



**UNIVERSITY OF KWAZULU-NATAL
HOWARD COLLEGE CAMPUS**

**College of Law and Management Studies
School of Law**

Child Labour: The sufficiency of international and domestic laws in providing protection for children against being used as domestic servants in Nigeria.

By

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**Submitted in partial fulfilment of the requirements of an LLM
(Child Care and Protection)
University of KwaZulu-Natal, Howard College Campus.**

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February, 2018.

Declaration

I, Verolyn Chinenye Emeka-Mgbemere, do hereby affirm that this dissertation is mine, and that to my knowledge it has not been submitted nor is it being considered for fulfilment of the requirement of a Master's Degree in any other institution of learning. Wherever the contribution of other scholarly writers is used, it is clearly acknowledged and referenced according to the requirement of the College of Law at the University of KwaZulu-Natal.

Verolyn Chinenye Emeka-Mgbemere

Date

Dedication

This dissertation is dedicated to God Almighty, and to every child in Nigeria and around the world passing through child labour.

Appreciation

My profound gratitude goes to God Almighty for His strength, inspiration and motivation, thank you Lord. To my supervisor for being there for me throughout the process of this dissertation, God will bless you ma'am. To my husband for always pushing and encouraging me, thanks my love. To my pastor, Gabriel Adejimi, for his Godly counsel and encouragement. To my sisters from another mother, Gbotemi Aloro, Deborah Ajenifujah, and Bunmi Okelola, who in different ways encouraged me, you are greatly loved. And to my parents, siblings, friends and family for being there for me and supporting me, may God bless you all abundantly.

Abbreviations

CDW-Child Domestic Work

CRA- Child Rights Act

CYPA- Children and Young Persons Act

UNICEF-United Nations Children's Emergency Fund

ILO-International Labour Organisation

UNCRC-United Nations Convention on the Rights of the Child

ACRWC-African Charter on the Rights and Welfare of the Child

UNDRC- United Nations Declaration on the Rights of the Child

FCT- Federal Capital Territory

NAPTIP-National Agency for the Prohibition of Trafficking in Persons

BCEA- Basic Conditions of Employment Act

BCEAA-Basic Conditions of Employment Amendment Act

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Abstract

The future of a country is highly dependent on the children; hence the protection of children is important to various nations and the world. One such issue is the protection of children against child labour. The right of children against child labour is provided for in several international instruments which have been adopted as national legislation by countries. However, there is a sector that is seldom remembered and that is child labour in the informal sector. This study discusses child domestic work as a form of child labour. Its nature causes and effect on children. It examines relevant international conventions and national legislation of Nigeria to determine if the available laws protect children from child domestic work. It discusses the challenges to the implementation of the available laws and proffers possible solutions to combating child domestic employment in Nigeria.

CHAPTER 1

INTRODUCTION

1.1 Introduction

It is said that a country's progress is measured by the level by which the rights of children are protected.¹ Nigeria, with a population of 154.7 million people, cannot afford to have approximately ten per cent of its population involved in child labour; this is worrisome and demands urgent intervention.² In Nigeria many have accepted child labour as part of their daily living,³ and the use of children in the domestic sector is rife. This sector of employment is unregulated and offers no legal or civil protection.⁴ This chapter will introduce child domestic work in the informal sector. It will provide the meaning of terms and the definition of concepts, the aims and objectives of the research, the research questions and the outline of the study.

1.2 Background of the Study

The eradication of child labour has been a global issue from the time when the first and Second World War ended.⁵ The war exposed the vulnerability of children thus making it important to protect them from hazardous working condition.⁶ Child labour constitutes 32 per cent of the work force in Africa.⁷ While the rate of children from five to fourteen years who are working has decreased globally, child labour continues to increase in sub-Saharan Africa.⁸ In Africa children are enlisted to work as domestic workers by agents and intermediaries, in some cases the parents of the

¹EM Mary, "Historical background of the child labour regulations: Strengths and limitations of the agricultural hazardous occupations orders" (2012) 17 *Journal of Aeromedicine*, 163.

