2015).

impact of the insurgency from a child's right perspective with particular emphasis on the right to education. Since the government has taken steps in fighting the insurgents through its counter-insurgency operations, the study reviews the steps taken by the Nigerian government in alleviating the sufferings of the children affected. It seeks to assess how well the plans aimed at addressing the effect of the insurgency have been child sensitive enough to complement the efforts at the international level.

This study is thus significant as a contribution to the body of knowledge on child protection in armed conflict. This study will be beneficial to child protection actors within Nigeria and in other areas affected by armed conflict, as it will provide detailed information about the protection gaps and challenges of children affected by armed conflict. This study will equally be useful to the Nigerian government; specifically, the National Emergency Management Agency in assessing its activities with regard to alleviating the plight of children denied access to education. Governments of other jurisdictions where access to education has equally been affected by armed conflict can draw inspiration from this study in addressing the issues. For future researchers, this study can provide a guideline on the situation of children affected by the Boko Haram insurgency.

### **1.7 Limitation of study**

This study is limited to the effect of the Boko Haram insurgency on the child's right to education in Nigeria. This study is limited to international, regional and national instruments on the protection of children in armed conflict which applies to Nigerian children. Reference will be made to the CRC, ACRWC and the CRA 2003 and other relevant works in this area of study.

### **1.8 Research methodology**

The study will review the literature on protection of children in armed conflict relevant to Nigerian children. International, regional and national laws on the subject will be referred to. The study will include a review of laws, resolutions, books, and articles, reports of international bodies, the media and electronic materials accessed from the internet which is relevant to the study.

## **1.9 Chapters overview**

### **Chapter 1: Introduction**

This chapter will present an overview and background to the study.

### **Chapter 2: Protection of children's rights in Nigeria**

This chapter will introduce the legal framework for protecting children's rights with emphasis on education.

### **Chapter 3: Protection of children in armed conflict**

This chapter will introduce the legal framework for protecting children in situations of armed conflict as well as the impact of armed conflict on the child's right to education.

### **Chapter 4: Effect of the Boko Haram insurgency on the child's right to education in Nigeria.**

This chapter will address the effect of the insurgency on child education.

### **Chapter 5: Nigerian government's response to the Boko Haram insurgency**

This chapter will examine the efforts of the government in conjunction with humanitarian aid received internationally and assess how much it has contributed to alleviating the plight of children who are deprived of education in Nigeria in line with the obligations of State Parties under the CRC and ACRWC.

### **Chapter 6: Conclusion and Recommendations.**

Based on the outcome of the preceding chapters, this chapter will draw observations and make relevant recommendations.

## CHAPTER TWO

### 2 PROTECTION OF CHILDREN'S RIGHTS IN NIGERIA

#### 2.1 Introduction

The essence of childhood is more than just the time between birth and attainment of adulthood, rather, it refers to the state and condition of the child's life within that period.<sup>82</sup> Hence, children's rights can be defined as the rights that make for their survival, development, protection and meaningful participation in the society. Over time, the recognition of children as right holders and not as mere extension of their parents has been improved with the adoption of several international instruments. This chapter looks at the protection of children's rights both at the international, regional level as well as in the Nigerian legal system with an emphasis on the child's right to basic education. Reference is also made to the commitments at the international level made towards the realisation of the child's right to basic education. It also looks into the situation of basic education in Nigeria highlighting the sorry state of basic education in Nigeria which has been worsened by Boko Haram insurgency.

#### 2.2 International and regional protection of children's rights

The Declaration of the Rights of the Child known as the Declaration of Geneva adopted on 26 September 1924, gave recognition to children after the First World War and viewed them as mere recipients of welfare.<sup>83</sup> This recognition continued with the United Nations Declaration of the Rights of the Child 1959<sup>84</sup> which declares that mankind owes the child the best it has to give in terms of protection and other means to enable him develop mentally, physically, morally, spiritually and socially<sup>85</sup> without discrimination.<sup>86</sup> This declaration formed the basis of the CRC which was adopted 30 years later.<sup>87</sup>

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<sup>82</sup> Bellamy C (2005) 3.

<sup>83</sup> Kaime T *The African Charter on the Rights and Welfare of the Child: A socio-legal Perspective* (2009) 12. The Declaration was not intended to create legal rights for children with corresponding legal obligations on States. It rather emphasised the duties men and women had to ensure mankind gave the best it could to children.

<sup>84</sup> Adopted by the General Assembly of the UN on 20 November 1959.

<sup>85</sup> Principle 2 of the Declaration.

<sup>86</sup> Principle 1 of the Declaration.

<sup>87</sup> Moody Z 'The United Nations Declaration on the Rights of the Child (1959): Genesis, transformation and dissemination of a treaty (re)constituting a transnational cause' (2015) 45 *Prospects* 25.

The International Covenant on Civil and Political Rights (ICCPR)<sup>88</sup> requires the family, society and the State to ensure without discrimination, the right of the child to such measures of protection as required by his status as a minor.<sup>89</sup> The ICESCR requires special measures of protection of children from economic and social exploitation and requires States to set age limits below which paid employment or child labour should be prohibited.<sup>90</sup> Other international instruments extending protection to children are the Convention on the Elimination of Discrimination against Women,<sup>91</sup> Convention on the Rights of Persons with Disability,<sup>92</sup> Convention on the Elimination of all Forms of Racial Discrimination<sup>93</sup> amongst others. On the African scene, there is the African Charter on Human and Peoples' Rights,<sup>94</sup> the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol).<sup>95</sup> Though the various human rights documents are applicable to all human beings, a child specific instrument was needed because they do not adequately address the peculiar needs of children.<sup>96</sup>

The principal international instrument specially dedicated to protecting the rights of the Child is the CRC. The motivating principle of the convention is that 'children need special protection and priority care as a vulnerable group because they are in the developmental stages of their lives.'<sup>97</sup> Children are considered vulnerable due to their lack of political power, their capacities are still developing, and they are legally dependent on an adult for care, protection, provision and guidance.<sup>98</sup> They are equally fragile, naïve, defenceless, often oblivious of danger and sometimes unaware and incapable of claiming their rights. Their physical, mental and psychological make-up predisposes them to greater hardship than adults. Children can neither negotiate special rights for themselves, nor possess necessary skill to acquire a stake in the resources of their communities. The CRC requiring special care and assistance for children recognises that even when children and adults face the same challenge,

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<sup>88</sup> Adopted by the General Assembly of the UN on 19 December 1966.

<sup>89</sup> Article 24 ICCPR.

<sup>90</sup> Article 10(3) ICESCR.

<sup>91</sup> Adopted by the UN General Assembly on 18 December 1979 and entered into force on 3 September 1989.

<sup>92</sup> Adopted on 13 December 2006 at the 61<sup>st</sup> session of the UN General Assembly by resolution A/RES/61/106.

<sup>93</sup> Adopted by the UN General Assembly on 21 December 1965 and entered into force on 4 January 1969.

<sup>94</sup> Adopted by the Organisation of African Unity Assembly in 1981 and entered into force on 21 October 1986.

<sup>95</sup> Adopted by the Assembly of the African Union at the second summit of the African Union in Maputo Mozambique on 21 July 2003.

<sup>96</sup> UNICEF 'The Child's Rights Act' Nigeria Country Programme August 2007 available at [http://www.unicef.org/wcaro/WCARO\\_Nigeria\\_Factsheets\\_CRA.pdf](http://www.unicef.org/wcaro/WCARO_Nigeria_Factsheets_CRA.pdf) (accessed 1 December 2015).

<sup>97</sup> Rosa S & Dutschke M 'Children's rights at the core: The use of international law in South African cases on children's socio-economic rights' (2002)22 *SAJHR* 230 (hereafter Rosa S & Dutschke M (2002)).

<sup>98</sup> Rosa S & Dutschke M (2002) 230.

children may require different solutions.<sup>99</sup> This necessitates the creation of a special ‘normative visibility’ and to an extent, priority for ‘children’s interests and needs.’<sup>100</sup> Mezmur notes that the ‘fundamental requirement for the implementation of the CRC is the recognition of the child as a full human being and respect for all the concomitant rights that they hold.’<sup>101</sup>

The CRC stands as the primary reference point regarding questions of children’s rights<sup>102</sup> covering both the traditionally classified civil and political rights on one hand, and economic, social and cultural rights on the other. It is unique amongst other human rights instruments because firstly, many States participated in the signing ceremony of the treaty.<sup>103</sup> Secondly, the CRC entered into force within a year of its adoption.<sup>104</sup> It is the most widely ratified human rights treaty having received near universal ratification.<sup>105</sup> The CRC in effect represents a global consensus on the terms of childhood, and although no absolute agreement exists on the interpretation of each of the articles of the convention, there is a substantial common ground on what the standards of childhood should be,<sup>106</sup> and the minimum rights which governments owe to children.<sup>107</sup> Considering that the rights of children were not adequately defined and protected in prior human rights instruments, the convention is equally notable for the new theory of children’s rights which it embraces.<sup>108</sup> An example is article 12 which gives children an opportunity to have a say in matters affecting them,<sup>109</sup> and also provisions concerning adoption, play and leisure, juvenile justice amongst others.<sup>110</sup>

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<sup>99</sup> Bellamy C (2005) 3.

<sup>100</sup> Scott C & Alston P ‘Adjudicating constitutional priorities in a transnational context: A comment on Soobramoney’s legacy and Grootboom’s promise’ (2000) 16 *SAJHR* 22.

<sup>101</sup> Mezmur BD ‘The African Children’s Charter versus the UN Convention on the Rights of the Child: A zero sum game?’ 2008 *SAPR/PL* 1 (hereafter Mezmur BD (2008)).

<sup>102</sup> Roose R & Bouverne-de Bie M ‘Do children have rights or do their rights have to be realised? The United Nations Convention on the Rights of the Child as a frame of reference for pedagogical action’ (2007) 41(3) *Journal of Philosophy of Education* 43.

<sup>103</sup> Sixty States participated in the signing of the CRC.

<sup>104</sup> It was adopted by the General Assembly Resolution 44/25 on 20 November 1989 and entered into force on 2 September 1990.

<sup>105</sup> The only State that has signed but not ratified the CRC is United States of America. Somalia ratified the treaty in October 2015 bringing the number of States parties to the CRC to 196. See United Nations Human Rights ‘UN hails Somalia’s ratification of the Convention on the Rights of the Child’ 2 October 2015 available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16556&LangID=E> (accessed 30 November 2015).

<sup>106</sup> Bellamy C (2005) 1.

<sup>107</sup> Cohen C ‘The rights of the child: Implications for change in the care and protection of refugee children’ (1996) 3 *International Journal of Refugee Law* 676.

<sup>108</sup> Sloth-Nielsen J ‘Ratification of the United Nations Convention on the Rights of the Child: Some implications for South African law’ (1995) 11 *African Journal on Human Rights* 402-3 (hereafter Sloth-Nielsen J (1995)).

<sup>109</sup> Sloth-Nielsen J (1995) 403.

<sup>110</sup> Sloth-Nielsen J (1995) 408.

Complementing the CRC in Africa is the ACRWC. Considering the fact that the world community is socially, economically and culturally diverse, the provisions of international instruments are prone to diverse understanding, interpretation and application.<sup>111</sup> The need to have a children's rights instrument to suit the particular needs of African children not captured in the CRC was the major reason for the ACRWC. Considering that African States were not adequately represented in the drafting of the CRC, it was thought that it missed some socio-cultural and economic realities of African experience.<sup>112</sup> Though both instruments exist to complement each other, the substantive provisions of the ACRWC set a higher level of protection for African children than the CRC.<sup>113</sup> Notable amongst them are the provisions in relation to participation in armed conflict, child marriages, refugee children and children who fall pregnant while in school. Each of these aspects is in tune with the precarious position in which children find themselves in Africa. The ACRWC is not opposed to the CRC, rather both instruments are meant to provide a legal framework for the rights of children in Africa.<sup>114</sup>

The CRC in Article 1 defines a child for the purpose of the convention as 'every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier'. This qualification was included as a flexibility device to cater for States where the age of majority is lower than 18.<sup>115</sup> The ACRWC in article 2 defines a child as every human being below the age of 18 years. There is no qualification and this runs through the whole Charter as it maintains a straight 18 position in all its provisions.

The CRC as a legally binding international treaty rests on four pillars or group of rights<sup>116</sup> which are considered as general principles of fundamental importance for the implementation of the whole convention.<sup>117</sup> The four pillars accords children the right against non-

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<sup>111</sup> Rwezaura B 'The concept of child's best interest in the changing economic and social context of Sub-Saharan Africa' (1994) 8 *International Journal of Law and the Family* 82-3. In this paper Rwezaura argued that the interpretation and application of the concept of child's best interest is largely influenced by the social, economic and political conditions of the State. Armstrong A 'Towards a cultural understanding of the interplay between children's and women's rights: An Eastern and Southern African perspective' (1995) 3 *International Journal of Children's Rights* 333.

<sup>112</sup> Viljoen F 'The African Charter on the Rights and Welfare of the Child' in Davel CJ (ed) *Introduction to Child Law in South Africa* (2000) 222.

<sup>113</sup> Mezmur BD (2008) 14.

<sup>114</sup> Olowu D 'Protecting children's rights in Africa: A critique of the African Charter on the Rights and Welfare of the Child' (2002) 10 *International Journal of Children's Rights* 128.

<sup>115</sup> Detrick S A *Commentary on the United Nations Convention on the Rights of the Child* (1999) 52.

<sup>116</sup> Biersteker L & Robinson SH 'Socio economic policies: The impact on children in South Africa' in Donald D, Dawes A & Louw J (eds) *Addressing Childhood Adversity* 30.

<sup>117</sup> Mezmur BD (2008) 3.

discrimination,<sup>118</sup> the right to have their best interest as a primary consideration in all actions concerning them,<sup>119</sup> the inherent right of the child to life survival and development<sup>120</sup> and the right of a child who is capable of forming his own views to express those views freely in all matters affecting the child.<sup>121</sup> These pillars of right are also replicated in the ACRWC.

### 2.3 Children's rights in Nigeria

The general protection of human rights in Nigeria is contained in Chapter IV of the CFRN 1999 though not child specific. The Children and Young Persons Law (CYPL)<sup>122</sup> of various states in Nigeria contain provisions dealing largely with juvenile justice administration and not necessarily child's rights specific. It is also not in line with the CRC and ACRWC in terms of modern conceptions on children's rights or even on juvenile justice administration.<sup>123</sup> Nigeria has committed to the protection of children's rights through its ratification of the CRC and ACRWC<sup>124</sup> and other international human rights treaties extending their wings of protection to children. Nigeria submitted its first report on the implementation of the CRC to the Committee on the Rights of the Child in 1996. One of the recommendations of the committee was the domestication of the CRC to ensure full implementation under Nigerian law.<sup>125</sup> The CRC equally enjoins State Parties to undertake to disseminate the convention's principles and take all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the convention.<sup>126</sup>

Against this background, the CRA 2003 was drafted in 1993 but finally became an Act of parliament in 2003. It was modelled after the provisions of the CRC and the ACRWC. The Act was informed by the need to incorporate the rights and principles contained in the CRC and ACRWC into national law, consolidate legislation concerning children into one

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<sup>118</sup> Article 2 CRC.

<sup>119</sup> Article 3 CRC.

<sup>120</sup> Article 6 CRC.

<sup>121</sup> Article 12 CRC, Sloth-Nielsen J (1995) 408-11.

<sup>122</sup> The CYPL was passed by various state legislatures from the principal enactment which is the Children and Young Persons Act. The Act was originally passed by the British colonial government in 1943 and was later revised and incorporated into Nigeria's federal laws in 1958.

<sup>123</sup> Ladam M 'The Child's Rights Act 2003 and the challenges of its adoption by the governments of the 19 Northern states' At a One-day interactive forum for Sokoto state House of Assembly legislators, organized by the Sokoto state Ministry of Women Affairs and UNICEF on 23 July 2007 at the Sokoto state House of Assembly, Sokoto, Nigeria 1.

<sup>124</sup> Nigeria ratified the CRC on 16 April 1991 and the ACRWC in 2001.

<sup>125</sup> Alemika EEO, Chukwuma I, Lafratta D *et al* 'Rights of the child in Nigeria: Report on the implementation of the rights of the child by Nigeria' A report prepared for the Committee on the rights of the Child 38<sup>th</sup> Session, Geneva January 2005 available at [http://www.cleen.org/nigeria\\_ngo\\_report\\_OMCT.pdf](http://www.cleen.org/nigeria_ngo_report_OMCT.pdf) (accessed 1 December 2015) 9 (hereafter Alemika EEO, Chukwuma I & Lafratta D *et al* (2005).

<sup>126</sup> Article 4 CRC.

comprehensive law,<sup>127</sup> as well as specify the duties and obligations of government, parents and other authorities, organizations and bodies.<sup>128</sup>

Though a landmark legislative achievement, the CRA 2003 has not translated into an improved child's right protection throughout the federation owing to the fact that having been enacted at the national level, the states are expected to formally adopt the Act for domestication as state laws.<sup>129</sup> The reason is that issues of child protection are on the residual list<sup>130</sup> of the Nigerian constitution giving states exclusive responsibility and jurisdiction to make laws relevant to their specific situations. Thus, the CRA 2003 is only effective in states that have adopted it as a state law.

The CRA 2003 in section 277 defines a child as 'a person below the age of eighteen years.' The Act provides the best interest of the child to be the primary consideration in all actions concerning a child, whether undertaken by an individual, public or private body, institution, court of law, or administrative or legislative authority.<sup>131</sup> The provisions of Chapter IV of the Constitution relating to fundamental rights are stated to apply in addition to the rights contained in the Act.<sup>132</sup> Under the Act, every child has the right to survival and development, identity, freedom of association and peaceful assembly, thought, conscience and religion, private and family life and movement. No child shall be subjected to any form of discrimination and must have his dignity respected at all times. The child also has a right to parental care, protection and maintenance, rest, recreation and leisure, health and health care services<sup>133</sup> and also free, compulsory and universal primary education.<sup>134</sup> The Act criminalises child marriage and betrothal, tattoos and skin marks,<sup>135</sup> exposure of children to the use, production or trafficking of narcotic drugs or other criminal activities, abduction or use of a child for exploitative labour, begging or hawking, unlawful sexual intercourse or other forms of sexual exploitation.<sup>136</sup> Section 34 prohibits the recruitment of a child into any

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<sup>127</sup> UNICEF 'Law reform and implementation of the Convention on the Rights of the Child' (2007) UNICEF Innocenti Research Centre 17.

<sup>128</sup> Section 2 CRA 2003.

<sup>129</sup> Iguh NA & Nosike O 'An examination of the child rights protection and corporal punishment in Nigeria' (2011) 2 *Nnamdi Azikiwe Journal of International Law and Jurisprudence* 98.

<sup>130</sup> The residual list of the Nigerian constitution contains issues over which only the state legislature has jurisdiction to make laws.

<sup>131</sup> Section 1 CRA 2003.

<sup>132</sup> Section 3 CRA 2003.

<sup>133</sup> Section 13 CRA 2003.

<sup>134</sup> Section 15 CRA 2003.