² World Bank Nigeria –country brief 2010 available on <http://go.worldbank.org/FIIOT240K0> as cited in MM Afolabi, "Underage housemaids and the problems of educating them in South Western part of Nigeria" A conference paper presented at the 23rd International Association for Feminist Economics Conference Lagon Ghana, 27 June 2014 1, 1 available at www.editorialexpress.com (Accessed on 26 July 2016).

³PI Mferekemfon, UR Ebirien, "Child labour: A public health problem I Nigeria" (2015)4(3) *Journal of Nursing and Health Science* 28, 29.

⁴LFC Ntoimo "Recycling poverty through domestic service and adolescent motherhood" (2011) 9 *The Nigerian Journal of Sociology and Anthropology* 56, 57.

⁵PS Fass, "A historical context for the United Nations Convention on the Rights of the Child" (2011)633 *ANNALS* 17.

⁶*Ibid.*

⁷AN Nwazuoke, CA Igwe "Worst forms of child labour in Nigeria: An appraisal of international and local legal regimes" (2016) 7 *Beijing Law Review* 69.

⁸R Evans, M Skovdal, "Defining children's right to work and care in sub-Saharan Africa: Tension and challenges in policy and practice" (2015) *Politics, Citizenship and Rights* 1, 5.

child make the demand in order to increase the family's income.⁹ Parents are sometimes made false promises by the intermediaries, of their children being sent to school or allowed to learn a trade or acquire a skill.¹⁰

Most research on child labour focuses on the formal sector and not on the informal sector, especially domestic services.¹¹ Apart from the agricultural sector where children are mostly employed, the domestic service is the next largest sector employing economically active children.¹² Child labour in the informal sector mostly occurs in households.¹³ While some work may be to the disadvantage of the child others may be harmless, skilful and educative.¹⁴ An estimate of about 52 million children are in domestic employment worldwide, of which 44 million are girls.¹⁵ Millions of children, most of which are girls, are sold into domestic servitude in West Africa.¹⁶ Among the different types of child labour, children in domestic employment are mostly invisible and vulnerable.¹⁷ They are sometimes treated well and allowed to go to school or they may be maltreated and made to work in harsh conditions with no working terms and unable to report their difficulty to anyone.¹⁸

The performance of domestic chores by children within the family is perceived as a part of their upbringing for the future, hence the difference between child labour and child work. Muzvidziwa explains that "when work does not interfere with the child's wellbeing, leisure, play and education, then it is not child labour".¹⁹ However child work turns into child labour when the child works long hours in harsh conditions that

⁹L Veil, "The issue of child domestic labour and trafficking in West and Central Africa" (Report prepared for UNICEF sub regional workshop on trafficking in child domestic workers, particularly girls in domestic service, in west and central Africa region Cotonou 6-8 July) as cited by A Adepoju, "Review of research and data on human trafficking in sub-Saharan Africa (2005) 43 (1/2) *International Migration* 75, 77.

¹⁰A Adepoju, "Review of research and data on human trafficking in sub-Saharan Africa (2005) 43(1/2) *International Migration* 75, 77.

¹¹VN Muzvidziwa, "Child labour or child work? Whither policy" (2006) (NS 22.1) *Research Review* 23, 24.

¹²EV Edmonds, N Pavcnik "Child labour in the global economy" (2005) 9(1) *Journal of Economic Perspectives*, 203.

¹³JC Andvig, S Canagarajah, A Kielland, "Child labour in Africa: The issues" 2.

¹⁴*Ibid.*

¹⁵J Gamlin *et al.*, "Is domestic work the worst form of child labour? The findings of a six-country study of psychosocial effects of child domestic work" (2013) *Children's Geographies* 1, 2.

¹⁶O Awosusi, GM Adebo, "Domestic servants and rural-youth urban migration in Nigeria: Issues for national intervention" (2012) 2(5) *International Journal of Humanities and Social Sciences* 271, 272.

¹⁷D Levison, A Langer, "Counting child domestic servants in Latin America" (2010) 36(1) *Population and Development Review*, 125.