<sup>135</sup> Sections 21, 22, 23 and 24 CRA 2003.

<sup>136</sup> Sections 25, 26, 27, 28, 29, 30, 31, 32, 33 CRA 2003.

branch of the armed forces and requires the government or relevant agency to ensure that no child is directly involved in military operation and hostilities.

In addition to the list of rights, the CRA 2003 sets out the responsibilities of government and parents to provide structures and facilities, homes and a conducive environment for the full development of children. It empowers the court to make protection and supervision orders in respect of children in need of care and protection.<sup>137</sup> Like the ACRWC, the CRA 2003 provides that every child has responsibilities towards his family and society, the country and legally recognised communities both locally and internationally.<sup>138</sup> The Act also establishes the family courts to determine issues relating to children.<sup>139</sup> The Act contains provisions relating to possession and custody of children,<sup>140</sup> guardianship, foster care and adoption,<sup>141</sup> and child justice administration.<sup>142</sup>

## 2.4 The child's right to education

The emotional, social and physical development of young children has a direct effect on their overall development and on the adult they will become. Hence, understanding the need to invest in every child is important so as to maximise their future well-being. Education is regarded as one of the most powerful tools for the development of man and the transformation of human society.<sup>143</sup> Education is also seen as an instrument of conserving, transmitting and renewing culture and for a child, the instructions received in the process of education strengthens his mind to be able to understand his culture<sup>144</sup> as well as unite children from different cultures.<sup>145</sup> Fafunwa describes education as the aggregate of all processes through which a child develops abilities, attitudes and other forms of behaviour which are of a positive value to society.<sup>146</sup> The necessary skills to prepare individuals to live

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<sup>137</sup> Section 50-67 CRA 2003.

<sup>138</sup> Section 19 CRA 2003.

<sup>139</sup> Section 149-203 CRA 2003.

<sup>140</sup> Section 68-81 CRA 2003.

<sup>141</sup> Sections 82-93 CRA 2003.

<sup>142</sup> Sections 204-238 CRA 2003.

<sup>143</sup> Labo-Popoola SO, Bello AA & Atanda FA 'Universal Basic Education in Nigeria: Challenges and the way forward' (2009) 6(5) *Pakistan Journal of Social Sciences* 252 (hereafter Labo-Popoola SO, Bello AA & Atanda FA (2009)).

<sup>144</sup> Aluede ROA 'Universal Basic Education in Nigeria: Matters arising (2006) 20(2) *Journal of Human Ecology* 97 (hereafter Aluede ROA (2006)).

<sup>145</sup> Woolman DC 'Educational reconstruction and post-colonial curriculum development: A comparative study of four African countries' (2001) 2(5) *International Education Journal* 27.

<sup>146</sup> Fafunwa AB *History of Education in Nigeria* (1974) 2.

happily with each other in the society is also seen as a function of education in the process of teaching, training and learning in schools.<sup>147</sup>

Education enables individuals to acquire appropriate knowledge, values and skills for personal development and also contribute meaningfully to the development of the society. It is equally a tool with which various countries can enhance national development. As a socio-economic right which requires resources for its achievement, the ability of education to achieve this needed development and transformation in the society is dependent on the political will of government to translate its educational policies into actions.<sup>148</sup> According to the Committee on Economic, Social and Cultural Rights (CESCR) education as a human right is indispensable in achieving other human rights, making it one of the best financial investments a State can make.<sup>149</sup>

Education was declared a basic human right for every person in the UDHR<sup>150</sup> and this has been reaffirmed in the ICESCR,<sup>151</sup> the CRC,<sup>152</sup> the African Charter<sup>153</sup> the ACRWC<sup>154</sup> and the African Women's Protocol amongst other international and regional human rights instruments. The right to education has also found its way into the Constitution of some countries where socio-economic rights are guaranteed alongside civil and political rights. One of such is the Constitution of the Republic of South Africa in which section 29 guarantees an unqualified right to basic education and the progressive availability of further education.<sup>155</sup>

The child's right to life, survival and development is guaranteed by the CRC as well as the ACRWC. Development in this regard refers to physical, mental, emotional and psychological development needed by the child in order to sustain him into adulthood for an individual life in a free society. Education is a key aspect of the child's development and the law as a dynamic tool of development, has been applied at different times to protect children and their rights. Children have to be cared for and nurtured to develop their potentials so that they can

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<sup>147</sup> Olamilekan A (2014) 376.

<sup>148</sup> Labo-Popoola SO, Bello AA & Atanda FA (2009) 252.

<sup>149</sup> Committee on Economic Social and Cultural Rights General Comment No. 13 'The Right to Education' (Article 13) adopted at the 21st session of the Committee on 8<sup>th</sup> December 1999 E/C.12/1999/10 para 1 (hereafter General Comment 13).

<sup>150</sup> Article 26 UDHR.

<sup>151</sup> Article 13 and 14 ICESCR.

<sup>152</sup> Article 28 and 29 CRC.

<sup>153</sup> Article 17(1) African Charter.

<sup>154</sup> Article 11 ACRWC.

<sup>155</sup> Fiske EB & Ladd HF *Elusive Equity: Education Reform in Post-Apartheid South Africa* (2004) 10.

contribute to the development of the society.<sup>156</sup> The CESCR, emphasising the indivisibility and interdependence of rights, noted in its General Comment 11 that the right to education is essential to the full realization of other rights.<sup>157</sup>

Drawing inspiration from articles 13 and 14 of the ICESCR which makes a comprehensive provision for the right to education, States Parties to the CRC in article 28 recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, are required to make primary education compulsory and available free to all; encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need; make higher education accessible to all on the basis of capacity by every appropriate means; make educational and vocational information and guidance available and accessible to all children; and take measures to encourage regular attendance at schools and the reduction of drop-out rates.

In article 29 of the CRC, education of the child is directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential; the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations. It also aims at the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own. Education is also meant to prepare the child for a responsible life in a free society, in the spirit of understanding, peace, and tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin as well as the development of respect for the natural environment.

The Committee on the Rights of the Child has noted that the child's right to education is not just a matter of access<sup>158</sup> but also of content<sup>159</sup> which can build into the child a balanced

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<sup>156</sup> Akwara AF, Soyibo AG & Agba MS 'Law and children's right protection: The nexus for sustainable development in Nigeria' (2010) 6(2) *Canadian Social Science* 27.

<sup>157</sup> Committee on Economic Social and Cultural Rights General Comment No. 11 'Plans of Action for Primary Education' (Article 14) adopted at the 20th Session of the Committee on 10 May 1999 E/1992/23 para 2 (hereafter General Comment 11).

<sup>158</sup> Article 28 CRC.

<sup>159</sup> Article 29 CRC.

human rights friendly approach to challenges that accompany a period of fundamental change driven by globalisation, new technologies and related phenomena.<sup>160</sup> Education should equally be child friendly, inspiring and a motivation to the child. The school should foster a humane atmosphere that allows children to develop according to their evolving capacities.<sup>161</sup> The essential feature of primary schools has been structured into a 4 'A' scheme by the UN Special Rapporteur on the Right to Education. They include availability, accessibility, acceptability and adaptability.<sup>162</sup> Availability means that all necessary infrastructures, learning facility and personnel are in place. Accessibility means that children have the right of access without discrimination, affordable and within a reasonable distance.<sup>163</sup> The CESCR, emphasising the importance of the four features in General Comment 13,<sup>164</sup> explains acceptability to mean that the form and substance of education curricula and teaching methods have to be relevant, culturally appropriate and of good quality.<sup>165</sup> Adaptability requires that education be flexible enough to meet the changing needs of societies, communities and students in their diverse social and cultural settings.<sup>166</sup>

A State has the obligation to respect protect and fulfil<sup>167</sup> the essential features of the right to education.<sup>168</sup> While the ICESCR in article 2 provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes on States Parties various obligations which are of immediate effect, such as non-discrimination in the exercise of the right and the obligation to take deliberate, concrete and targeted steps towards the full realization of the right to education.<sup>169</sup> Progressive realization of the right to education overtime means that States Parties have a specific and continuing obligation to move as expeditiously and effectively as possible towards the full realization of the right to

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<sup>160</sup> Committee on the Rights of the Child General Comment No. 1 'Article 29(1): The Aims of Education' adopted at the 26<sup>th</sup> session of the committee on 17 April 2001 CRC/GC/2001/1 para 3 (hereafter General Comment No. 1).

<sup>161</sup> General Comment No. 1 para 8.

<sup>162</sup> United Nations Economic and Social Council Preliminary Report of the Special Rapporteur on the Right to Education Ms Katarina Tomasevski, submitted in accordance with the Commission on Human Rights resolution 1998/33 para 50-74.

<sup>163</sup> Verheyde M *Commentary on the United Nations Convention on the Rights of the Child (Article 28: The Right to Education)* (2006) 15-17.

<sup>164</sup> General Comment 13 para 6.

<sup>165</sup> General Comment 13 para 6(c).

<sup>166</sup> General Comment 13 para 6(d).

<sup>167</sup> General Comment 13 para 46.

<sup>168</sup> General Comment 13 para 50.

<sup>169</sup> General Comment 13 para 43.

education.<sup>170</sup> In line with article 14 of the ICESCR, the CESCR in General Comment 11 requires the State to adopt a plan of action towards its progressive implementation.<sup>171</sup>

On the African scene, the ACRWC makes the same provisions as section 28(1) of the CRC though not requiring a progressive realisation of the right. Article 11 of the ACRWC as complementing the CRC in addition, directs education to the preservation and strengthening of positive African morals, traditional values and cultures; the preservation of national independence and territorial integrity; the promotion of African unity and solidarity; and the promotion of the child's understanding of primary health care. The ACRWC protects the rights of children who fall pregnant before completing their education to have an opportunity to continue with their education on the basis of their individual ability.<sup>172</sup> The States Parties to both the CRC and ACRWC are also required to take appropriate measures to ensure that school discipline is administered in a manner that respects the child's human dignity and in conformity with the convention and the charter.<sup>173</sup> Considering the precarious position of the girl child in accessing education, the African Women's Protocol requires State Parties to eliminate all forms of discrimination in access to education.<sup>174</sup> Also, State Parties are obliged to promote the enrolment and retention of girls in school<sup>175</sup> and also protect them from all forms of abuse while in school.<sup>176</sup>

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## **2.5 Commitments towards achieving the right to education**

It has been noted that a major problem facing the developing world is the lack of quality basic education to poor children from poor countries with the worst hit being girls and other vulnerable children, such as those with disabilities, affected by HIV/AIDS, refugees and internally displaced children.<sup>177</sup> Commendable efforts have been made at the international level to improve access to and the quality of education. One of such is the Education for All (EFA) movement led by the UNESCO with the aim of meeting all the learning needs of children, youths and adults by 2015. In 1990 over 150 governments met at Jomtien in Thailand and adopted the World Declaration on Education for All. In 2000, this commitment

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<sup>170</sup> General Comment 13 para 44.

<sup>171</sup> General Comment 11 para 10.

<sup>172</sup> Article 11(6) ACRWC.

<sup>173</sup> Article 28(2) CRC and Article 11(5) ACRWC.

<sup>174</sup> Article 12(1)(a) African Women's Protocol.

<sup>175</sup> Article 12(2)(c) African Women's Protocol.

<sup>176</sup> Article 12(1)(b) African Women's Protocol.

<sup>177</sup> Sperling GB 'The case for universal basic education for the world's poorest boys and girls' (2005) 87(3) *Phi Delta Kappan (PDK International)* 213.

was reaffirmed by 164 governments in Dakar, Senegal at the World Education Forum where six goals were adopted to be met by 2015.<sup>178</sup>

Among the goals, of particular interest to children are expanding and improving comprehensive early childhood care and education, especially for vulnerable and disadvantaged children and ensuring that all children, particularly girls, children in difficult circumstances and those belonging to ethnic minorities have access to free, quality and compulsory education. Other goals are, eliminating gender disparities in primary and secondary education with a focus on ensuring girls' full and equal access to quality basic education; improving every aspect of the quality of education and ensuring their excellence so that recognised and measurable learning outcomes are achieved by all, especially in literacy, numeracy and essential life skills.<sup>179</sup>

Commitment towards ensuring the reality of the right to education is also reflected in the UN Millennium Development Goals (MDGs) established at the Millennium Summit of the UN in 2000 following the adoption of the UN Millennium Declaration. Through the declaration, all UN member States and international organisations made a commitment to help achieve the MDGs by 2015. The achievement of universal primary education is the second goal among the eight MDGs. The target of this goal is to ensure that children universally, including both boys and girls will be able to complete a full course of primary education by 2015.<sup>180</sup> MDG third goal also has the target of eliminating gender disparity in primary and secondary education by 2005 and in all levels of education by 2015.<sup>181</sup>

Although the MDG deadline of 2015 has not met with full achievement, significant progress has been made. Primary school net enrolment in the developing world rose from 83 percent in 1990 to 91 percent in 2015.<sup>182</sup> Also, there has been nearly 50 percent decrease in the number of out-of-school children of primary school age globally from 100 million in 2000 to

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<sup>178</sup> UNESCO 'Education for All Movement' (2015) available at <http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/education-for-all/> (accessed 26 November 2015).

<sup>179</sup> UNESCO 'Education for All Goals' available at <http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/education-for-all/efa-goals/> (26 November 2015).

<sup>180</sup> United Nations 'Goal 2: Achieve universal primary education' (2015) available at <http://www.un.org/millenniumgoals/education.shtml> (accessed 26 November 2015).

<sup>181</sup> United Nations 'MDG 3: Promote gender equality and empower women' (2015) available at <http://www.un.org/millenniumgoals/gender.shtml> (accessed 26 November 2015).

<sup>182</sup> United Nations Millennium Development Goals Report 2015 available at [http://www.un.org/millenniumgoals/2015\\_MDG\\_Report/pdf/MDG%202015%20rev%20\(July%2011\).pdf](http://www.un.org/millenniumgoals/2015_MDG_Report/pdf/MDG%202015%20rev%20(July%2011).pdf) (accessed 15 February 2016) 25 (hereafter MDG Report 2015).

about 57 million in 2015.<sup>183</sup> In Sub-Saharan Africa, primary school net enrolment has increased from 8 percent in the period between 1990 and 2000 to 20 percent in the period between 2000 and 2015.<sup>184</sup>

However, the target of MDG second goal of achieving universal basic education is still a challenge in the developing countries as a result of poverty, disability, inadequate school facilities, and disparity in access to education for the rich and the poor, and for children in urban and rural areas.<sup>185</sup> A survey conducted in 63 developing countries between 2008 and 2012 revealed that children in the poorest households were four times more likely to be out of school as those in the wealthiest households.<sup>186</sup> That same study showed that the average number of out-of-school children was twice as high as the rate in urban areas.<sup>187</sup> In India 33 percent of children aged six to 13 with disabilities are out of school.<sup>188</sup>

Inequality in access to education is also a major hindrance in achieving the MDG second goal. The children most likely to drop out of school are girls from poor households living in rural areas<sup>189</sup> due to son preference and early marriage.<sup>190</sup> Sub-Saharan Africa and Western Asia have the largest gender gaps in primary enrolment.<sup>191</sup> Another major problem currently affecting education is armed conflict. Due to the impact of armed conflict on access to education, in North Africa and Southern Asia, the number of out of school children increased from 30 percent in 1990 to 36 percent in 2012.<sup>192</sup>

The EFA goals have not seen full achievement in many countries. The EFA 2015 report<sup>193</sup> documented increases in school enrolment, abolition of school fees that helped attract

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<sup>183</sup> MDG Report 2015 25.

<sup>184</sup> MDG Report 2015 25.

<sup>185</sup> MDG Monitor 'Goal 2: Achieve universal primary education' (2015) available at <http://www.mdgmonitor.org/mdg-2-achieve-universal-primary-education/> (accessed 26 November 2015) (hereafter MDG Monitor :Goal 2 (2015)).

<sup>186</sup> MDG Monitor: Goal 2 (2015).

<sup>187</sup> MDG Monitor: Goal 2 (2015).

<sup>188</sup> MDG Monitor: Goal 2 (2015).

<sup>189</sup> United Nations 'Goal 2: Achieve universal primary education' Fact Sheet 25 September 2008 available at <http://www.un.org/millenniumgoals/2008highlevel/pdf/newsroom/Goal%202%20FINAL.pdf> (accessed 26 November 2015).

<sup>190</sup> Otoo-Oyortey N & Pobi S 'Early marriage and poverty: Exploring the links and key policy issues' (2003)11(2) *Gender and Development* 44.

<sup>191</sup> United Nations 'MDG 3: Promote gender equality and empower women' Fact Sheet (2008) available at <http://www.un.org/millenniumgoals/2008highlevel/pdf/newsroom/Goal%203%20FINAL.pdf> (accessed 26 November 2015).

<sup>192</sup> MDG Monitor: Goal 2 (2015).

<sup>193</sup> UNESCO 'Education For All 2000-2015: Achievements and challenges' (2015) available at <http://unesdoc.unesco.org/images/0023/002322/232205e.pdf> (accessed 15 February 2016) (hereafter UNESCO EFA (2015)).

students, declining disparities in education access but noted rural urban gap in access to education as well as a large out-of-school population.<sup>194</sup> It was noted that though school entry and enrolment was made a priority, efforts to address the issues of quality, age-appropriate entry and schooling costs did not match need. This led to significant problems with dropout, progression and completion levels.<sup>195</sup> Although achieving education for all is one of the biggest challenges of the present, any country looking for lasting economic development must put in place strategies to raise the literacy level of its citizens.<sup>196</sup>

## 2.6 Child education in Nigeria

The CFRN 1999 does not guarantee a right to education, but draws attention of government to it in Chapter II as a Fundamental Objective and Directive Principle of State Policy. Section 18 provides that government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels. The government is equally urged to strive to eradicate illiteracy and where practicable, provide free, compulsory and universal primary education and also free secondary, university and adult literacy education.<sup>197</sup> The CRA 2003 in section 15 guarantees the child's right to free, compulsory and universal basic education which the government has a duty to provide.

The education system is modelled as prescribed by the National Policy on Education (NPE) document of 1977 (last revised in 2013) which serves as a national guideline for effective administration, management and implementation of education at all tiers of government. The policy document is a statement of intention, expectations, goals, prescriptions, standards and requirements for quality education delivery in Nigeria.<sup>198</sup> It addresses the issues of imbalance in the provision of education in different parts of the country with regard to access, quality of resources and girls' education. Under this policy, Nigerian education is structured into;

1. Early Child Care and Development Education (ECCDE) for ages zero to four years
2. Basic education for ages 5-15 years, encompassing pre-primary one year, six years of primary school and three years of junior secondary school.
3. Post basic education for three years in senior secondary school and technical colleges

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<sup>194</sup> UNESCO EFA (2015) 77.

<sup>195</sup> UNESCO EFA (2015) 78.

<sup>196</sup> Aderinoye RA, Ojokheta KO & Olojede AA 'Integrating mobile learning into nomadic education programmes in Nigeria: Issues and perspectives' (2007) 8(2) *International Review of Research in Open and Distance Learning* 2.

<sup>197</sup> Section 18(3) CFRN 1999.

<sup>198</sup> Federal Republic of Nigeria *National Policy on Education* 6 ed (2013) (hereafter National Policy on Education (2013)).

4. Tertiary education provided in colleges of education, monotechnics, polytechnics and universities.

Basic education which largely caters for children has been considered very important as it serves as the foundation upon which higher educational pursuit is built, hence made the center piece of educational policies by successive governments in Nigeria.<sup>199</sup> Under the NPE, basic education is given to children aged 0-15 encompassing ECCDE situated in day care and crèches fully in the hands of the private sector and social development services. There is also the one-year pre-primary school given to five year olds prior to their entering primary school. The government is expected to provide the one year pre-primary schooling, six years of primary and three years of junior secondary school.<sup>200</sup> Primary education is given to children aged 6-12 years and the objectives are; to inculcate permanent literacy, numeracy and the ability to communicate effectively; lay a sound basis for scientific, critical and reflective thinking; promote patriotism, fairness, understanding and national unity; instil social, moral norms and values in the child; develop in the child the ability to adapt to a changing environment and provide an opportunity for the development of life manipulative skills that will enable the child function effectively in the society within the limits of the child's capacity.<sup>201</sup> In pursuance of these objectives, primary education must be compulsory, free, universal and qualitative.<sup>202</sup> Senior secondary school, which lasts for three years, caters for adolescents aged between 15 and 18 years.<sup>203</sup>

## 2.7 Universal Basic Education

A commendable strategy in fulfilment of the objectives of basic education in the NPE is the Universal Basic Education (UBE) scheme put in place basically to enhance the success of the first nine years of schooling. This initiative is aimed at eradicating illiteracy, ignorance and poverty. It also aims to facilitate national development, political consciousness, and national integration and enhance economic development.<sup>204</sup> The UBE programme is the strategy adopted by Nigeria to meet the EFA agenda and the MDGs.<sup>205</sup> The scope of UBE scheme

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<sup>199</sup> Labo-Popoola SO, Bello AA & Atanda FA (2009) 252.

<sup>200</sup> National Policy on Education (2013) 4.

<sup>201</sup> National Policy on Education (2013) 7.

<sup>202</sup> National Policy on Education (2013) 7.

<sup>203</sup> Imam H 'Educational policy in Nigeria from the colonial era to the post-independence period (2012) 1 *Italian Journal of Sociology of Education* 197.

<sup>204</sup> Gabriel A 'Achieving Universal Basic Education in Nigeria since 1999: Women as partners' (2012) 2(5) *International Journal of Learning and Development* 215.

<sup>205</sup> Universal Basic Education Commission available at <http://ubeonline.com/> (accessed 26 November 2015) Olorunyomi BR 'Millenium Development Goals and the universal primary education in Nigeria (a case study of

covers formal basic education, nomadic education, literacy and non-formal education. The formal basic education covers the first nine years of schooling, nomadic education is offered to school age children of pastoral farmers while literacy and non-formal education is given to out-of-school children and illiterate adults.<sup>206</sup>

In 2004 the Compulsory, Free Universal Basic Education Act (UBE Act) was enacted to address comprehensively the issues of access, equality, equity, inclusiveness, affordability and quality of basic education. Basic education, according to section 15 of the Act encompasses early childhood care and education and nine years of formal schooling comprising compulsory primary and junior secondary education. The UBE involves six years of primary school education and three years of junior secondary school education, making up nine years of uninterrupted schooling, and transition from one class to another determined through continuous assessments.<sup>207</sup>

The UBE Act provides for the establishment of the Universal Basic Education Commission to coordinate the implementation of the programme in the states through the State Universal Basic Education Board (SUBEB) and the Local Government Education Authorities.<sup>208</sup> Section 2 of the Act provides that every government in Nigeria shall ‘provide free, compulsory and universal basic education for every child of primary and junior secondary age.’ Every parent also has a duty to ensure that his child or ward<sup>209</sup> attends and completes his primary school education and junior secondary education by endeavouring to send the child to primary and junior secondary school.<sup>210</sup> The local government is obliged to ensure that every parent fulfils this duty<sup>211</sup> and a penalty is attached for contravention.<sup>212</sup> The Act expressly makes the services provided by public primary and junior secondary school free of charge.<sup>213</sup>

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Ibadan North Local Government Area, Oyo state)’ (2014) 3 *International Journal of Asian and African Studies*, Duze CO ‘Educational policies/programmes’ effects on attrition rates in primary schools in Nigeria’ (2012) 4(2) *International Journal of Education Administration and Policy Studies* 42.

<sup>206</sup> Ajayi IA ‘Achieving Universal Basic Education (UBE) in Nigeria: Strategies for improved funding and cost effectiveness’ (2007) 2(3) *The Social Sciences* 343 (hereafter Ajayi IA (2007)).

<sup>207</sup> Anaduaka US & Okafor CF ‘The Universal Basic Education (UBE) programme in Nigeria: Problems and prospects’ (2013) 2(3) *Basic Research Journal of Education Research and Review* 44.

<sup>208</sup> Section 7 UBE Act.

<sup>209</sup> ‘child or ward’ is defined by section 15 as a ‘person of primary and junior secondary school age which is between the ages of 6 years and 16 years whether disabled or not’.

<sup>210</sup> Section 2(2) UBE Act.

<sup>211</sup> Section 2(3) UBE Act.

<sup>212</sup> Section 2(4) UBE Act.

<sup>213</sup> Section 4 UBE Act.

## 2.8 The situation of children and access to education in Nigeria

Nigeria has been unable to secure an effective child's right protection system despite the domestication of the CRC and ACRWC as the CRA 2003. The protection gaps are evident in education, high rate of child marriage, female genital mutilation and other harmful cultural practices, child abuse and neglect, lack of appropriate and accessible healthcare services, especially in rural areas, child labour,<sup>214</sup> absence of a child friendly justice system and recently the children affected by the Boko Haram insurgency.

Children are also affected by discrimination as a result of living on the streets, being orphaned, disabled or born out of wedlock.<sup>215</sup> Poverty and hunger have increased the number of street children exposed to exploitative labour<sup>216</sup> and trafficking, illnesses, malnourishment, accidents and drug abuse.<sup>217</sup> In Northern Nigeria, many of the street children are Almajiris. They are young children (boys) who leave their homes to receive Koranic education, but rather than learn, they are sent to the streets by their teachers to beg or carry out menial jobs to survive.<sup>218</sup> A survey conducted on 340 Almajiris in Northeast Nigeria revealed that 66.2 percent of the boys were involved in the use of drugs such as stimulants, volatile solvents, cigarettes and cannabis.<sup>219</sup>

The rate of early and child marriage is still very high, especially in the North.<sup>220</sup> This was a reason for the delay in the passing of the Child's Right Bill as the predominantly Muslim states, objected to the provision setting 18 years as the minimum age for marriage. They claimed that it was incompatible with Islamic precepts where girls were given in marriage at a much younger age.<sup>221</sup>

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<sup>214</sup> Edmonds EV & Pavenik N 'Child labour in the global economy' (2005) *Journal of Economic Perspectives* 209.

<sup>215</sup> Alemika EEO, Chukwuma I, Lafratta D *et al* (2005) 7.

<sup>216</sup> Aderinto AA 'Social correlates and coping measures of street-children: A comparative study of street and non-street children in south-western Nigeria' (2000) 24(9) *Child Abuse and Neglect* 1200.

<sup>217</sup> Ali-Akpajiak SCA & Pyke T *Measuring Poverty in Nigeria* (2003) 55.

<sup>218</sup> Yusha'u MA, Tsafe AK, Babangida SI *et al* 'Problems and prospects of integrated almajiri education in Nigeria' (2013) *Scientific Journal of Pure and Applied Sciences* 125.

<sup>219</sup> Abdulmalik J, Omigbodun O, Beida O *et al* 'Psychoactive substance use among children in informal religious schools (Almajiris) in northern Nigeria (2009) 12(6) *Mental Health, Religion and Culture* 532.

<sup>220</sup> Ijaiya H 'Human rights: Gender discrimination against female children in Nigeria' (2006) 1 *University of Illorin Law Journal* 92.

<sup>221</sup> Toyo N 'Revisiting equality as a right: The minimum age for marriage in the Nigerian Child's Rights Act, 2003' (2006) 27(7) *Third World Quarterly* 1301.

The CRA 2003 has not made a huge significance in the lives of Nigerian children because of the unwillingness of some states to adopt it as they claim diversity of cultures and religion as the reason.<sup>222</sup> Considering that a protected right activates the obligation of the duty bearer,<sup>223</sup> no court can punish the violation of children's right in states that have not adopted the CRA 2003 especially with respect to provisions that are peculiar to the Act. There is a severe lack of financial and human resources allocated to the promotion and protection of children's rights as well as a weak social protection system due to poor enforcement and inadequate documentation of the extent of violation of children's rights.<sup>224</sup> More so, not much effort has been made to educate children about their rights as a study revealed children's limited awareness of their rights.<sup>225</sup>

Though the UBE scheme is a laudable strategy for providing free basic education, it however has many challenges, the greatest of which is funding. The funds allocated to education are not sufficient to ensure effective implementation of the scheme. In Nigeria, education funding involves the federal, state and local governments appropriating funds for capital and recurrent expenditure from the budgetary allocations for the educational sector in each particular fiscal year.<sup>226</sup> Despite the UN recommendation that 26 per cent of the total budget be devoted to education,<sup>227</sup> only 10 per cent of the 2015 budget was allocated for education.<sup>228</sup> More so, just a fraction of the budget was spent in developing the sector. Out of over 483 billion naira budgeted for education in 2015, the 71 billion budgeted for UBE had 67 billion for recurrent and 4 billion for capital expenditure.<sup>229</sup> The increased military spending due to the Boko Haram insurgency has also affected the spending on other sectors including education.<sup>230</sup>

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<sup>222</sup> Akinwumi OS 'Legal impediments on the practical implementation of the Child's Rights Act 2003' (2009) 37 *International Journal of Legal Information* 391.

<sup>223</sup> Donnelly J *Universal Human Rights in Theory and Practice* (2013) 9.

<sup>224</sup> Nicola J, Pressler-Marshall E, Cooke N *et al* 'Promoting synergies between child protection and social protection in Nigeria' (2012) UNICEF Nigeria/UNFPA/Overseas Development Institute 18.

<sup>225</sup> Ejieh MUC & Akinola OB 'Children's rights and participation in schools: Exploring the awareness level and views of Nigerian primary school children' (2009) 8(1) *Elementary Education Online* 180.

<sup>226</sup> Oseni M 'Adequacy of budgetary allocations to educational institutions in Nigeria' (2012) 3(1) *Pakistan Journal of Business and Economic Review* 144.

<sup>227</sup> International Organisation for Migration 'Needs assessment in the Nigerian education sector' (2014) available at [https://publications.iom.int/system/files/pdf/needs\\_assessment\\_nigerianeducsector.pdf](https://publications.iom.int/system/files/pdf/needs_assessment_nigerianeducsector.pdf) (accessed 18 February 2016) 27.

<sup>228</sup> Federal Republic of Nigeria Appropriation Act 2015 (hereafter Appropriation Act 2015).

<sup>229</sup> Appropriation Act 2015.

<sup>230</sup> Adebisi MA & Oladele O 'Public education expenditure and defence spending in Nigeria: An empirical investigation' (2005) University of Lagos, Nigeria available at [http://iaddsenegal.org/sites/default/files/documentheque/3\\_Public%20education%20Expenditure%20and%20defence%20spending.....pdf](http://iaddsenegal.org/sites/default/files/documentheque/3_Public%20education%20Expenditure%20and%20defence%20spending.....pdf) (accessed 3 February 2016) 5.

Another problem is corruption resulting in mismanagement and embezzlement of funds reserved for the development of the education sector.<sup>231</sup>

There is equally the absence of proper planning with regard to teaching staff requirements, infrastructure requirements, and materials for teaching and learning.<sup>232</sup> Consequently, most public primary and secondary schools are heavily populated with an inadequate teacher pupil ratio, overcrowded classes, inadequate teaching and learning materials which makes the school environment unsuitable for teaching and learning.<sup>233</sup>

Another problem with the UBE scheme is as regards its accessibility which is an essential feature of basic education as contemplated in CESC General Comment 13. 'Universal' in the context of UBE, means the availability of basic education to the whole people irrespective of tribe, ethnic group, race, culture, sex or class.<sup>234</sup> The placing of a ceiling on enrolment rates in various states with differential levels of literacy being the reason is seen as a ploy by the federal government to reintroduce the quota system into the Nigerian educational system.<sup>235</sup> This undermines universality contemplated in the UBE scheme and falls short of the accessibility requirement of education. These problems are the result of inappropriate projections in relation the estimated population of children that will be enrolled in school, the number of qualified teachers that will be needed, the required infrastructure and learning facilities and the cost implication of these.<sup>236</sup>

Due to the problems highlighted and the growing loss of confidence in public schools<sup>237</sup> privately owned schools have sprung up with better academic quality, infrastructure, adequate teaching and learning aids and stable calendars.<sup>238</sup> In the search for quality education for their children, a study revealed that many parents preferred the private schools to public schools as it was believed the schools offered better quality of education.<sup>239</sup> This

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<sup>231</sup> Arong FE & Ogbadu MA 'Major causes of declining quality of education in Nigeria from an administrative perspective: A case study of Dekina Local Government Area' (2010) 6(3) *Canadian Social Science* 195.

<sup>232</sup> Adeyemi TO 'Teacher preparation and availability for achieving basic education in Ondo state, Nigeria' (2007) 2(2) *Humanities and Social Sciences Journal* 159.

<sup>233</sup> Ajayi IA (2007) 343.

<sup>234</sup> Aluede ROA (2006) 99.

<sup>235</sup> Aluede ROA (2006) 99.

<sup>236</sup> Aluede ROA (2006) 100.

<sup>237</sup> Ehigiamusoe UK 'Private sector participation in secondary education in Nigeria: Implications for national development' (2012) 1(3) *International Journal of Development and Sustainability*.

<sup>238</sup> Saidu A, Amali IOO, Oniye MI *et al* 'Challenges and prospects of privatization of education in Nigeria: Focus on secondary education (2013) 9(1) *African Journal of Historical Sciences in Education* 34-42 (hereafter Saidu A, Amali IOO, Oniye MI *et al* (2013).

<sup>239</sup> Adebayo FA 'Parents' preference for private secondary school in Nigeria' (2009) 1(1) *International Journal of Educational Sciences* 1-6.

creates a class structure between children in access to education,<sup>240</sup> thus making nonsense of the universal context of UBE.<sup>241</sup> Sadly too, some of these private schools do not meet proper education standards as they lack qualified teachers, teaching and learning aids and in some cases occupy private homes, shacks or uncompleted buildings with little or no space for sporting, library, convenience or other facilities necessary for learning.<sup>242</sup> As a result of these shortcomings, the ability of the school to offer a balanced curriculum as required by the education system is limited.<sup>243</sup> There is need for laws and policy measures to guide the issuance of licenses to private schools in order to ensure that they meet the standard set by the NPE.

A major indicator of Nigeria's failure to meet the EFA and MDGs is the high level of out-of-school children (OOSC). An estimated 42 per cent of children of primary school age, amounting to about 10.5 million are out of school.<sup>244</sup> Among the factors responsible are poverty, distance, rural and urban as well as gender disparities in access to education. The Nigerian Demographic and Health Survey 2013 (NDHS)<sup>245</sup> revealed that attendance is higher among wealthy households than poorer households at both the primary and secondary levels.<sup>246</sup>

Child education in the Northern region still suffers a major setback as it has the highest rate of OOSC.<sup>247</sup> The NDHS survey also revealed that the North East has the lowest attendance rate at the primary and secondary levels (44 per cent and 29 per cent, respectively), while the South East has the highest (81 per cent and 70 per cent, respectively).<sup>248</sup> This trend is due to poverty and a preference for Islamic education,<sup>249</sup> which has resulted in the exploitative Almajiri system. Almajiris are sent to the streets to beg for alms or perform cheap labour at the expense of more time spent in school.<sup>250</sup> The Almajiri street children are seen as a

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<sup>240</sup> Saidu A, Amali IOO, Oniye MI *et al* (2013) 40.

<sup>241</sup> Aluede ROA (2006) 100.

<sup>242</sup> Agi UK 'The challenges and prospects of managing private school system in Rivers state' 2013 7(1) *African Research Review* 346 (hereafter Agi UK (2013)).

<sup>243</sup> Agi UK (2013) 346.

<sup>244</sup> *Accelerating Progress to 2015: Nigeria* (2013) 3.

<sup>245</sup> National Population Commission and ICF International Nigeria Demographic and Health Survey 2013 (2014) (hereafter NDHS 2013).

<sup>246</sup> NDHS 2013 26.

<sup>247</sup> *'Accelerating Progress to 2015: Nigeria'* (2013) 4.

<sup>248</sup> NDHS 2013 26.

<sup>249</sup> Fabunmi M 'Historical analysis of educational policy in Nigeria: Implication for educational planning and policy' (2005) 4(2) *International Journal of African and African American Studies* 1 (hereafter Fabunmi M (2005)).

<sup>250</sup> Usman LM 'Assessing the Universal Basic Education primary and koranic schools' synergy for Almajiri street boys in Nigeria' (2008) 22(1) *International Journal of Education Management* 64.

potential security threat to Nigeria as some of Boko Haram's foot soldiers are drawn from among this group.<sup>251</sup> According to Adetoro, in order to curb this threat, it is imperative for the Qur'anic school to be harmonized with the Universal Basic Education programme.<sup>252</sup>

The high level of rural and urban disparity is a problem as rural areas are worst hit by the shortage of infrastructure. Children have to walk long distances to school, a situation which could be avoided if schools are provided in communities so that children can have easy access.<sup>253</sup> The NDHS survey revealed that, at the primary level, the attendance rate in urban areas is higher than the rural areas (71 per cent and 52 per cent, respectively), while there is a wider gap at the secondary level (64 per cent and 38 per cent, respectively).<sup>254</sup> The NDHS 2010<sup>255</sup> revealed that besides child labour and monetary cost, distance to school was a potential factor for children who never attended school in rural areas.<sup>256</sup>

Another problem, especially in Northern Nigeria, is the attitude towards the education of girls which is felt could interfere with their marriage at a proper age, lose interest in home management, could instil too much independence and make them feel equal with their husbands.<sup>257</sup> It is equally considered a waste as girls are expected to marry early and leave their family to join their husbands.<sup>258</sup> As a result of this, the dropout rate for boys is close to half of the dropout rate for girls.<sup>259</sup>

More recently, the Boko Haram insurgency has led to high level of out of school children mostly in the North Eastern region of Nigeria as a result of school closures because of

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<sup>251</sup> Agbiboa D 'Resistance to Boko Haram: Civilian Joint Task Forces in North-Eastern Nigeria' 2015 *Conflict Studies Quarterly* 8.

<sup>252</sup> Adenrele AR 'Boko Haram insurgency in Nigeria as a symptom of poverty and political alienation' (2012) 3(5) *Journal of Humanities and Social Science* 22.

<sup>253</sup> Ajayi IA (2007) 344.