¹⁸*Ibid.*

¹⁹VN Muzvidziwa, *op. cit.* note 11 above, 24.

interferes with the child's education, or is dangerous or can cause injury to the child's communal, bodily, ethical or psychological wellbeing.²⁰ Where the work deprives children of their leisure, play time, education and interferes with their health and wellbeing then it can be termed as child labour.²¹ Children are also trafficked for the purpose of domestic services in Africa.²²

In Nigeria, because of the socio economic situation of the country, many poor families have resorted to seeking other ways of supplementing their income which include sending their children to work as domestic workers (house help, as they are popularly called) in wealthy and middle class households.²³ It is approximate that there are 17.2 million children working in a third party's household in Nigeria.²⁴ While 67.1 per cent of the child workers are girls, 65.1 per cent of them are under the age of 14 years.²⁵ Again 7.4 million of the said children are between five and 11 years of age, while 3.8 million are between 12 and 14 years of age.²⁶

Children agree to live with relatives as domestic workers for a promise of a better life.²⁷ Others are not paid cash; they are fostered by a third party with a promise of future settlement according to the agreement between the parents and their employer.²⁸ And then there are children who live with their parents but perform every activity done by a child worker in the home of a third party and even more.²⁹ However, that is not the focus of this study. The study seeks to focus on children who are working in a third party's household, as domestic workers.

Article 32 of the United Nations Convention on the Rights of the Child (hereinafter the UNCRC) "defines child labour as any work that is dangerous or might harm the

²⁰VN Muzvidziwa, "Child labour or child work? Whither policy" (2006) (NS 22.1) *Research Review* 23, 24.

²¹*Ibid.*

²²A Adepoju, *op. cit.* note 10 above, 76-77.

²³EE Okafor, "Child labour dynamics and implications for sustainable development in Nigeria" (2010) 12(5) *Journal of Sustainable Development in Africa* 8, 9.

²⁴NP Ibeme, "Child domestic worker in rural and urban areas of Nigeria: Implication for national development" (2014)1(12) *International Journal of Emerging Knowledge* 219, 220.

²⁵*Ibid.*

²⁶*Ibid.*

²⁷D Levison, A Langer, "Counting child domestic servants in Latin America" (2010) 36 (1) *Population Development Review* 125, 126.

²⁸*Ibid.*

²⁹*Ibid.*

health and education of the children”, this however does not prohibit child work done at home by children in a safe environment, suitable for their age, under the supervision of their parents for the purpose of equipping them for the future.³⁰ This study deals with children employed to work as domestic servants in the home of a third party in Nigeria.

1.3 Research Problem

The use of children as domestic workers in Nigeria is a well-known phenomenon that continuously leads to the violation of the rights of the children concerned.³¹ Most of these children, due to one reason or the other, take up employment through an intermediary in the homes of rich and middle-class families, with or without payment. Muzvidziwa argued that focus should be on the conditions under which children perform the work and not whether children should work or not.³² Working children are categorised as a vulnerable group by the United Nations.³³ The millennium development goals are targeted at the education, health and welfare of children.³⁴

Despite the intervention of government in Nigeria through the enactment of laws to combat child labour, the use of children as domestic workers is still prevalent. This study focuses on the employment of children as house help in Nigeria. It evaluates the impact of laws on child domestic work and what can be done to combat the act. The focus is on the engagement of children as domestic servants in a third party’s household, especially those below the internationally recognised minimum age of employment or work.

As countries fight to eradicate child labour, of which Nigeria is not left out, this study intends to draw the attention of international and national bodies to the informal sector, which in this case is the child domestic worker.

1.4 Aim of the Research

³⁰TU Onyemachi, “Children, status and the law in Nigeria” (2010) 4(3a) *African Research Review* 378, 390.

³¹O Tade, AA Aderinto, “Factors influencing the demand for domestic servants in Oyo state Nigeria” (2012) 4(1) *International Journal of Child, Youth and family studies* 521, 522.

³²VN Muzvidziwa, *op. cit.* note 11, 24.

³³R Evans, M Skovdal, *op. cit.* note 8 above, 1, 3.

³⁴*Ibid*, 1.