<sup>254</sup> NDHS 2013 26.

<sup>255</sup> National Population Commission and RTI International Nigeria Demographic and Health Survey EdData 2010 (2011) (hereafter NDHS 2010).

<sup>256</sup> NDHS 2010 91.

<sup>257</sup> Csapo M 'Universal Primary Education in Nigeria: Its problems and implications' (1983) 26 (1) *African Studies Review* 101-2.

<sup>258</sup> Csapo M 'Religious, social and economic factors hindering the education of girls in Northern Nigeria (1981) 17(3) *Comparative Education* 315.

<sup>259</sup> Nmadu G, Avidime S, Olugbenga O et al 'Girl child education: Rising to the challenge' (2010) 14(3) *African Journal of Reproductive Health* 107.

targeted attacks, destruction of school buildings and facilities, occupation of schools by the military, abduction and killing of school children and teachers and displacement.<sup>260</sup>

## 2.9 Conclusion

The provision of education is largely the duty of governments and international support comes in when necessary. Being a signatory to the CRC and the ACRWC as well as the enactment of the CRA 2003 places an obligation on the Nigerian government to take targeted steps towards providing adequate education for all children. Poverty, discrimination and lack of government attention to their rights are the reasons for the intolerable hardship of majority of Nigerian children. Nigeria's basic education challenges are low attendance, low completion rates, gender disparities as well as regional disparities in access to education. The uneven spread of the OOSC burden requires flexibility in measures to address it. The planning for education requires adequate data which is particularly lacking in Nigeria and is a militating factor against the achievement of the MDG target of universal primary education.<sup>261</sup>

Another problem that is worsening the OOSC burden in Nigeria is the Boko Haram insurgency. The next chapter looks at how armed conflict can affect children's rights in general and particularly their access to education.

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<sup>260</sup> Jones A & Naylor R 'The quantitative impact of armed conflict on education in Nigeria: Counting the human and financial costs' (2014) CfBT Education Trust 4 (hereafter Jones A & Naylor R (2014)).

<sup>261</sup> Ajjiye S 'Achievement of millennium development goals in Nigeria: A critical examination' (2014) 25 *International Affairs and Global Strategy* 31.

## CHAPTER THREE

### 3 PROTECTION OF CHILDREN IN ARMED CONFLICT

#### 3.1 Introduction

An old African proverb says that where two elephants fight, it is the grass that suffers. In the context of armed conflict, whether inter or intrastate, children constitute a large percentage of the suffering grass. They go through untold human rights violations such as killing and maiming, forced recruitment, sexual abuse, denial of access to education, healthcare, food and other needs for survival. This chapter looks into the protection of children's rights in situations of armed conflict especially the right to education. It also looks at the impact of armed conflict on children's enjoyment of their rights particularly the right to education.

Armed conflicts were usually fought between States with almost 90 per cent of the casualties being combatants. However, recent conflicts are mostly intrastate conflicts involving a variety of non-state actors divided along ethnic and political lines.<sup>262</sup> Feelings of dissatisfaction and inequality occasioned by poverty,<sup>263</sup> the uneven spread of economic benefits,<sup>264</sup> and serving narrow or personal interests at public expense<sup>265</sup> have over time led to conflicts between government and rebels, opposition groups struggling for supremacy or secessionist movements. Armed conflict deepens societal division, and has dire fiscal consequences which affect economic growth and the provision of basic services.<sup>266</sup>

Over time, the pattern of armed conflict has changed in terms of targets, weaponry, tactics, and lethality. This is brought about by globalization and advancement in technology which facilitates the transfer of information and the creation of handy and portable weapons.<sup>267</sup> The distinction between civilians and combatants has been greatly blurred as the proportion of civilian casualties in these conflicts has risen from five per cent to over 90 per cent.<sup>268</sup> There have also been targeted attacks on defenceless civilians through killings, sexual assault, and

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<sup>262</sup> Wessels M & Monteiro C 'Healing, social integration and community mobilization for war-affected children: A view from Angola' in Krippner S & McIntyre TM (eds) *The Psychological Impact of War Trauma on Civilians: An International Perspective* (2003) 179.

<sup>263</sup> Stewart F 'Root causes of violent conflict in developing countries' (2002) 324 *British Medical Journal* 343.

<sup>264</sup> Smith D (2004).

<sup>265</sup> Smith D (2004) 11.

<sup>266</sup> Gupta S, Clement B, Bhattacharya R *et al* 'Fiscal consequences of armed conflict and terrorism in low and middle-income countries' (2004) 20 *European Journal of Political Economy* 406.

<sup>267</sup> Ottoh FO 'Changing the pattern of warfare in Africa: Boko Haram insurgency in Nigeria' (2015) *Conflict Studies Quarterly* 23.

<sup>268</sup> Machel G *Impact of war on children* (2001) 1.

abduction, destruction of means of survival such as crops, water wells, schools, hospitals and hindering access to humanitarian aid. Sadly, children have become prime targets and perpetrators of the violence and atrocities.<sup>269</sup> These attacks on civilians have led to mass exoduses, displacement and separation of families. This crisis with no clear beginning or end has the effect of subjecting people, including children, to seemingly endless sufferings and struggles for survival.

### **3.2 The rights of the child in armed conflict**

In international humanitarian law, during armed conflict, whether international or non-international, children benefit from the general protection provided for civilians who are not taking part in hostilities. Considering the vulnerability of children to abuses during armed conflict, the Fourth Geneva Convention of 1949 (GCIV 1949) and the Additional Protocols of 1977 (AP1 and AP2) lay down rules according special protection to children. Article 77 of AP1 provides that:

‘Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.’

#### **3.2.1 Survival needs**

In caring for their survival needs, article 23 of the GCIV 1949 provides that the parties shall permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under 15. In the case of children under 15 who are aliens in the territory of a party to the conflict, they shall benefit by any preferential treatment to the same extent as the nationals of the State concerned.<sup>270</sup> In the case of internees, article 89(5) of the GCIV 1949 provides that expectant and nursing mothers and children under 15 years of age shall be given additional food in proportion to their physiological needs. In the distribution of relief supplies such as food, medicine, clothes, means of shelter, bedding and other supplies necessary to the survival of the civilian population, priority shall be given to children who

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<sup>269</sup> Wessells MG ‘Children, armed conflict, and peace’ (1998) 35(5) *Journal of Peace Research* 635.

<sup>270</sup> Article 38(5) GCIV 1949.

under the convention or protocol are to be accorded privileged treatment or special protection.<sup>271</sup>

### 3.2.2 Education

With regard to education, article 24 (1) of GCIV 1949 requires parties to conflict to ensure that children under fifteen, who are orphaned or are separated from their families as a result of the war, have access to education.<sup>272</sup> In the case of occupied territories, article 50 of GCIV 1949 requires the occupying power with the co-operation of the national and local authorities, to facilitate the proper working of all institutions devoted to the care and education of children. In the case of internees, article 94 of the GCIV 1949 provides that children and young people must be allowed to attend schools either within the place of internment or outside. In addition, the API provides in article 78(2) that an evacuation must take account of the need for continuity in a child's education. Article 26 of the GCIV 1949 requires each party to a conflict to facilitate the reunion of families dispersed and encourage the work of organisations engaged in doing so provided they are acceptable and conform to security regulations.

As a result of displacement, children leave the place where they are able to have access to school to a place where they have no provision for education. Hence, the UN Guiding Principle on Internal Displacement<sup>273</sup> in principle 23 requires concerned authorities to ensure that internally displaced children receive free and compulsory education which should respect their cultural identity, language and religion. Special efforts must be taken to ensure girls' participation.<sup>274</sup>

Also, the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)<sup>275</sup> requires State Parties to provide internally displaced persons which includes children, to the fullest extent practicable and without delay, adequate humanitarian assistance which includes food, water, shelter, medical care and other health services, sanitation, education and other necessary social services and in appropriate cases extend such assistance to host communities.<sup>276</sup> The convention requires States to also

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<sup>271</sup> Article 70 API.

<sup>272</sup> A similar provision for education is made in Article 4(3) of AP2.

<sup>273</sup> UN Guiding Principles on Internal Displacement 22 July 1998 ADM 1.1, PRL 12.1, PR00/98/109.

<sup>274</sup> Principle 23(3).

<sup>275</sup> Adopted by the Special Summit of the African Union held in Kampala, Uganda on 22 October 2009 and entered into force on 6 December 2012.

<sup>276</sup> Article 9(2)(b) Kampala Convention.

provide special protection for and assistance to internally displaced persons with special needs.<sup>277</sup>

### 3.2.3 Participation in hostilities

With regard to participation in hostilities, the Additional Protocols of 1977 are the first instruments to cover such situations. Article 77(2) requires parties to conflict to take all feasible measures to ensure that children who have not attained the age of 15 years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces.<sup>278</sup> Article 77(2) further provides that in recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, priority must be given to those who are oldest. However, if in exceptional cases, children who have not attained the age of 15 years take a direct part in hostilities and fall into the power of an adverse party, they shall continue to benefit from the special protection, whether or not they are prisoners of war.<sup>279</sup>

The Rome Statute of the International Criminal Court<sup>280</sup> considers as a war crime the conscription and enlisting of children under the age of 15 years into the national armed forces or using them to participate in hostilities.<sup>281</sup> Also, directed attacks against the civilian population,<sup>282</sup> places of worship, education, hospitals,<sup>283</sup> wilful killing,<sup>284</sup> enforced disappearance,<sup>285</sup> torture or inhuman treatment,<sup>286</sup> sexual assault,<sup>287</sup> impeding relief supplies<sup>288</sup> are considered war crimes under the Rome Statute.

### 3.2.4 Protection under the CRC and ACRWC

In the CRC, article 38 requires States to respect the rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child<sup>289</sup> and take all feasible

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<sup>278</sup> Article 4 (3)(c) AP1.

<sup>279</sup> Article 77(3) AP1 and Article 4 (3)(d) AP2.

<sup>280</sup> Adopted on 17 July 1998 and entered into force on 1 July 2002.

<sup>281</sup> Article 8 (2) (b) (xxvi) Rome Statute.

<sup>282</sup> Article 8 (2) (b) (i) Rome Statute.

<sup>283</sup> Article 8 (2) (b) (ix) Rome Statute.

<sup>284</sup> Article 8 (2) (a) (i) Rome Statute.

<sup>285</sup> Article 7(2)(i) Rome Statute.

<sup>286</sup> Article 8 (2) (a)(ii) Rome Statute.

<sup>287</sup> Article 8 (2) (b)(xxii) Rome Statute.

<sup>288</sup> Article 8 (2) (b)(xxv) Rome Statute.

<sup>289</sup> Article 38(1) CRC.

measures to ensure protection and care of children who are affected by armed conflict.<sup>290</sup> In line with the Additional Protocols, the CRC also prohibits the participation of children less than 15 in hostilities or being recruited into the armed forces<sup>291</sup> and priority for the oldest during recruitment of children above 15 but below 18.<sup>292</sup> Article 39 further provides for the physical and psychological recovery and social reintegration of children affected by armed conflict in an environment which fosters the health, self-respect and dignity of the child.

Article 22 of the ACRWC makes similar provision as article 38 of the CRC requiring that children must be protected from abuse and participation in hostilities.<sup>293</sup> While the CRC requires States to take feasible measures to ensure that a child under 15 does not take direct part in hostilities, the ACRWC places the limit on every child (persons under 18). The instruments also require States to protect the civilian population in armed conflict and take all feasible measures to ensure protection and care of children who are affected which includes the displaced, abandoned, and orphaned or children who do not have access to health care or education. The ACRWC takes a step further by extending the application of article 22 to situations of internal armed conflicts, tension and strife. This, according to Van Bueren, shows that the drafters were sufficiently far sighted to recognize that it is the best interest of the child which ought to predominate in international law and not the form of conflict.<sup>294</sup>

The 15-year age limit undermines the provisions protecting the rights of children outlined in the Geneva Conventions and the Additional Protocols. The CRC follows this despite its definition of a child as a person below the age of 18. To cure the lapse in the CRC, the CRC Optional Protocol on the Involvement of Children in Armed Conflict<sup>295</sup> provides in article 1 that State Parties must ensure that members of their armed forces who have not attained the age of 18 do not take direct part in hostilities. It also prohibits the compulsory recruitment of persons under the age of 18.<sup>296</sup> In recognition of the fact that under the CRC, persons under the age of 18 are entitled to special protection, the protocol urges State Parties to raise the age for voluntary recruitment of persons into their national armed forces.<sup>297</sup> The Optional

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<sup>290</sup> Article 38(4) CRC.

<sup>291</sup> Article 38(2) CRC.

<sup>292</sup> Article 38(3) of the CRC.

<sup>293</sup> Ang F A *Commentary on the United Nations Convention on the Rights of the Child (Article 38 Children in Armed Conflict)* (2005) 26.

<sup>294</sup> Van Bueren G *The International Law on the Rights of the Child* (1998) 332 (hereafter Van Bueren G (1998)).

<sup>295</sup> Adopted by the UN General Assembly Resolution A/RES/54/263 of 25 May 2000, entered into force on 12 February 2002.

<sup>296</sup> Article 2 of the Optional Protocol.

<sup>297</sup> Article 3 of the Optional Protocol.

Protocol in addition prohibits non state armed groups under any circumstances from recruiting or using children under the age of 15 in armed conflict.

Section 34 of the CRA 2003 prohibits the recruitment of children into the armed forces of Nigeria and obliges the government and relevant agencies to ensure that no child is involved in military activities or hostilities.

### **3.3 Violation of children's rights in armed conflict**

Armed conflict violates most of the child's rights as a result of the deprivations it engenders. Some of these conflicts last for so long as to rob the child of the necessary foundations that support his or her physical, moral, emotional, cognitive and social development. Leila Zerrougui, the SRSG-CAAC in her report<sup>298</sup> noted that the extreme violence which was a prevalent feature of conflicts in 2014 and continued into 2015 saw a dramatic rise in grave violations against children who were disproportionately affected and were direct targets of acts of violence.<sup>299</sup> These violations are reportedly in large scale in countries affected by major crisis such as the Central African Republic, Iraq, Israel, Nigeria, and South Sudan, the Syrian Arab Republic as well as protracted conflicts in Afghanistan, Democratic Republic of Congo and Somalia.<sup>300</sup> This motivated the declaration of 2014 by UNICEF as a devastating year for children.<sup>301</sup>

The report presented to the General Assembly of the United Nations in 1996 by Graca Machel, former Minister of Education of the Republic of Mozambique, provided the first detailed assessment of the several ways in which children's rights were violated in situations of armed conflict, hence emphasising the need for the international community to seek ways to better protect children during armed conflicts.<sup>302</sup> The six grave violations against children during armed conflict noted by Graca Machel includes

1. The recruitment and use of children;
2. Killing and maiming of children;

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<sup>298</sup> SRSG-CAAC Report (2015).

<sup>299</sup> SGRG-CAAC Report (2015) para 3.

<sup>300</sup> Annual Report of the Secretary General 'Children and armed conflict' A/69/926-S/2015/409 5 June 2015 para 5 (hereafter Annual Report of the Secretary General (2015)).

<sup>301</sup> UNICEF '2014: A devastating year for children' (2014).

<sup>302</sup> United Nations 'Impact of Armed Conflict on Children' Report of the Expert of the Secretary General, Graca Machel submitted pursuant to General Assembly Resolution 48/157 August 1996 A/51/306 (hereafter Machel G (1996)).

3. Sexual violence against children;
4. Attacks against schools and hospitals;
5. Abduction of children and
6. Denial of humanitarian aid.

Graca Machel in her report revealed the pitiable situation of children affected by armed conflict in which they are not mere bystanders but targets.<sup>303</sup> The statistics according to her were horrifying, but more worrisome is the fact that

‘more and more of the world is being sucked into a desolate moral vacuum. This is a space devoid of the most basic human values; a space in which children are slaughtered, raped, and maimed; a space in which children are exploited as soldiers; a space in which children are starved and exposed to extreme brutality. Such unregulated terror and violence speak of deliberate victimization. There are few further depths to which humanity can sink’.<sup>304</sup>

The SRSR-CAAC has equally identified these violations based on their reprehensible nature and the impact on the lives and wellbeing of children which makes them suitable for monitoring.<sup>305</sup> These violations are contrary to international law encompassing international humanitarian law, international human rights law, as well as international criminal law which must be respected during armed conflicts. Special protection must be given to children’s rights during conflicts as they have no means of protecting themselves against abuses.<sup>306</sup>

### **3.4 Impact of armed conflict on education**

One of the grave violations against children in armed conflict is the attacks on schools. These attacks are against students, teachers and other education personnel. They include killing, abduction, kidnapping, forced recruitment that denies access to education, illegal detention, torture and sexual violence against school children and teachers. It also includes damage of

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<sup>303</sup> Machel G (1996) para 1.

<sup>304</sup> Machel G (1996) para 3.

<sup>305</sup> Office of the Special Representative of the Secretary General for Children and Armed Conflict Working Paper No. 1 ‘Six grave violations against children during armed conflict: The legal foundation’ (2013) 9 (hereafter OSRSG-CAAC Working Paper No 1(2013)).

<sup>306</sup> OSRSG-CAAC Working Paper No 1(2013) 9.

educational buildings and other facilities, occupation of buildings for military purposes, violent attacks on educational process such as attacks on convoys carrying examination papers, and prevention of repair, rehabilitation or reconstruction of schools already attacked.<sup>307</sup>

Under international humanitarian law, schools<sup>308</sup> are protected civilian objects and therefore benefit from humanitarian principles of distinction and proportionality. During armed conflict, there are targeted attacks at schools and beyond that, the general state of insecurity could force schools to close down. This has the effect of depriving millions of children their right to education in order to realize their potential.<sup>309</sup> Condemning the grave violations against children, the United Nations Security Council (UNSC) in Resolution 1988 (2011)<sup>310</sup>, 2143 (2014)<sup>311</sup> and 2225 (2015),<sup>312</sup> urges parties involved in armed conflict to refrain from actions that impede children's access to education.<sup>313</sup> The UNSC also in resolution 2225 of 2015 encourages member States to take concrete measures to deter the attack and use of schools by armed forces and armed groups.<sup>314</sup>

The attacks on schools during armed conflict can hinder the development of the education system in several ways. Jones and Naylor have noted several ways in which armed conflict can affect education.<sup>315</sup> Amongst them are

1. School closure due to targeted attacks.
2. Collateral damage and military use of school buildings.
3. Death and injury to teachers and students.
4. Fear of sending children to school and teachers' fear of attending due to threats and targeted attacks can also affect education.

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<sup>307</sup> O'Mally B *Education under Attack* (2010) 59-60.

<sup>308</sup> Article 18 GCIV 1949.

<sup>309</sup> SGRG-CAAC Report (2015) para 18.

<sup>310</sup> UNSC Resolution 1998 was adopted by the council at its 6581<sup>st</sup> meeting on 12 July 2011 (S/RES/1998(2011)) (hereafter Resolution 1998(2011)).

<sup>311</sup> UNSC Resolution 2143 was adopted by the council at its 7129<sup>th</sup> meeting on 7 March 2014(S/RES/2143(2014)) (hereafter Resolution 2143(2014)).

<sup>312</sup> UNSC Resolution 2225 was adopted by the council at its 7466<sup>th</sup> meeting on 18 June 2015 (R/RES/2225(2015)) (hereafter Resolution 2225 (2015)).

<sup>313</sup> Resolution 1998(2011) para 4, Resolution 2143(2014) para 17, Resolution 2225 (2015) para 1.

<sup>313</sup> Machel G (1996) para 199.

<sup>314</sup> Resolution 2225 (2015) para 7.

<sup>315</sup> Jones A & Naylor R (2014).

5. General insecurity reducing freedom of movement.
6. Recruitment of teachers and students by armed forces (State and non-state).
7. Forced population displacement interrupting education.
8. Public health impacts of conflict which reduce access and learning.
9. Reduced educational expenditure due to an overall reduction in resources and shifting priorities reduces public capacity to deliver education.<sup>316</sup>

These disruptions have the effect of lowering access to education, the quality of education as well as the quality of the learning experience.<sup>317</sup> These are the same factors bedeviling basic and secondary education in Nigeria due to the Boko Haram insurgency ravaging the North Eastern part of the country. In contravention of the GCIV 1949 which prohibits attacks on protected persons, the Boko Haram insurgents opposed to secular education have launched several targeted attacks on schools in North Eastern Nigeria, which has left many children and teachers dead. Schools have shut down as the general climate of insecurity prevents children, teachers and other education personnel from attending school. Even where educational opportunities exist, parents worried about the safety of their children may be reluctant to send them to school.<sup>318</sup> In 2014, conflict in the Democratic Republic of Congo threw over 31 000 children out of school owing to the attacks on 22 schools, of which 12 were used for military purposes.<sup>319</sup>

O'Mally has also noted longer term impacts of armed conflict on education as a result of persistent attacks over a number of years and the use of force to prevent the recovery from such attacks. Such long term effects include

1. Reduced enrolment and permanent drop-out of students which hinders attempts to achieve the EFA and MDGs agenda.
2. Destruction of infrastructure and disruption of attempts to rebuild them could lead to shortage of infrastructure which impacts negatively on the learning conditions and children's access to education.

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<sup>316</sup> Jones A & Naylor R (2014) 4.

<sup>317</sup> O'Mally B (2011) 2.

<sup>318</sup> Machel G (1996) para 199.

<sup>319</sup> Annual Report of the Secretary General (2015) para 63.

3. Withdrawal of educational personnel leading to a shortage of teachers.
4. The general impact of armed conflict on the government's resources reduces the government capacity to manage or deliver education.
5. Reduction in the quality of educational provision.<sup>320</sup>

As a result of the immense threat to education, conflict affected areas have some of the world's worst indicators for education as millions of children are deprived of their only chance of schooling that could transform their lives.<sup>321</sup> Armed conflict also poses a problem for States in the implementation of the EFA and MDGs with regard to universal primary education.<sup>322</sup> Her Majesty, Queen Rania Al Abdullah of Jordan in her special contribution to the EFA report noted that with conflict children out of school, the EFA and MDG targets become impossible to reach, hence focus must be directed to giving children education as it prevents conflict before it occurs and rebuilds countries after it ends.<sup>323</sup>

The exposure of children to the traumatic events such as loss of loved ones, displacement, lack of food, and interruption of school associated with armed conflict has detrimental consequences for their mental health and psychological well-being.<sup>324</sup> Children are affected by Post Traumatic Stress Disorders (PTSD) such as irritability, insomnia, sleeping disorders, fear, aggression, confusion and inability to concentrate<sup>325</sup> which greatly affects their ability to have a loving relationship with family and friends and perform well in school. In a study conducted on 796 children living in the occupied West Bank and Gaza, an area affected by armed conflict, they were found to have behavioural and psychological problems such as depression, fears, disobedience, fighting, sleep disturbances, nightmares and low self-esteem.<sup>326</sup> It was discovered that children in Sri Lanka provinces who suffered traumatising experiences in armed conflict suffered from PTSD and both memory tests and school grades

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<sup>320</sup> O'Mally B (2011) 5-6.

<sup>321</sup> Education for All Global Monitoring Report (2011) 'The hidden crisis: Armed conflict and education' UNESCO 125 (hereafter EFA Report (2011)).

<sup>322</sup> UNESCO 'The quantitative impact of conflict on education' A think piece prepared for the Education for All Global Monitoring Report 2011 (2010) (2011/ED/EFA/MRT/P1/50) UNESCO Institute for Statistics 4.

<sup>323</sup> EFA Report (2011) 125.

<sup>324</sup> Barenbaum J, Ruchkin V & Schwab-Stone M (2004).

<sup>325</sup> Thabet AAM, Abed Y & Vostanis P 'Cosmorbidity of PSTD and depression among refugee children during war conflict' (2004) 45(3) *Journal of Child Psychology and Psychiatry* 533-34.

<sup>326</sup> Baker AM 'The psychological impact of the intifada on Palestinian children in the occupied territory West Bank and Gaza: An exploratory study' (1990) 60(4) *American Journal of Orthopsychiatry* 502.

demonstrated significant impairment of cognitive development.<sup>327</sup> It has also been shown that children of school age in Rwanda exposed to the 1994 genocide experience had a drop in educational achievement.<sup>328</sup>

The environment has an influence on development, on learning and other aspects of behaviour. Thus, any society characterized by any form of violence will not be conducive for any social interaction in the form of teaching and learning.<sup>329</sup> The attacks can also affect students' performance in school as insecurity constitutes a negative reinforcement due to the obvious fact that teaching and learning cannot successfully occur in an environment of fear.<sup>330</sup> The condition of the people in the North Eastern Nigeria as a result of Boko Haram insurgency is synonymous with misery and fear. The conflict has been traumatic for children as they are forced to flee from their homes under threat, witness killings of schoolmates or living as displaced persons or refugees.<sup>331</sup> An attack against teachers and sometimes in full view of their pupils is capable of exposing children to severe trauma.

War not only destroys lives and schools, it also diverts resources from education to military spending.<sup>332</sup> As much as defence spending provides security which sustains a stable business environment, negatively it gulps resources that could be put to more productive use.<sup>333</sup> The economic implications of managing the Boko Haram insurgency have been heavy on the Nigerian government,<sup>334</sup> and the huge spending on security has a ripple effect on the funding of other sectors. Despite the importance of education in human capital development, excessive defence spending has led to poor funding of the educational sector in Nigeria.<sup>335</sup> Even the lean resources available for its improvement are being channelled to rebuilding the schools destroyed by the insurgents.

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<sup>327</sup> Elbert T, Schauer M, Schauer E *et al* 'Trauma-related impairment in children- A survey of Sri Lankan provinces affected by armed conflict' (2009) 33 *Child Abuse and Neglect* 238.

<sup>328</sup> Akresh R & De Walque D 'Armed conflict and schooling: Evidence from the 1994 Rwandan genocide' (2008) World Bank Policy Research Working Paper available at <http://ssrn.com/abstract=1149109> (accessed 10 February 2015).

<sup>329</sup> Joda FM & Abdulrasheed O 'Effects of insurgency on girls education in North Eastern Nigeria' (2015) 3(1) *European Journal of Education and Development Psychology* 48 (hereafter Joda FM & Abdulrasheed O (2015).

<sup>330</sup> Umar B & Manabete SS 'Peace and security: Challenges to education and communal existence in Nigeria' in Dichaba M & Nwaozuzu D *Rethinking Teaching and Learning in the 21<sup>st</sup> Century* (2015) 207-8.

<sup>331</sup> Yule W, Stuvland R, Baingana FK *et al* (2003) 218.

<sup>332</sup> EFA Report (2011) 146.

<sup>333</sup> Edame GE & Nwankwo C 'The interaction between defence spending, debt service obligation and economic growth in Nigeria' (2013)4 (13) *Research Journal of Finance and Accounting* 62.

<sup>334</sup> Bamidele O 'Beyond the shadows of terrorism: Boko Haram crisis in North-Eastern Nigeria' 2015 *Conflict Studies Quarterly* 52.

<sup>335</sup> Olofin OP 'Defence spending and poverty reduction in Nigeria' (2012) 2(6) *American Journal of Economics* 122.

### 3.5 Conclusion

Children have become more vulnerable due to the changing tactics of warfare resulting in targeted attacks on children and the institutions that protect them such as family, schools and hospitals. Children suffer several human rights violations including the rights to education. State parties have the primary duty to protect children and ensure that even in armed conflict, their right to life, food, family life, health and other survival needs as well as education is secured. The care and protection of children affected by armed conflict require all stakeholders to develop sensitive programs that protect all the rights of children living in conflict areas. The changing context of armed conflict with its increased risk for children, cries out for a different approach to the issues confronting children in these situations.

Addressing the long term impact of armed conflict on education requires a variety of approaches including building the capacity of the education ministry to rebuild education through reconstruction of damaged facilities; rapid interim teacher training; mobilisation of community support for education; joint approaches with security, economic and education ministries to ensure stability of the education system and better monitoring of the long term impacts in order to improve responses to them. However, in many areas where there are persistent attacks, these responses cannot be made precisely because schools and the education system are still being attacked. An instance is where continuing attacks deter contractors from rebuilding schools or teachers from returning to work.<sup>336</sup> For this reason, action to deter or avert attacks must be addressed as a matter of priority.

The next chapter looks into the situation of Nigerian children affected by the Boko Haram insurgency. The chapter particularly looks at how the attacks by the insurgents on schools and school children have affected their access to education in the North Eastern part of Nigeria.

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<sup>336</sup> O'Mally B (2011) 3.

## CHAPTER FOUR

### 4 EFFECT OF THE BOKO HARAM INSURGENCY ON THE CHILD'S RIGHT TO EDUCATION IN NIGERIA

#### 4.1 Introduction

The right to education guaranteed under the ICESCR, CRC, ACRWC as well as other international instruments is not suspended in situations of armed conflict. Concerned about the consequences of brutal armed conflicts for education, Vernor Munoz, former Special Rapporteur on the Right to Education noted in his report that 'security in schools', meaning not only physical, psychological and emotional safety, but also an uninterrupted education in conditions conducive to knowledge acquisition and character development, form part of the right to education.<sup>337</sup> Hence, States have the obligation to respect, protect and fulfil the right to education whether or not an emergency situation exists.<sup>338</sup> This chapter looks into the impact of the Boko Haram insurgency on basic education in North-eastern Nigeria. It considers the impact on school attendance, education facilities as well as the educational challenges of internally displaced children.

The incessant attacks made by the Boko Haram insurgents have disrupted academic activities and greatly affected school attendance. Teachers and other education personnel have also not been spared the wrath as some have lost their lives during the attacks and others fled out of fear. It has been reported that at least 198 teachers were killed by the insurgents between 2012 and 2014.<sup>339</sup> The already inadequate facilities have further been depleted as a result of the attacks which have affected school buildings, furniture and school records. Also, the funds which should have been used for education improvement are being spent on security and in rebuilding the damaged schools. The negative psychological effect of the insurgency on students and teachers has affected education greatly as teaching and learning cannot effectively take place in a state of insecurity. This problem is aptly captured in the following words:

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<sup>337</sup> Report of the Special Rapporteur on the Right to Education 'Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: Right to education in emergency situations' A/HRC/8/10 20 May 2008 para 21 (hereafter Report of the Special Rapporteur on the Right to Education (2008)).

<sup>338</sup> Report of the Special Rapporteur on the Right to Education (2008) para 37.

<sup>339</sup> Annual Report of the Secretary General (2015) para 235.

‘Perhaps more than any time in history, school children, teachers and schools are on the front line of violence. Classrooms are destroyed not just because they are caught in the crossfire, but because they are targeted by combatants.... And resources that could be used to finance productive investment in education are wasted on unproductive military expenditure.’<sup>340</sup>

## 4.2 Effect on school attendance

According to Oladunjoye and Omemu, attendance at school is dependent on the readiness of the child, encouragement from parents, provision of school materials, distance to school and very importantly, the security of the child.<sup>341</sup> The present state of insecurity in the North Eastern region of Nigeria has greatly affected children’s school attendance, and this has a direct effect on the progress and completion levels. As a result of the incessant attacks on schools, school children and teachers, UNICEF reports that over one million children have been forced out of school.<sup>342</sup> Teachers have also been forced to stay away from school.<sup>343</sup> Some schools were forced to shut down and the deserted school buildings were converted into shelters for the internally displaced persons.<sup>344</sup> Children who are supposed to populate the schools have either sought refuge along with their families in neighbouring countries or internally displaced as over 1.4 million children have been forced to flee the region.<sup>345</sup>

Out of fear, children are forced to stay out of school as attacks by insurgents have led to the death of many children. In July 2013, the insurgents invaded a government owned boarding school in Mamudo village in Yobe state and killed 42 students and teachers and also burnt down the school.<sup>346</sup> On 25<sup>th</sup> February 2014, the insurgents invaded Federal Government College, Buni Yadi, Yobe state and gruesomely murdered about 59 students and burnt several

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<sup>340</sup> EFA Report (2011) 124-25.

<sup>341</sup> Oladunjoye P & Omemu F (2013) 5.

<sup>342</sup> ‘Nigeria conflict forces more than one million children out of school’ UNICEF 22 December 2015 available at [http://www.unicef.org/media/media\\_86621.html](http://www.unicef.org/media/media_86621.html) (accessed 1 February 2016).

<sup>343</sup> Atsua TG & Abdullahi U ‘Impact of Boko Haram insurgency on principals, teachers and students in senior secondary schools in Borno state, Nigeria’ (2015) 33(1) *Knowledge Review* 4.

<sup>344</sup> ‘IDP Protection Strategy 2015’ Protection Sector Working Group Nigeria available at [https://www.humanitarianresponse.info/en/system/files/documents/files/idp\\_protection\\_strategy\\_march\\_2015\\_1.pdf](https://www.humanitarianresponse.info/en/system/files/documents/files/idp_protection_strategy_march_2015_1.pdf) (accessed 1 February 2016) 8.

<sup>345</sup> UNICEF Press Centre (2015).

<sup>346</sup> Agba G, Otuchikere C, Odemwingie E *et al* ‘Nigeria: Boko haram attack on Yobe school, “You’ll burn in hell”, Jonathan tells sect’ All Africa 8 July, 2013. Available at <http://allafrica.com/stories/201307080649.html> (accessed 1 February 2016).

buildings in the school.<sup>347</sup> In November 2014, a suicide bomber entered a secondary school, killed about 47 school pupils and injured many others while at their morning assembly by disguising as a member of the school.<sup>348</sup> Also in April 2014, over 200 Chibok girls were abducted from their school dormitory and till date they have not been found except for some that are reported to have escaped.<sup>349</sup> The Chibok girls' abduction represented the largest single incident of abduction attributable to the Boko Haram.<sup>350</sup>

The North Eastern Nigeria being ravaged by insurgents has ordinarily recorded a low literacy level as it has the highest number of OOSC.<sup>351</sup> The 2013 NDHS showed that the North East had the lowest rate of school attendance compared with the South Eastern region which had the highest. Yobe state in particular was the lowest among all the states in Nigeria in terms of school attendance for both male and female in primary and secondary school with just 12 per cent attendance<sup>352</sup> compared to Imo state in the South East with 75 per cent.<sup>353</sup> A recent study conducted in some schools in Damaturu, the capital city of Yobe state revealed that the insecurity in the region has further caused a reduction in school attendance.<sup>354</sup> Borno state has had the most devastating experience since the Boko Haram insurgency with a huge negative impact on basic education. Despite the ordinarily low primary and secondary school attendance level in the state (35 and 28 per cent respectively),<sup>355</sup> a recent study revealed that the insurgency has affected basic education as school attendance has drastically reduced owing to attacks on schools which has left many children hurt in the process, the abduction of over 200 Chibok girls, and also as children and many teachers have narrowly escaped death during the attacks on their communities.<sup>356</sup>

Female education in the North East though ranking least prior to the insurgency, has been worsened as a result of attacks on schools and kidnap of female students with some being

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<sup>347</sup> 'The Buni Yadi students massacre in Yobe state' The Sun 2 March 2014 available at [www.sunnewsonline.com/new/buni-yadi-students-massacre-yobe/](http://www.sunnewsonline.com/new/buni-yadi-students-massacre-yobe/) (accessed 5 February 2016).

<sup>348</sup> 'Nigerian school blast kills dozens', The Guardian (Nigeria) Monday 10 November 2014, available at <http://www.theguardian.com/world/2014/nov/10/nigeria-school-bomb-blast> (accessed 2 February 2016).

<sup>349</sup> Oke RO & Labeodan HA 'Boko Haram insurgency, the Chibok Girls' abduction and the implication for the girl child in Nigeria' in Ross RE & Amenga-Etego R (eds) *Unravelling and Reweaving the Sacred Canon in Africana Womanhood* (2015) 100-2.

<sup>350</sup> Annual Report of the Secretary General (2015) para 236

<sup>351</sup> Fabunmi M (2005)1.

<sup>352</sup> NDHS 2013 26-7.

<sup>353</sup> NDHS 2013 26-8.

<sup>354</sup> Abdullahi U & Terhemba GA 'Effects of insecurity on primary school attendance in Damaturu metropolis Yobe state, Nigeria' (2014) 5(1) *Journal of Research in Education and Society* 35.

<sup>355</sup> NDHS 2013 26-7.

<sup>356</sup> Abdulrasheed O, Onuselogu A & Obioma UG (2015) 490-94.

turned into suicide bombers.<sup>357</sup> This state of insecurity has forced parents to keep their daughters away from school.<sup>358</sup> It has been shown that due to the insurgency, and particularly the abduction of the Chibok girls, the female students were afraid of being kidnapped and this caused them to stay away from school.<sup>359</sup>

The study carried out by Oladunjoye and Omemu showed that school attendance is mostly affected in rural areas as they are usually neglected unlike the urban areas where the schools enjoy a measure of protection from security forces.<sup>360</sup> The constant attacks by the sect undermines the effort of government in improving education in the Northern region and no right thinking parent would want to send their wards to school for fear of being victims of the attacks.<sup>361</sup> Some parents rather send the children to neighbouring states that are peaceful but the masses in the Northeast counted among the poorest cannot afford that luxury.<sup>362</sup> In situations such as these, the children may never return to school or complete their education even when the insurgency is over, thus diminishing their contribution to their society.<sup>363</sup>

### 4.3 Educational facilities

Availability which stands as one of the essential features of education requires that all necessary infrastructures and learning facilities must be in place.<sup>364</sup> The physical condition of a school has a direct positive or negative effect on a teacher's morale, effectiveness and on the general learning environment.<sup>365</sup> Inadequacy of educational facilities is a threat to the right to education. Nigerian schools are ordinarily ill equipped and not conducive for learning,<sup>366</sup> and the destruction of the available school facilities by the insurgents leaves basic education in a dire situation. Access to basic education in the North Eastern states has been

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<sup>357</sup> Sanni OB 'Effects of insecurity and challenges of female's education in Nigeria' (2015) 18(3) *African Journal for the Psychological Study of Social Issues* 51.