The elimination of the worst form of labour and the promotion of education is a global issue, hence the promulgation of international conventions³⁵ and the enactment of national laws by different countries including Nigeria.³⁶ This study therefore aims to evaluate the international and domestic laws against the use of children as domestic servants in Nigeria. This study will evaluate the effectiveness of international and domestic enactments regulating child labour in Nigeria by looking at the impact of the laws in comparison to the provision of other jurisdictions (which in this case is South Africa), in relation to employing children as domestic workers; whether the lawmakers have done enough to eradicate the act.

The question arises whether the enactment of these laws has deterred people from using children as domestic servants in their homes. What impact have the laws made in the prohibition of employing children as domestic servants when compared with South Africa where this is not rampant?

1.5 Objective of the Study

The objectives of the study are to:

- 1.5.1 Determine whether national laws exist in Nigeria to protect children against child labour in the domestic sector.
- 1.5.2 Examine how these laws are implemented.
- 1.5.3 Identify the challenges faced in the implementation of the provided laws.
- 1.5.4 Determine how child domestic labour can be combated in Nigeria.
- 1.5.5 Identify the methods utilised in combating child domestic labour in South Africa.

1.6 Key Questions to be Answered

In answering the key question “Do the international and domestic laws provide sufficient protection against the use of children as domestic servants in Nigeria” the study provides answers to the following questions:

- 1.6.1 Do national laws exist in Nigeria to protect children against child labour in the domestic sector?

³⁵United Nations Convention on the Rights of the child 1989, the Minimum Age Convention 138 Of 1973, the Worst Forms of Child Labour Convention 182 of 1999 and the Decent work for Domestic Workers Convention 189 of 2011.

³⁶The Child Rights Act 2003, the Labour Act Cap 198 of 1990.

- 1.6.2 How are the laws implemented?
- 1.6.3 What are the challenges faced in the implementation of the provided laws?
- 1.6.4 What can be done to combat child domestic labour in Nigeria?
- 1.6.5 What are the methods utilised in combating child domestic labour in South Africa?

1.7 Definition of Terms and Concepts

The International Labour Organisation defines ‘children in employment’, ‘children in child labour’, ‘child domestic work’ and ‘hazardous work’ as follows:³⁷

“Children in employment are defined as children aged under 18 engaged in any productive activities for at least one hour on any day during a 7-day reference period, including in the informal or formal sector, inside and outside family settings, work for pay or profit (in cash, in kind, full time, or part time), or for domestic work outside the child’s own household for an employer (with or without pay)”.³⁸

‘Children in child labour’ are a subgroup of ‘children in employment’; these are children below the age of 18 years who are engaged in the worst forms of child labour and those below the minimum age of employment who are working.³⁹ The Convention on the Rights of the Child does not provide an express definition of child labour but provides that member nations shall take steps to safeguard children from child labour.⁴⁰ However, the United Nations defines child labour as “work carried out to the detriment and endangerment of a child, in violation of international law and national legislation”.⁴¹

³⁷R Evans, M Skovdal, “Defining Children’s right to work and care in sub-Saharan Africa: Tension and challenges in policy and practice” (2015) *Politics, Citizenship and Rights* 1, 5.

³⁸*Ibid.*

³⁹*Ibid.*

⁴⁰Article 32 of the Convention on the Rights of the Child 1989.

⁴¹World day against child labour available at www.un.org/en/events/childlabourday/background.shtml (Accessed: 17 October 2017).

‘Child domestic work’ is defined as children working in the domestic sector, in an employer’s or third party’s household. Children working in the homes of third parties maybe remunerated in cash or kind or may not be remunerated at all.⁴²

“Child labour in domestic work refers to situations where domestic work is performed by children below the relevant minimum age (for light work and full time non-hazardous work) in hazardous conditions or in slavery-like situations”.⁴³

‘Hazardous work’ done by children is any work or activity which by its characteristics or form can cause, or have a negative effect on the wellbeing, security and ethical advancement of children.⁴⁴ The Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, in Article 3 defines “the worst forms of child labour as all forms of slavery or practices similar to slavery which include forced or compulsory labour and work which, by its nature or the circumstances in which it is performed, is likely to harm the health, safety or morals of children”.⁴⁵

Domestic servitude is described as a crime where domestic workers are not allowed to leave their employer, they are underpaid, sometimes not paid at all, and face different kinds of exploitation, abuse, violence and harassment.⁴⁶

1.8 Research Methodology/ Approach:

1.8.1 Research Design

Research design refers to the decisions made in the planning and conducting of the research.⁴⁷ A desk top research method was used to access information on the implementation of available legislation to cases. Desk top research is the gathering of secondary materials from internal and external sources.⁴⁸ The library and internet

⁴²R Evans, M Skovdal, “Defining Children’s right to work and care in sub-Saharan Africa: Tension and challenges in policy and practice” (2015) *Politics, Citizenship and Rights* 1, 5.