<sup>358</sup> UNICEF 'Insecurity threatens gains in girls education' June 15 2014 available at [http://www.unicef.org/nigeria/media\\_8480.html](http://www.unicef.org/nigeria/media_8480.html) (accessed 19 February 2015).

<sup>359</sup> Joda FM & Abdulrasheed O (2015) 48.

<sup>360</sup> Oladunjoye P & Omemu F (2013) 7.

<sup>361</sup> Ohiwerei FO 'Effects of Boko Haram insurgency/terrorism on business education in Nigerian universities' (2014) 3(9) *Scholarly Journal of Education* 165.

<sup>362</sup> Khan A & Hamidu I 'Boko Haram and turmoil in Northern Nigeria' (2015)19(1) *Jadavpur Journal of International Relations* 29.

<sup>363</sup> O'Mally B (2011) 13.

<sup>364</sup> General Comment 13 para 6(a).

<sup>365</sup> Owoeye JS & Yara PO 'School facilities and academic achievement of secondary school agricultural science in Ekiti state, Nigeria' (2011) 7(7) *Asian Social Science* 64.

<sup>366</sup> Nwangwu CC 'The environment of crisis in the Nigerian education system' (1997) 33(1) *Comparative Education* 91.

greatly affected by the targeted attacks on school facilities by Boko Haram.<sup>367</sup> According to UNICEF over 300 schools were destroyed and 314 children killed between 2012 and 2014.<sup>368</sup>

In Borno, which is the worst hit of all the states, the Executive Chairman of the Borno State Universal Basic Education Board (SUBEB) Shettima Bukarkullima stated that over 512 schools which translate into over 1000 classrooms have been destroyed over the years.<sup>369</sup> In such a situation, not only the building, but also teaching materials and also children's school records are destroyed.<sup>370</sup> The effort of governments of affected states in rebuilding the damaged schools is being frustrated as the insurgents have destroyed some schools repeatedly.<sup>371</sup>

#### **4.4 Educational challenges of internally displaced persons (IDPS)**

One of the gravest consequences of the Boko Haram insurgency is the large population that has been displaced. The International Organisation for Migration set up a Displacement Tracking Matrix in July 2014 to support the government in collecting and disseminating data on IDPs. As of December 2015, the total IDPs in Nigeria were 2,151,979 individuals identified in Adamawa, Bauchi, Benue, Borno, Gombe, Taraba, Yobe, Nasarawa, Plateau, Kaduna, Kano, Zamfara and Abuja.<sup>372</sup> The report also states that 84 per cent were displaced by the insurgency while others are victims of communal clashes in the Northern region. The majority of the IDPs were identified in Borno (64 per cent), followed by Adamawa (6.32 per cent) and Yobe (6.1 per cent). Of the IDPs, 92 per cent live in host communities while eight per cent live in the camps.<sup>373</sup> Children constitute 55.7 per cent of the IDP population and more than half of them are five years old or younger.<sup>374</sup>

Considering that many IDPs are sheltered in schools and humanitarian assistance is limited to life saving interventions, displaced children are generally unable to pursue their education.<sup>375</sup>

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<sup>367</sup> World Report 2014: Nigeria.

<sup>368</sup> UNICEF Child Alert 'Missing childhoods' (2015) 5.

<sup>369</sup> Anumba E 'Boko Haram Kills 350 teachers and destroys 512 schools' The Sun 9 December 2015 available at <http://sunnewsonline.com/new/boko-haram-kills-350-teachers-destroys-512-schools/> (accessed 1 February 2016).

<sup>370</sup> Amnesty International (2013).

<sup>371</sup> Amnesty International (2013) 12.

<sup>372</sup> IOM and NEMA Displacement Tracking Matrix (DTM) Round VII Report December 2015 available at [https://nigeria.iom.int/sites/default/files/dtm/01\\_IOM%20DTM%20Nigeria\\_Round%20VII%20Report\\_20151223.pdf](https://nigeria.iom.int/sites/default/files/dtm/01_IOM%20DTM%20Nigeria_Round%20VII%20Report_20151223.pdf) (accessed 18 February 2016) 1 (hereafter DTM Report (2015)).

<sup>373</sup> DTM Report (2015) 4.

<sup>374</sup> DTM Report (2015) 2.

<sup>375</sup> Internal Displacement Monitoring Centre (IDMC) 'Nigeria: Multiple displacement crisis overshadowed by Boko Haram' (2014) available at

The occupation of the schools by the IDPs and security forces have damaged and destroyed some infrastructure and denied children access to the occupied schools. An increase in IDPs in Adamawa during the school holidays in September 2014 led to the use of schools as shelters, preventing classes from resuming at the start of the academic year.<sup>376</sup> Considering that education planning does not take account of situations of population increase due to displacement, children are refused attendance at host community schools that do not have the facilities or staff to take on more students. In cases where they are accepted, the overstretched resources have reduced the quality of education.<sup>377</sup> Due to fear of attack or abduction, some parents refuse to allow their children go to school and they tend to prioritize basic needs such as food and shelter over education.<sup>378</sup> Such lack of preoccupation could result in juvenile delinquency, drug addiction, prostitution and continued destitution.

#### 4.5 Conclusion

Nigeria has been ranked third among 162 countries in the 2015 Global Terrorism Index<sup>379</sup> and also third among 50 countries for the worst terrorist attacks in 2014.<sup>380</sup> The Boko Haram insurgency stands today as a major threat confronting Nigeria and nearly stretching its security apparatus to their limits.<sup>381</sup> The disintegration of the education system as a result of the general state of insecurity which has led to an exodus of teachers and students could be a long lasting legacy of Boko Haram that sets the North Eastern Nigeria back a generation. There is a need for the government to take decisive and targeted steps in handling the humanitarian needs of those affected by the insurgency in a child sensitive manner with particular attention to the provision of educational opportunities.

The next chapter details the protection gaps in addressing the impact of the Boko Haram insurgency as it reviews what has been done to address the issue at the national level as well as how well the Nigerian government and the relevant agencies have tried to complement the efforts at the international level.

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<http://www.internaldisplacement.org/assets/library/Africa/Nigeria/pdf/201412-af-nigeria-overview-en.pdf> (accessed 20 February 2016) 13 (hereafter IDMC (2014)).

<sup>376</sup> IDMC (2014) 13.

<sup>377</sup> IDMC (2014) 13.

<sup>378</sup> IDMC (2014) 13.

<sup>379</sup> 'Global Terrorism Index 2015' Institute for Economics and Peace available at <http://www.premiumtimesng.com/regional/north-east/194074-boko-haram-nigeria-human-rights-commission-laments-number-of-out-of-school-children.html> (accessed 6 February 2016) Annex A (hereafter Global Terrorism Index 2015).

<sup>380</sup> Global Terrorism Index 2015 Annex B.

<sup>381</sup> Agbiboa D 'Nigerian State responses to insurgency' in Lyons T & Lahai JI, (eds) *African Frontiers: Insurgency, Governance and Peacebuilding in Postcolonial States* (2015) 90.

## CHAPTER FIVE

### 5 NIGERIAN GOVERNMENT'S RESPONSE TO THE BOKO HARAM INSURGENCY

#### 5.1 Introduction

The protection of children from the effects of armed conflict is seen as a legal and moral commitment, as well as a question of international peace and security.<sup>382</sup> Under international law, national governments bear primary responsibility to respect, protect and promote the rights of children within their jurisdiction as well as bringing perpetrators of grave violations against children to justice.<sup>383</sup> The role of the UN and the international community is that of support and one situation where that is greatly required is in the protection of children against grave violations of their rights in countries affected by armed conflict. This chapter looks at the international response to the plight of children affected by armed conflict. It also considers how the Nigerian government in line with its international obligations has responded to the educational needs of children affected by the Boko Haram insurgency.

#### 5.2 International responses to grave violations against children

The international community has taken crucial steps to end impunity and grave violations against children during armed conflict. Various international instruments are in place to secure the protection of children in situations of armed conflict as discussed in chapter three of this study. The unique success of the CRC heightens the burden to ensure appropriate monitoring of implementation of its provisions<sup>384</sup> and the report of Graca Machel in 1996 initiated a purposive agenda for the protection of children in armed conflict. The UNSC has overtime used its capacity to apply pressure through sanctions to ensure compliance with international standards for the protection of children affected by armed conflict.<sup>385</sup>

The UNSC resolutions on children in armed conflict provide the UN with tools to effectively address grave violations against children. The Council has established a strong normative framework to end and prevent grave violations against children through UNSC Resolutions

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<sup>382</sup> OSRSG-CAAC Working Paper No 1(2013) 9.

<sup>383</sup> Office of the Special Representative of the Secretary General for Children and Armed Conflict Working Paper No. 3 'Children and justice during and in the aftermath of armed conflict' (2011) 9.

<sup>384</sup> Verhellen E 'Monitoring children's rights' in Verhellen E *Monitoring Children's Rights* (1996) 7.

<sup>385</sup> Office of the Special Representative of the Secretary General for Children and Armed Conflict 'Monitoring and Reporting Mechanism Guidelines' March 2012 3 (hereafter MRM Guidelines).

1261 (1999), 1314 (2000), 1379 (2001), 1460 (2003), 1539 (2004), 1612 (2005), 1882 (2009), 1998 (2011), 2068 (2012), and 2143 (2014). The Secretary-General is authorised in resolution 1379 (2001)<sup>386</sup> to include State and non-state parties to conflict responsible for the recruitment and use of children in the annexes to his annual report on children and armed conflict.<sup>387</sup> Killing and maiming of children and sexual violence against children was added in resolution 1882 (2009)<sup>388</sup> while recurrent attacks on schools and hospitals were added in resolution 1998 (2011).<sup>389</sup> During the March 2015 Open Debate on Children and Armed Conflict, council members and member States urged the council to designate abductions as a new criteria for listing of parties in order to enhance the effectiveness of child protection by the international community as well as hold perpetrators to account.<sup>390</sup>

With resolution 1612 (2005),<sup>391</sup> the UNSC empowered the Secretary General to establish an enhanced and systemized method of gathering data on violations against children.<sup>392</sup> This led to the establishment of the Monitoring and Reporting Mechanism (MRM) with the mandate of gathering accurate, timely, objective and reliable information on the six grave violations against children in armed conflict by State and non-state actors.<sup>393</sup> The UNSC also in its resolution 1998 (2011) requires all parties listed in the Secretary General's annual report to develop concrete time-bound action plans to halt and prevent violations.<sup>394</sup> MRM is established in countries in situations where parties to conflict have been listed<sup>395</sup> and terminated when the parties are delisted after the UN verifies that the violations for which the parties were listed have ended and action plans to end the violations have been finalized.<sup>396</sup> The 2014 Annual Report of the Secretary General lists 59 parties of which 51 are non-state armed groups and 31 have been in the annexes for at least 5 consecutive reports making them continuing violators.<sup>397</sup>

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<sup>386</sup> Adopted by the UNSC at its 4423<sup>rd</sup> meeting on 20 November 2001 S/RES/1379 (2001) (hereafter Resolution 1379(2001)).

<sup>387</sup> Resolution 1379 (2001) para 16.

<sup>388</sup> Adopted by the UNSC at its 6176<sup>th</sup> meeting on 4 August 2009 (S/RES/1882 (2009) para 3.

<sup>389</sup> Adopted by the UNSC at its 6581<sup>st</sup> meeting on 11 July 2011 (S/RES/1998 (2011) para 3 (hereafter Resolution 1998(2011)).

<sup>390</sup> Report of UNSC 7414<sup>th</sup> meeting held on 25 March 2015 (S/PV/7414).

<sup>391</sup> Adopted by the UNSC at its 5235<sup>th</sup> meeting on 26 July 2005 S/RES/1612 (2005) (hereafter Resolution 1612 (2005)).

<sup>392</sup> Resolution 1612 (2005) para 3.

<sup>393</sup> MRM Guidelines 4.

<sup>394</sup> Resolution 1998 (2011) para 6(c).

<sup>395</sup> MRM Guidelines 5.

<sup>396</sup> MRM Guidelines 18.

<sup>397</sup> Annual Report of the Secretary General 'Children and armed conflict' A/68/878-S/2014/339 15 May 2014 (2014) Annex I and II (hereafter Annual Report of the Secretary General (2014)).

In July 2014, Boko Haram was listed for two grave violations against children - killing and maiming of children and attacks on schools and hospitals.<sup>398</sup> The listing of Boko Haram triggers a country-specific Monitoring and Reporting Mechanism (MRM) on grave violations against children in Nigeria.<sup>399</sup> In December 2014, UN formally established a country task force on children affected by armed conflict to monitor and report on violations against children in Nigeria.<sup>400</sup> The verification of incidents has been challenging due to the lack of easy access to affected areas.<sup>401</sup>

The creation of the Security Council Working Group on Children and Armed Conflict,<sup>402</sup> and the Country Task Force on Monitoring and Reporting<sup>403</sup> are geared towards the effective implementation of the MRM. As the UN lead agency for children, UNICEF has a special responsibility for the effective implementation of the MRM in ensuring timely and adequate response to the needs of affected children.<sup>404</sup> The Office of the SRSG-CAAC has focused a lot of attention on the “Children, Not Soldiers” campaign which has recorded huge success.<sup>405</sup> The SRSG-CAAC also increased focus on the attacks on schools and hospitals. It has helped to further raise the profile of these violations, but it has not resulted in action plans by parties involved.

The listing otherwise called “naming and shaming” of parties to conflicts who commit grave violations against children has recorded successes as some parties already listed have signed action plans with the UN to end and prevent violations against children.<sup>406</sup> Twenty-three action plans have been adopted by 22 parties. Of the action plans, 22 are to stop child recruitment while the other is about killing and maiming signed by the Transitional Federal Government of Somalia on 6 August 2012.<sup>407</sup> The Chadian National Army was delisted following the full implementation of the action plan to end the recruitment and use of

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<sup>398</sup> Annual Report of the Secretary General (2014) Annex II

<sup>399</sup> Watchlist on Children and Armed Conflict ‘Who will care for us?’ (2014)

<sup>400</sup> Annual Report of the Secretary General (2015) para 231.

<sup>401</sup> Annual Report of the Secretary General (2015) para 231.

<sup>402</sup> Established by UNSC in its Resolution 1612(2005) para 8.

<sup>403</sup> This is the organisational structure for the implementation of the MRM at the country level.

<sup>404</sup> MRM Guidelines 8.

<sup>405</sup> Leila Zerrougui ‘A year of progress for “Children, Not Soldiers” 6 March 2015 available at [www.childrenandarmedconflict.un.org/children-not-soldiers-one-year-anniversary/](http://www.childrenandarmedconflict.un.org/children-not-soldiers-one-year-anniversary/) (accessed 8 February 2016).

<sup>406</sup> ‘Expanding the UN’s children and armed conflict agenda’ Watchlist on Children and Armed Conflict Briefing Note May 2015 available at [www.watchlist.org/wordpress/wp-content/uploads/Watchlist\\_Abductions\\_Policy\\_Brief-LR.pdf](http://www.watchlist.org/wordpress/wp-content/uploads/Watchlist_Abductions_Policy_Brief-LR.pdf) (accessed 8 February 2016).

<sup>407</sup> Security Council Cross Cutting Report ‘Children and armed conflict’ June 2015 available at [www.securitycouncilreport.org](http://www.securitycouncilreport.org) (accessed 8 February 2015) 11 (Cross Cutting Report (2015)).

children signed with the UN in 2011.<sup>408</sup> The UN has also provided support to the government of Chad in training, age assessment mechanisms and birth registration. Chad's speedy implementation of an action plan in order to participate in the peacekeeping mission in Mali demonstrates the essence of political will combined with incentives in motivating a government to take concrete steps to halt child's rights violation.<sup>409</sup> With the delisting of parties in Cote d' Ivoire since 2009, the protection of children has continued to improve.<sup>410</sup> A party was also delisted in Uganda in 2009 and also one in Sri Lanka in 2012.<sup>411</sup>

The fight against impunity for war crimes against children has been strengthened by the work of the International Criminal Court (ICC). On 10 July 2012, the Congolese warlord Lubanga Dyilo was found guilty and sentenced to 14 years of imprisonment and this was confirmed by the Appeal Chamber on 1 December 2014.<sup>412</sup> This conviction, according to Amnesty International shows that the ICC can bring the world's worst offenders to justice for genocide, crimes against humanity and war crimes.<sup>413</sup>

### **5.3 Nigerian government's response to Boko Haram insurgency**

The Nigerian government has taken a soft-handed approach involving an attempt to engage the Boko Haram members in political negotiations as was done with the Niger Delta Militants. In April 2013, former President Goodluck Jonathan established a 26 member Amnesty Committee on Dialogue and Peaceful Resolution of Security Challenges in the North with the mandate to within three months convince the Boko Haram sect to surrender its arms in exchange for a state pardon and social integration.<sup>414</sup> The sect however claimed it had done no wrong deserving pardon, rather insisting on its violent campaigns to establish an Islamic State in Nigeria.<sup>415</sup> This attempt, according to Nwankpa was ill advised as the

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<sup>408</sup> Annual Report of the Secretary General (2015) para 52.

<sup>409</sup> Cross Cutting Report (2015) 3.

<sup>410</sup> Annual Report of the Secretary General (2015) para 57.

<sup>411</sup> Cross Cutting Report (2015) 16.

<sup>412</sup> *The Prosecutor v. Thomas Lubanga Dyilo* ICC-01/04-01/06.

<sup>413</sup> 'Landmark ICC verdict over the use of child soldiers' Amnesty International 14 March 2012 available at [www.amnesty.org/en/latest/news/2012/03/landmark-icc-verdict-over-use-child-soldiers/](http://www.amnesty.org/en/latest/news/2012/03/landmark-icc-verdict-over-use-child-soldiers/) (accessed 5 February 2016).

<sup>414</sup> Agbiboa D 'Resistance to Boko Haram: Civilian Joint Task Forces in North-Eastern Nigeria' 2015 *Conflict Studies Quarterly* 11 (hereafter Agbiboa D (2015)).

<sup>415</sup> Agbiboa D 'The ongoing campaign of terror in Nigeria: Boko Haram versus the State' (2013) 2(3) *Stability: International Journal of Security and Development* 1-18.

religious motivation of the sect is different from the secular demands of the Niger Delta militants.<sup>416</sup>

The Boko Haram launched several brutal attacks after its refusal<sup>417</sup> which led the government to a hard approach by declaring a state of emergency on 14<sup>th</sup> May 2013 in Borno, Adamawa and Yobe, as an attempt to restore order and reclaim the territories under Boko Haram control.<sup>418</sup> The government established a Joint Task Force (JTF) and deployed 8000 soldiers to the region which happened to be the largest military deployment since the Nigerian civil war.<sup>419</sup> In 2015, the troop succeeded in reclaiming most of the areas under Boko Haram control. The Nigerian army supported by the Nigerian Air Force has launched attacks against Sambisa forest which is considered a major stronghold of the sect, rescuing captives, arresting insurgents and destroying their weapons.<sup>420</sup>

Amnesty International has however documented a series of human rights violations against Nigerians by the JTF mandated to protect them.<sup>421</sup> They are reported to have carried out extra-legal killings, intimidation of residents, arbitrary arrests and searches, and burning of houses and shops belonging to civilians. Also, rather than conducting intelligence-driven operations, the JTF simply condoned off areas and carried out house to house searches and at times shooting young men in their homes.<sup>422</sup> In a fire fight between the JTF and the Boko Haram in Baga, a village on Lake Chad near the Nigerian border with Cameroon, almost 185 people were killed and others injured.<sup>423</sup>

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<sup>416</sup> Nwankpa M 'The politics of amnesty in Nigeria: A comparative analysis of the Boko Haram and the Niger Delta insurgencies' (2014) 5(1) *Journal of Terrorism Research* 74.