⁴³*Ibid.*

⁴⁴*Ibid.*

⁴⁵Article 3 (a) and (d) of the Worst Forms of Child Labour Convention 182 of 1999 available at <http://www.ilo.org/public/english/standards/relm/ilc87/com-chic.htm> (Accessed: 26 May 2016).

⁴⁶Department of State, United States of America, Trafficking in Person’s Report July 2015 6, 8.

⁴⁷E Babbie, A Rubin, “Research Method for Social Work” 7 ed (Linda Schreiber 2011) 245.

⁴⁸B2B International, Chapter 4: An introduction to research methodology available at <http://www.b2binternational.com/assts/ebook/mr../04-market-research-ch4-pdf> (Accessed: 9 October 2016).

was greatly utilised to source journals, newspapers, directories, government statistics, books, magazines and law reports on the study. A desk top research method was used to access information on the implementation of the available legislation to cases.

The research analysed the provisions of Nigerian legislations together with available cases in comparison with that of South Africa and other possible countries in order to make recommendations that can influence possible change in Nigeria.

1.8.2 Ethical Consideration

Since the study involves the use of desk top research, an ethical clearance form was filled out and submitted, and an exemption was obtained from the appropriate authority at the University of KwaZulu-Natal.

1.8.3 Limitation of the Study

A literature review is an integral part of the study to provide information on the topic under research; however, the study is limited by the non-availability of adequate literature on the use of children as domestic work due to the sensitive nature of the matter.

1.9 Research Outline

This dissertation comprises of five chapters. It begins with an introduction to the use of children as domestic workers in Nigeria, a definition of concepts, the aims and objectives of the research, and the research questions are also discussed in this chapter. In chapter two the case of child domestic workers in Nigeria is elaborated on. It also highlights the history, nature, forms, causes and extent of child labour in domestic work.

Various international instruments and national legislation dealing with the issue and regulating the prevention of child domestic work is analysed to determine their effectiveness in chapter three. Also gaps and challenges in these instruments are highlighted and discussed. Chapter four analyses South Africa's position and legislative provisions in combating the employment of children as domestic workers, also the laws and their implementation are compared to those of Nigeria. Gaps,

differences and similarities are identified. Lessons are drawn in comparison to that of Nigeria.

Then in chapter five the experiences and steps taken by other countries to combat child domestic work are used to provide recommendations to the Nigerian government in order to eradicate the use of children as domestic servants in Nigeria. The child's best interests should be paramount.

CHAPTER 2

LITERATURE REVIEW ON CHILD DOMESTIC WORK IN NIGERIA

2.1 Introduction

The employment of children as domestic workers shares similar characteristics with the Chinese practice of *MuiT sai* which was outlawed by the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery.⁴⁹ This practice involves the handing over of children to new families by their parents or guardians in disguise of adoption to be used as domestic servants.⁵⁰ It is a system in which young girls are transferred by their parents to other persons for employment in domestic service till they are of marriageable age.⁵¹ Most times there is payment of money and sometimes the children are given as a gift; sometimes there is the involvement of an intermediary and in other cases the children are sold and the money is regarded as payment for the children's services in domestic employment by the parties to the transaction.⁵²

This chapter begins with a brief historical overview of child domestic employment, as well as the issue of child domestic servants in Nigeria. This chapter also highlights the nature, causes and extent of child labour in domestic work.

2.2 Child Labour and Child Domestic Work

Child labour refers to children working outside their home generally for payment but sometimes without payment.⁵³ The United Nations Convention on the Rights of the Child (1989) provides for the characteristics of child labour as any "work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development".⁵⁴ Child domestic employment as a type of child labour possesses the following

⁴⁹J Blagbrough, "Child domestic labour: A modern form of slavery" (2008) 22 *Children and Society* 179, 183.