<sup>417</sup> 'Analysis: Nigerians on the run as military combat Boko Haram' IRIN 22 May 2013 available at [www.irinnews.org/report/98076/analysis-nigerians-on-the-run-as-military-combat-boko-haram](http://www.irinnews.org/report/98076/analysis-nigerians-on-the-run-as-military-combat-boko-haram) (accessed 4 February 2016).

<sup>418</sup> Owete F 'Mixed reactions trail declaration of state of emergency in Borno, Yobe and Adamawa' Premium Times 14 May 2013 available at <http://www.premiumtimesng.com/news/134285-mixed-reactions-trail-declaration-of-state-of-emergency-in-borno-yobe-adamawa.html> (accessed 5 February 2016).

<sup>419</sup> Agbiboa D 'Peace at daggers drawn? Boko Haram and the state of emergency in Nigeria' (2014) 37 *Studies in Conflict and Terrorism* 60.

<sup>420</sup> 'Sambisa forest battle: 3 soldiers killed as Nigerian Army commences attack on Boko Haram' Premium Times 6 December 2015 available at <http://www.premiumtimesng.com/news/headlines/194654-sambisa-forest-battle-3-soldiers-killed-as-nigerian-army-commences-attack-on-boko-haram.html> (accessed 6 February 2016).

<sup>421</sup> Amnesty International 'Stars on their shoulders, blood on their hands: War crimes committed by the Nigerian military' June 2015 available at [www.amnestyusa.org/sites/default/files/report.compressed.pdf](http://www.amnestyusa.org/sites/default/files/report.compressed.pdf) (accessed 11 February 2015).

<sup>422</sup> Anyadike O 'Analysis: Carrot or stick? – Nigerians divided over Boko Haram' IRIN 16 July 2012 available at [www.irinnews.org/report/95874/analysis-carrot-or-stick-nigerians-divided-over-boko-haram](http://www.irinnews.org/report/95874/analysis-carrot-or-stick-nigerians-divided-over-boko-haram) (accessed 4 February 2016).

<sup>423</sup> '185 killed in Borno town, Baga, as soldiers, Boko Haram fight' Premium Times 22 April 2013 available at <http://www.premiumtimesng.com/news/130680-185-killed-in-borno-town-baga-as-soldiers-boko-haram-fight.html> (accessed 5 February 2016).

In reaction to the perceived failure of the Nigerian military to protect civilians against Boko Haram, the local youths (yan gora) of the affected communities in Borno state, armed with rudimentary weapons such as sticks, machetes, daggers, bows and arrows, have mobilized themselves against Boko Haram elements in their communities.<sup>424</sup> The group serves to complement the counter terrorism efforts of the JTF.<sup>425</sup> The group officially recognised as Civilian Joint Task Force (CJTF), due to numerical strength and local knowledge, has successfully tracked down some insurgents in their communities who they either kill or hand over to security operatives.<sup>426</sup> They work with the Nigerian soldiers providing local intelligence and man some checkpoints in Maiduguri.<sup>427</sup>

Since 2013, the CJTF has recorded success against Boko Haram. In March 2014, the CJTF killed 207 Boko Haram insurgents who invaded a military barracks in Maiduguri, Borno state capital.<sup>428</sup> They have also helped to prevent attacks in Maiduguri and push the insurgents out into more rural areas.<sup>429</sup> In December 2015, thousands of Muslims celebrating Maulud escaped death as members of the CJTF intercepted five food flasks containing bombs being carried by suspected Boko Haram members to a popular mosque in Maiduguri.<sup>430</sup> Despite this success, they have also fallen as casualties to Boko Haram. In June 2015, a suicide bomber killed three CJTF and injured several others at a checkpoint in Maiduguri.<sup>431</sup> Hundreds of CJTF members were killed while trying to prevent bomb strapped insurgents from detonating their bombs in large crowds.<sup>432</sup>

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<sup>424</sup> Agbibo D (2015) 13.

<sup>425</sup> Agbibo D (2015) 13.

<sup>426</sup> Agbibo D (2015) 14.

<sup>427</sup> Ogene A 'Nigerian vigilantes aim to rout Boko Haram' Aljazeera 31 May 2014 available at [www.aljazeera.com/indepth/features/2014/05/nigerian-vigilantes-aim-rout-boko-haram-2014526123758444854.html](http://www.aljazeera.com/indepth/features/2014/05/nigerian-vigilantes-aim-rout-boko-haram-2014526123758444854.html) (accessed 4 February 2015).

<sup>428</sup> '207 Boko Haram militants killed in Maiduguri attack, says Civilian –JTF' Premium Times 14 March 2014 available at [www.premiumtimesng.com/news/156763-207-boko-haram-militants-killed-maiduguri-attack-says-civilian-jtf.html](http://www.premiumtimesng.com/news/156763-207-boko-haram-militants-killed-maiduguri-attack-says-civilian-jtf.html) (accessed 4 February 2015).

<sup>429</sup> 'Maiduguri attack: Shettima hails soldiers, Civilian-JTF' Information Nigeria 2 February 2015 available at [www.informationng.com/2015/02/maiduguri-attack-shettima-hails-soldiers-civilian-jtf.html](http://www.informationng.com/2015/02/maiduguri-attack-shettima-hails-soldiers-civilian-jtf.html) (accessed 4 February 2016).

<sup>430</sup> Audu O 'Thousands escape death in Maiduguri as Civilian-JTF intercept bombs concealed in food flasks' Premium Times 24 December 2015 available at <http://www.premiumtimesng.com/news/headlines/195700-thousands-escape-death-in-maiduguri-as-civilian-jtf-intercept-bombs-concealed-in-food-flasks.html> (accessed 6 February 2016).

<sup>431</sup> 'Male suicide bomber kills 3 civilian JTF members near Maiduguri' Sahara reporters 13 June 2015 available at [www.saharareporters.com/2015/06/13/male-suicide-bomber-kills-3-civilian-jtf-members-near-maiduguri](http://www.saharareporters.com/2015/06/13/male-suicide-bomber-kills-3-civilian-jtf-members-near-maiduguri) (accessed 4 February 2015).

<sup>432</sup> Otuchikere C '603 Civilian JTF killed by Boko Haram' All Africa 30 June 2015 available at [www.allafrica.com/stories/201506300050.html](http://www.allafrica.com/stories/201506300050.html) (accessed 4 February 2016).

Due to the insurgency, the government's defence spending has increased drastically compared to what it was before the insurgency started. It is however debatable whether the increased funding for defence will be helpful in the fight against the insurgency considering the corruption in the Nigerian armed forces as well as the human rights abuses by Nigerian soldiers who are assigned to provide protection for the affected people. Recently in Nigeria, some high profile politicians and top military officers were arrested and currently facing trial over the two billion dollar (\$2 billion) arms contract deal which was allocated for the procurement of arms in the fight against the insurgency. This sum was allegedly misappropriated by the office of the National Security Adviser, Colonel Sambo Dasuki who oversaw the fight against Boko Haram during President Goodluck Jonathan's administration.<sup>433</sup>

#### **5.4 How child sensitive has the response been?**

##### **5.4.1 Counter-insurgency operations**

It is the right and duty of a State facing insurgency to take counter insurgency measures to ensure public security.<sup>434</sup> The UN General Assembly in Resolution 60/288 requires such measures to comply with the provisions of international human rights and humanitarian law.<sup>435</sup> The insurgency as well as government's counter-insurgency operation has claimed hundreds of civilians including children. The JTF, rather than calm the situation in the states has even heightened the fear of the inhabitants. Children have been killed, orphaned and displaced by the activities of the JTF. The result of failure on the part of the military to protect the citizens led to the CJTF that serves as an avenue for the violation of children's rights.

The Nigerian government appears to have failed in its obligation to ensure that children do not participate in hostilities as required by the CRC, ACRWC and section 34 of the CRA 2003. The CJTF, largely teenagers without basic education, some who have lost their parents and siblings to the insurgency, are on a revenge mission.<sup>436</sup> According to UNICEF and the

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<sup>433</sup> 'Dasuki's arms deal scandal and blood of the innocent' Vanguard 9 December 2015 available at <http://www.vanguardngr.com/2015/12/dasukis-arms-deal-scandal-and-blood-of-the-innocent/> (accessed 11 March 2016).

<sup>434</sup> Odomovo AS 'Insurgency, counter-insurgency and human rights violations in Nigeria' (2014) 3 *Age of Human Rights Journal* 50-51.

<sup>435</sup> Resolution 60/288 'The United Nations Global Counter-Terrorism Strategy' Adopted by the General Assembly on 8 September 2006 (A/RES/60/288) Annex IV para 2.

<sup>436</sup> Agbiboa D (2015) 13.

Protection Sector Working Group, children are joining the ranks of the CJTF in increasing numbers and being used in the fight against insurgency.<sup>437</sup> Watchlist noted that the CJTF forcefully recruits young men and boys as young as 13 years old.<sup>438</sup> Lack of education and preoccupation is the reason some of these youths are involved in the fight against the insurgents. Considering that there is no formal process of drafting in members of the group, it is feared that the youths could become new militias if not properly regulated and their activities could incite the Boko Haram into more attacks,<sup>439</sup> It is however disheartening that the government of Borno state gives monthly allowance to an unorganised group in the guise of fighting the insurgency.<sup>440</sup> The work of counter-insurgency should be carried out by military operatives who are adequately trained and paid for such operations and not civilians.

#### 5.4.2 Humanitarian needs

According to the UN Guiding Principles on Internal Displacement,<sup>441</sup> and the UN Resolution 46/182 of 1991,<sup>442</sup> the State has the primary role in protection and provision of humanitarian assistance to IDPs within its territory. The fact that IDPs remain within the borders of their country means that it is their own government that bears primary responsibility for protecting and assisting them.<sup>443</sup> The support rendered by UNICEF and other international bodies cannot override that responsibility.

Nigeria has received support internationally to take care of the increasing needs of those affected by the insurgency. Following the repeated attacks on schools and the abduction of over 200 Chibok girls in 2014, the Safe Schools Initiative was launched by the UN Special Envoy for Global Education and former UK Prime Minister, Gordon Brown at the World

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<sup>437</sup> UNICEF Child Alert 'Missing childhoods' (2015) 6, 'IDP Protection Strategy' (2015) Protection Sector Working Group Nigeria available at [https://www.humanitarianresponse.info/en/system/files/documents/files/idp\\_protection\\_strategy\\_march\\_2015\\_1.pdf](https://www.humanitarianresponse.info/en/system/files/documents/files/idp_protection_strategy_march_2015_1.pdf) (accessed 13 February 2015) 8 (hereafter IDP Protection Strategy (2015)).

<sup>438</sup> Watchlist on Children and Armed Conflict 'Who will care for us?' (2014) 29.

<sup>439</sup> 'Civilian vigilante groups increase dangers in northeastern Nigeria' IRIN 12 December 2013 available at [www.irinnews.org/fr/report/99320/civilian-vigilante-groups-increase-dangers-in-northeastern-nigeria](http://www.irinnews.org/fr/report/99320/civilian-vigilante-groups-increase-dangers-in-northeastern-nigeria) (accessed 4 February 2016).

<sup>440</sup> 'Shettima meets civilian JTF, unfolds welfare package for members' Information Nigeria 30 December 2015 available at [www.informationnigeria.com,2015/12/shettima-meets-civilian-jtf-%2%80%8eunfolds-welfare-package-for-members.html](http://www.informationnigeria.com,2015/12/shettima-meets-civilian-jtf-%2%80%8eunfolds-welfare-package-for-members.html) (accessed 4 February 2015).

<sup>441</sup> Principle 25, see also Rerries E & Winthrop R 'Education and displacement: Assessing conditions for refugees and internally displaced persons affected by conflict' Background paper prepared for the Education for All Global Monitoring Report 2011 (2010) UNESCO 2011/ED/EFA/MRT/PI/38.

<sup>442</sup> Adopted by the UN General assembly at its 78 meeting on 19 December 1991 (A/RES/46/182) para 4.

<sup>443</sup> Ladan M 'Strategies for adopting the national policy on IDPs and domesticating in Nigeria the African Union Convention for the Protection and Assistance of IDPs in Africa' Being a paper presented at the National Summit on IDPs in Nigeria on 19-20 August 2015 4 (hereafter Ladan M (2015)).

Economic Forum in Nigeria with an initial donation of \$10 million. The initiative is to strengthen the #BringBackOurGirls campaign and to ensure that all schools in Nigeria are safe from attacks in the future.<sup>444</sup> It seeks to build community security groups to promote safe zones for education, consisting of teachers, parents, police, community leaders and young people themselves. The long term goal is to develop school security plans and rapid response system to help repair or rebuild and ensure destroyed educational materials are replaced.<sup>445</sup> The initiative has so far received funding from the Nigerian government, foreign governments and international donor agencies.

In addition to health, nutrition and other survival needs as well as psychosocial services,<sup>446</sup> UNICEF has contributed its own quota to the provision of education to IDP children across the North Eastern region.<sup>447</sup> Through partnership with the government, it has supported the training of teachers. In Yobe, UNICEF delivered tents at a primary school to serve as temporary learning spaces for the education of IDP children. Also, school-in-a-box kits, 50 000 school bags and other school supplies were distributed to the Ministry of Education in Borno, Yobe and Adamawa states. In Dalori camp in Borno state, the state Coordination Committee supported by UNICEF, enrolled 4 737 children in the neighbouring Dalori Estate primary/junior secondary school. UNICEF provided pedagogical material to Borno SUBEB for the children enrolled and also transport to and from school due to parent's security concerns. It also established 2 in-camp temporary learning spaces in UNICEF tents for children aged between three and five years.<sup>448</sup> As of 1 October 2015, 6 300 children have been able to undertake schooling in a more conducive environment through UNICEF

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<sup>444</sup> A World at School 'Safe schools initiative launched after kidnappings in Nigeria' 7 May 2014 available at <http://www.aworldatschool.org/news/entry/safe-schools-initiative-launched-in-nigeria> (accessed 19 February 2016).

<sup>445</sup> Office of the UN Special Envoy for Global Education 'Safe School Initiative Launched' Press Release 7 May 2014 available at <http://educationenvoy.org/press-release-safe-schools-initiative-launched-at-world-economic-forum/> (accessed 19 February 2016).

<sup>446</sup> UNICEF Child Alert 'Missing childhoods' (2015) 9.

<sup>447</sup> UNICEF 'Nigerian Humanitarian Situation Report' 1 June 2015 available at [www.unicef.org/appeals/files/UNICEF\\_Nigeria\\_Sitrep\\_North\\_East\\_1\\_June\\_2015.pdf](http://www.unicef.org/appeals/files/UNICEF_Nigeria_Sitrep_North_East_1_June_2015.pdf) (accessed 11 February 2015) (hereafter UNICEF 'Nigerian Humanitarian Situation Report' June (2015)).

<sup>448</sup> UNICEF 'Nigerian Humanitarian Situation Report' June (2015).

schooling support programmes.<sup>449</sup> Also, it's Back to School campaign in Borno and Yobe has led to the enrolment of 170 432 children previously out of school.<sup>450</sup>

The support rendered by these bodies is only limited to some camps reaching just a fraction of the IDPs. The major burden lies with the Nigerian government. However, the government has not been able to meet the humanitarian needs of the IDPs probably because their needs outweigh its current capacity to address them and also the limited understanding of the rights of IDPs.<sup>451</sup> National efforts to respond to displacement and mitigate its long-term effects on IDPs and host communities tend to be fragmented, uncoordinated and inadequate and most assistance IDPs receive is provided by host communities.<sup>452</sup>

Most of the IDPS live in host communities with little access to humanitarian support, putting additional strain on the already stretched health, education and social services.<sup>453</sup> Hence, the IDP camps are witnessing an increasing influx of IDPs who cannot sustain themselves and communities are less able to absorb the large crowds. The camps are struggling to accommodate the increasing number of displaced people under unhealthy living conditions. Due to the hunger, so many children are malnourished as no adequate provision is made for their feeding.<sup>454</sup>

Families displaced as a result of conflict represent an example of war affected population in which the context of child development becomes dramatically altered by war.<sup>455</sup> IDPs have been identified as a special category of concern as they are among the most vulnerable to human rights abuses.<sup>456</sup> The ratification of the Kampala Convention places an obligation on the Nigerian government in responding to the Boko Haram insurgency, to ensure children's access to education.<sup>457</sup> Though regular school structures may not be achievable in the short term, concrete efforts must be made to ensure that children do not miss out of education as a result of being displaced. Unfortunately, Nigeria ratified the Kampala Convention in April

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<sup>449</sup> UNICEF 'Nigerian Humanitarian Situation Report' 1 October 2015 available at [http://www.unicef.org/appeals/files/UNICEF\\_Nigeria\\_Humanitarian\\_Report\\_1\\_Oct\\_2015.pdf](http://www.unicef.org/appeals/files/UNICEF_Nigeria_Humanitarian_Report_1_Oct_2015.pdf) (accessed 20 February 2016).

<sup>450</sup> UNICEF 'Nigerian Humanitarian Situation Report' 1 November 2015 available at [http://www.unicef.org/appeals/files/UNICEF\\_Nigeria\\_Humanitarian\\_SitRep\\_1\\_Nov\\_2015.pdf](http://www.unicef.org/appeals/files/UNICEF_Nigeria_Humanitarian_SitRep_1_Nov_2015.pdf) (accessed 20 February 2016).

<sup>451</sup> IDP Protection Strategy (2015) 6.

<sup>452</sup> IDMC (2015).

<sup>453</sup> UNICEF Child Alert 'Missing childhoods' (2015) 2

<sup>454</sup> UNICEF Child Alert 'Missing childhoods' (2015) 9.

<sup>455</sup> Bentancourt TS & Kahn KT (2008) 323.

<sup>456</sup> Mooney E 'The concept of internal displacement and the case for internally displaced persons as a category of concern' (2005) 24(3) *Refugee Survey Quarterly* 15.

<sup>457</sup> Article 9(2)(b) Kampala Convention.

2012 and submitted a draft policy on IDPs<sup>458</sup> domesticating its provisions to the Federal Executive Council. Till date, the policy is yet to be adopted.<sup>459</sup>

Education of victims is virtually non-existent in some camps. Out of 78 IDP camps, 33 do not have access to education. In the other 45 camps having access to education, 35 have an education facility on the camp while the other 29 have educational facilities situated outside the camps.<sup>460</sup> In an IDP camp in Taraba state of Nigeria, despite having lived there for almost two years, children were found roaming about without any form of education programme.<sup>461</sup> In one of the IDP camps in Sangere, Yola state, the schools for IDP children is run by 58 parents who are equally displaced despite not receiving any form of assistance from the government except Non-Governmental Organisations and kind hearted individuals.<sup>462</sup>

The federal government has failed to make good efforts targeted at rebuilding the damaged schools in the areas that are safe enough for habitation. Reintegration efforts are almost non-existent as a result of focus on short-term humanitarian responses. Hence, few resources have been dedicated to the pursuit of durable solutions for IDPs for their return, local integration or sustainable settlement elsewhere in the country.<sup>463</sup>

The problem of corruption which is endemic in Nigeria has equally reared its ugly head in addition to the burden of the IDPs. The level of exploitation has reached staggering heights as people have begun to profit off the situation of the IDPs. Funds for their care are redirected and their numbers are sometimes exaggerated in order for the operators to get more funds.<sup>464</sup>

The government in Borno state which is the worst hit has taken steps to address the sufferings of victims of the insurgency. The government in 2015 created the Ministry of Reconstruction, Rehabilitation and Resettlement with the mandate of rebuilding and resettling the over 500

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<sup>458</sup> Federal Republic of Nigeria 'National Policy on Internally Displaced Persons (IDPs) in Nigeria' 2012 available at <http://infopointmigration.org.ng/wp-content/uploads/NATIONAL-IDP-POLICY.pdf> (accessed 15 March 2016).

<sup>459</sup> Ladan M (2015) 11.

<sup>460</sup> DTM Report (2015) 9.

<sup>461</sup> Oyewobi A 'NHRC decries neglect of 4000 IDPs in Taraba' Premium Times 17 January 2016 available at <http://www.premiumtimesng.com/regional/north-east/196920-nhrc-decries-neglect-of-4000-idps-in-taraba.html> (accessed 5 February 2016).

<sup>462</sup> Ajayi A 'Boko Haram: Nigerian Human Rights Commission laments number of out-of-school children' Premium Times 29 November 2015 available at <http://www.premiumtimesng.com/regional/north-east/194074-boko-haram-nigeria-human-rights-commission-laments-number-of-out-of-school-children.html> (accessed 6 February 2016).

<sup>463</sup> IDMC (2014) 14.

<sup>464</sup> Ogundamisi K 'Exploitation of internally displaced persons in Nigeria' Premium Times 12 July 2015 available at [www.premiumtimesng.com/exploitation-of-internally-displaced-persons-in-nigeria-by-kayode-ogundamisi/](http://www.premiumtimesng.com/exploitation-of-internally-displaced-persons-in-nigeria-by-kayode-ogundamisi/) (accessed 20 February 2016).

000 IDPs and other victims of the insurgency in Borno state.<sup>465</sup> The ministry will be in charge of reconstructing destroyed public buildings such as schools and hospitals so that the IDPs can return to their communities and schools reopened for resumption. This is a significant step in the post insurgency plan of Borno state.

## **5.5 Conclusion**

The inclusion of the children and armed conflict as part of the agenda of the Security Council is a vital step in the protection of children from grave violation of their rights. The success of the naming and shaming has seen an improvement in the situation of children affected by armed conflict in those States that have signed action plans and taken steps towards its implementation. Though a very significant change has not been achieved when compared with the magnitude of the problem, there is cause to be hopeful that with the strength of the campaign being made, there will be a significant improvement in a few years.

The Nigerian government has not been impressive in its response to the humanitarian needs of children affected by the insurgency. Despite the importance of education to national development, no significant attention has been paid to ensuring the provision of education to children affected by the insurgency. The attention has rather been on short term humanitarian responses. The failure to adopt the draft policy on IDPs shows how much insensitive the government is to the plight of children deprived of education and an adequate standard of living as a result of the insurgency.

The final chapter will draw conclusions from the entire study and make necessary recommendations.

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<sup>465</sup> Njadvara M 'Borno creates ministry to rebuild, rehabilitate communities destroyed by insurgents' The Guardian 19 September 2015 available at <http://www.ngrguardiannews.com/2015/09/orno-creates-ministry-to-rebuild-rehabilitate-communities-destroyed-by-insurgents/> (accessed 6 February 2015).

## CHAPTER SIX

### 6 CONCLUSION AND RECOMMENDATIONS

#### 6.1 Conclusion

The protection of the rights of children affected by armed conflict has been a burning international, regional as well as a national issue. Children have overtime suffered severe and worsening human rights violations as a result of being caught in situations of armed conflict. Furthermore, several commitments have been made to secure adequate care and protection for children in armed conflict as well as to prevent the grave violations of their rights. Considering the above, this study focused on the effect of the Boko Haram insurgency in Nigeria with special emphasis on its impact on the child's right to education. The study also considered how effective the steps of the Nigerian government are in securing children's right to education affected by the insurgency in line with its obligations under international and regional legal framework. Despite the focus on education, the Boko Haram insurgency has had a negative impact on children's right to life, health care, adequate standard of living, parental care, and other rights guaranteed for Nigerian children.

Chapter two of the study set out the legal framework for the protection of children's rights in Nigeria with emphasis on the right to education. The EFA and MDG goals have facilitated international commitment to education. Nigeria's commitment to achieving these goals is through the UBE scheme which is a laudable initiative in achieving basic education. However, the scheme was shown to have several shortcomings such as lack of adequate learning facilities and shortage of qualified personnel. The lapses in the provision of education have led to high level of OOSCs as well as the disparity in level of education in the Southern and Northern region with the North Eastern region being rated least in school attendance in the whole of the country. Also, there is the rural and urban as well as gender disparities in access to education as a result of inadequate infrastructural development and the gender discrimination against girls in accessing education especially in the Northern region.

In addition, chapter three set out the legal framework protecting the child's right to education in armed conflict. The changing context of armed conflict which has resulted in grave violations against children has equally affected their right to education. The reason is that those institutions protecting children such as family, school, and health institutions are potential targets in situations of armed conflict. One of the grave violations is the attacks on

schools resulting in abduction and killing of students and teachers, destruction of school facilities and the general state of insecurity leading to closure of schools. Armed conflict has dire implications for the child's access to education as it causes a disruption of school attendance, drop in enrolment, progress as well as completion rates.

Furthermore, chapter four looked at how the Boko Haram insurgency has affected children's access to education. It was shown that the Boko Haram sect has made targeted attacks on schools, school children, teachers as well as education facilities. Children and teachers have been killed and injured during these attacks and learning facilities and school records destroyed in the process. As a result, they have been forced to stay out of school due to fear of being casualties. These attacks and the general state of insecurity has had a negative impact on school attendance in the North Eastern states most affected by the insurgency, leading to an increase in the OOSC burden in the country. The displacement of people, of which children constitute more than half has equally been a problem as children in such IDP camps are forced to leave places where they have access to education to places where such access is a luxury.

Again, chapter five showed the protection gaps in the care of children affected by the insurgency. A number of steps taken at the international level to help the situation of children affected by armed conflict around the world as well as Nigeria were highlighted. The measures such as naming and shaming of parties committing grave violations against children in armed conflict has led to the signing of action plans to stop such violations. Reference was also made to the contributions of the SRSB-CAAC as well as the ICC in protecting children against grave violations of their rights. Also documented is the provision of humanitarian aid by the UNICEF and also the UN Special Envoy on Global Education (the Safe Schools Initiative).

Chapter five also noted that on the part of the Nigerian government, not much has been done to complement the efforts at the international level. Human rights abuses have been committed by the JTF during its counter-insurgency operations. Children are being employed in the fight against the insurgency as they are recruited into the unorganised CJTF. Also, corruption is a challenge in the fight against the insurgency as military officers and other influential politicians are facing trial for misappropriation of funds allocated to the fight against the Boko Haram insurgency. There are also reports of individuals benefitting from the plight of the IDPs. The most obvious victims of the insurgency, which are the IDPs, are still a

sorry sight as access to education was shown to be completely non-existent in most camps. No concrete strategies are in place to see to the rebuilding of damaged schools or the reintegration of displaced populations as the government has overtime placed much emphasis on short term humanitarian responses.

Despite being a member of the CRC and ACRWC as well as the enactment of the CRA 2003, better life for a majority of Nigerian children is still far-fetched. Being a party to these instruments places an obligation on the Nigerian government to ensure the protection and care of children affected by the insurgency. The large number of children deprived of an adequate standard of living owing to poverty, children subjected to abuse and exploitation, street children as well as the high OOSC burden, shows the failure of the Nigerian government to secure the rights of children.

It is submitted that armed conflict greatly impacts negatively on the child's right to education as the targeted attacks on schools, school children, teachers and school facilities can cause a drop in school enrolment and attendance as well as longer term effects on the standard of education provided. Also, the Boko Haram insurgency in Nigeria is a vivid example of the impact of armed conflict on education as children and teachers have been forced out of school due to attacks against school children, teachers and school facilities, abductions, occupation of school buildings and the general state of insecurity.

The protection of children affected by armed conflict is the primary duty of States, but the Nigerian government's response has not been impressive in this regard. Despite its ratification of the Kampala Convention, the present situation of the children affected by the insurgency shows that the government has failed to secure an adequate protection. A large number of Nigerian children are still out of school as the government has failed to make concrete effort to rebuild damaged schools and meet the educational needs of IDP children. The various human rights abuse by the JTF in the process of restoring the much needed peace and security is worrisome. The lack of expertise in child protection in emergencies among government actors is hindering the response. Concrete steps addressing the protection gaps affecting children need to be taken. There is need for the adoption of the draft policy on IDPs as the absence of a law and policy framework that clearly defines the roles and responsibilities hampers the coordination of humanitarian and development efforts to mitigate the effects of displacement on children.

## 6.2 Recommendations

The ultimate step to putting smiles on the faces of children affected by conflict is an end to it. The present situation in North Eastern Nigeria as a result of the Boko Haram insurgency calls for urgent intervention. Thus, the Nigerian government needs to take proactive steps to nip the insurgency in the bud so that peace can return to the region. The use of the military in fighting the insurgency is commendable, but the government needs to pursue a more comprehensive strategy that addresses the economic and social roots of the crisis. Measures should address the high poverty and unemployment in the North and also steps should be taken to get the Almajiri boys off the streets because these groups are a potential weapon in the hands of the insurgents. The government should expose and bring to justice Boko Haram activists, funders as well as those who are benefitting from the conflict. The Nigerian immigration service needs to be effectively equipped to guard especially the Nigeria-Chad and Nigeria-Cameroon borders to prevent the influx of illegal aliens that support the insurgent group.

Considering that security cannot be promoted at the expense of human rights, the counter insurgency operations should uphold the rule of law and abide by international human rights standards. The military must ensure it conducts its operations more professionally in order to minimize collateral casualties, damage to livelihoods and human rights violations and eventually win the support of citizens in the fights against Boko Haram.

Considering the importance of children in the future of a nation, there is need for states in Nigeria to enact the CRA 2003 as state laws in order to ensure an effective child's right protection in all the states of the federation. Also, adequate awareness must be created in respect of the rights of children as this will engender an improved child care and support from parents, school authorities and other stakeholders as well as enable children to become aware of their rights. Furthermore, there is a need for improvement in child protection mechanisms to check child abuse and economic and sexual exploitation, trafficking and street children. One of such is the provision of appropriate alternative care arrangements to cater for children deprived of family care.

Owing to the importance of education in the overall human capital development of any State, and the obligation upon the Nigerian government as a party to the CRC and ACRWC, there is a need for a stronger protection of the child's right to education. Having the child's right to

education contained in the CRA 2003, while the Nigerian Constitution makes the right to education a directive principle of state policy which is specifically stated to be non-justiciable, renders the provision of the CRA 2003 of no meaningful effect. There is a need for a constitutional protection of the right of the child to basic education so that it becomes a justiciable right.

The government needs to provide quality education for children in line with the essential features as stipulated by the CESC. It is not in doubt that the Nigerian education system, especially basic education is in dire need of improvement. Thus, the provision of adequate infrastructure and learning facilities in schools in both urban and rural areas is necessary. Concrete efforts must be made to ensure a reduction in the OOSC burden and considering its uneven spread, measures to address it should be flexible enough and take into account the disparity between the North and the South, the rural and urban areas as well as the gender disparity. Also, proper assessment must be made before the issuance of licenses to private school operators and proper monitoring and inspection must be done after such issuance.

Education is a basic right and its availability in emergencies can provide life-saving information, protect children from trafficking, recruitment by armed groups and psychosocial trauma.<sup>466</sup> In the long term, it can promote peace and post-conflict reconstruction and help young people develop skills and qualifications to live a meaningful life after the conflict ends.<sup>467</sup> Vernor Munoz, former Special Rapporteur on the Right to Education stated also that:

‘Education mitigates the psychosocial impact of conflict and disasters by giving a sense of normality, stability, structure and hope during time of crisis, and provides essential building blocks for social reconstruction and future economic stability.’<sup>468</sup>

The Special Rapporteur noted that States have the duty to respect, protect and fulfil the right to education as the right is available to all irrespective of legal status, whether refugee, child soldier or internally displaced person.<sup>469</sup> He noted that the humanitarian emphasis on food, health and shelter ought to be extended to the people’s overall welfare which includes

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<sup>466</sup> Coursen-Neff Z ‘Attacks on education: Monitoring and reporting for prevention, early warning, rapid response and accountability’ in UNESCO *Protecting Education from Attack* (2010)111 (hereafter Coursen-Neff Z (2010)).

<sup>467</sup> Coursen-Neff Z (2010) 111.

<sup>468</sup> Report of the Special Rapporteur on the Right to Education (2008) para 34.

<sup>469</sup> Report of the Special Rapporteur on the Right to Education (2008) para 37.

education.<sup>470</sup> Education can help children recover from the post traumatic effects of armed conflict. A study evaluated a school-based psychosocial intervention in conflict affected Nepal and it showed moderate reductions on general psychological difficulties.<sup>471</sup>

The Nigerian government should direct efforts at rebuilding the schools destroyed by the insurgents. The rebuilding of the schools in areas still under attacks is not recommended as they might be razed to the ground again by the insurgents leading to wastage of already lean resources. Besides, school activities will not resume if the insurgency persists despite the reconstruction of the schools. Rather the government should seek efforts pending the return of peace to the region, to provide basic education to the affected children in the IDP camps and host communities through building temporary school structures, recruitment of teachers, providing teaching and learning materials or through other alternative methods such as broadcasting lessons over the radio or establishing classes in safe community spaces. The steps in ensuring that children return to school despite the insurgency will help to curtail the influx of children into Islamic schools which could cause a rise in the number of Almajiri street children in the Northern region.

More so, children should be encouraged to return to school with the provision of scholarships and other incentives as motivation when the insurgency is over. This motivation could be achieved by the establishment of a school structure that is child friendly such as the provision of adequate facilities for play, recreation and feeding while at school. There should be provision of security personnel in these schools and also an internal school security system so as to reassure teachers and the children of their safety. Again, considering that children in very protracted displacement situations can grow up without education, in the case of children who are in IDP camps, adopting the national policy on IDPs will go a long way in helping Nigeria to discharge her treaty obligations towards IDPs.

In addition, the government should provide all necessary support to children and teachers who were forced to flee the region towards their rehabilitation and resettlement<sup>472</sup> and this should include the education of children in the principles of peace. According to Van Bueren:

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<sup>470</sup> Report of the Special Rapporteur on the Right to Education (2008) para 31.

<sup>471</sup> Jordans MJD, Komproe IH, Tol WA *et al* 'Evaluation of a classroom-based psychosocial intervention in conflict-affected Nepal: A cluster randomized controlled trial' (2010) 51(7) *Journal of Child Psychology and Psychiatry* 8.

<sup>472</sup> Article 39 of the CRC.

‘Educating children in the principles of peace and human rights is an attempt to break the circle and prevent future armed conflicts.... In areas where conflicts prevail, the very act of bringing together children from divided communities to discuss peace can sometimes serve as a bridge for adults.... It empowers children who have been victimised by war to assume leadership roles in initiating grass root communal healing.’<sup>473</sup>

Displacement is a consequence of war which leaves children separated from loved ones. In this situation, they face hunger, sickness, death and other human rights violations.<sup>474</sup> The government in line with its obligations under the CRC<sup>475</sup> and ACRWC<sup>476</sup> should put measures in place to assist children to trace their parents and reunite families who have been separated by the conflict. The government also needs to end the activities of the CJTF especially the recruitment of children into their ranks. Steps must be taken to ensure that such children withdrawn from CJTF reintegrate into their communities and get enrolled in school. The Boko Haram insurgents need to uphold their obligations under international law by stopping attacks on schools and returning abducted children to child protection actors for reunion with their families. Where reunion is not feasible, appropriate alternative care should be given as a child deprived of parental care, and efforts should be made to ensure that such children return to school.

Finally, in the CRC, the world has a unique instrument that represents a substantial common ground on what the standard of childhood should be and the duties governments owe to children. The single most important resolve that the world could make would be to transform universal ratification of this Convention into universal reality. According to Graca Machel, children are both our reason to struggle to eliminate the worst aspects of warfare, and our best hope of succeeding at it.<sup>477</sup> Considering the grave violations against children in armed conflict, it is important for countries that are free from conflict to take a clue from others and try by all means possible to prevent the emergence of conflict. According to Kofi Annan:

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<sup>473</sup> Van Bueren G (1998) 346.

<sup>474</sup> Albertyn R, Bickler SW, Van As AB *et al* ‘The effects of war on children in Africa’ (2003) 19(4) *Paediatric Surgery International* 228.

<sup>475</sup> Article 9 and 10 CRC.

<sup>476</sup> Article 23 and 25(2) (b) ACRWC.

<sup>477</sup> Machel G (1996) para 6.

‘Perhaps the most pitiable lesson of the past decade has been that the prevention of violent conflict is far better and more cost-effective than cure. The challenge is to apply that lesson so that prevention exists not just at the rhetorical level but also practically.... On the other hand, the costs of *not* preventing violence are enormous. The human cost of war include not only the visible and immediate – death, injury, destruction, displacement – but also the distant and indirect repercussion for families, communities, local and international institutions and economies, and neighbouring countries.’<sup>478</sup>



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<sup>478</sup> Annan KA *Prevention of Armed Conflict: Report of the Secretary General* (2002) United Nations New York para 1.

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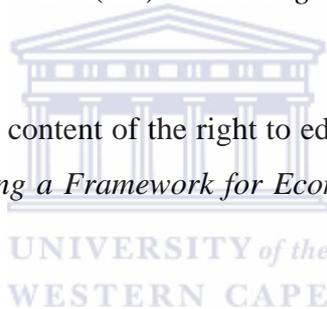
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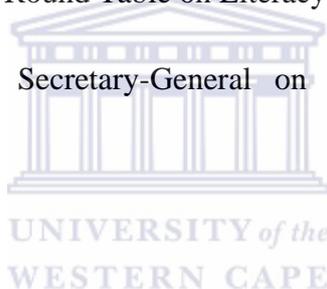
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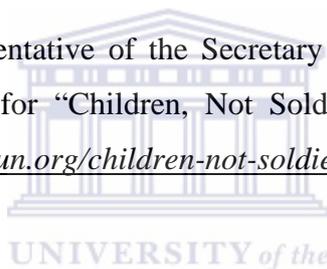
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