⁵⁰S Miers, "Slavery in the twentieth century the evolution of global problem" (2003) Atla Mira Press Walnut Creek, CA cited in J Blagbrough "Child domestic labour: A modern form of slavery" (2008) 22 *Children and Society* 179, 183.

⁵¹*Ibid.*

⁵²*Ibid.*

⁵³ZB Susanli, O Inanc-Tuncer, S Kologlugil, "Child domestic labour and mother's employment in Turkey (2016) 29(1) *Economic Research* 967.

⁵⁴Article 32(1) of the United Nations Convention on the Rights of the Child 1989.

characteristics: children work in households so the job is hidden; children are at risk of bodily harm, mental abuse, emotional abuse and sexual violence; children are deprived of their leisure and rest, they work for long hours; children are poorly paid; they are deprived of their education; and they are separated from their families and friends.⁵⁵

In distinguishing work which is exploitative from that which can be beneficial to children, the United Nations Trust Funds (hereinafter called UNICEF) set out the following criteria as determinants of exploitative work:⁵⁶

- Children working full time at a young age.
- Children working for too many long hours.
- Work which places excessive bodily, mental or social pressure on children.
- Working and living in bad conditions.
- Working for inadequate pay.
- Having too much responsibility.
- Work that hinders the opportunity to attend school.
- Work which undermines children's dignity and self-esteem.
- Work that will hamper children's full social and mental growth.

From the above characteristics of child labour, it is clear that any work which hinders the development of a child in any form becomes harmful and unacceptable.⁵⁷

Child domestic employment as a type of child labour is distinct from children performing domestic chores within their own home.⁵⁸ While child domestic work is performed in the home of a third party, children perform domestic chores in their own

⁵⁵C Bellamy, The state of the world's children (UNICEF 1997) 30-35 available at <https://www.unicef.org/mexico/spanish/EMI1997.pdf> (Accessed: 20 October 2017).

⁵⁶UNICEF State of the World's Children (1997) available at <https://www.unicef.org/sowc97/report/what.htm> (Accessed: 20 October 2017).

⁵⁷L Ndjanyaou, S Djienuouassi, "Characteristics and determinants of child labour in Cameroon" *African Economic Research Consortium Nairobi, research paper 274* (June 2014) 1, 3 available at citeseerx.1st.psu.edu/viewdoc/download?doi=10.1.1.192.6457&rep=rep/&type=pdf. (Accessed 17 October 2017)

⁵⁸S Lyon, C Valdivia, "Towards the effective measurement of child domestic workers: Building estimates using standard household survey instruments" understanding children's work programme working paper series, September 2010, 1,1 available at www.ucw-project.org/attachment/st_measuringchild_work20110517-125820pdf (Accessed:17 October 2017).

homes as well.⁵⁹ Also, while a child domestic worker does his or her work unsupervised and for remuneration, children who are performing home chores do so under the supervision of an adult and not for remuneration.⁶⁰

2.3 Historical Overview of Child Domestic Work in Nigeria

“One of the basic principles of the International Convention on the Rights of the Child is that every child must be protected against all forms of exploitation; indecent or degrading treatment, including child labour, abduction and sale”.⁶¹ In Asia and Latin America children are employed in industries, while in Africa children are engaged in hawking, hustling, being vendors or domestic workers, among other activities.⁶² Africa, due to its rural nature, has a high level of child labour compared to other continents of the world.⁶³ Millions of children, mostly girls and less often boys, are sold into slavery as domestic workers across West Africa.⁶⁴ Little attention was paid to child domestic work as a form of child labour till the late 1990s.⁶⁵ And it is still not given the needed attention because of its hidden nature.⁶⁶ Therese *et al.* define child domestic workers as “children under the age of 18 who work in an employer’s home performing household duties such as cooking, cleaning, child care and the care of older people”.⁶⁷ Due to the invisible nature of the practice it is difficult to obtain accurate statistics of children employed in homes as domestic workers.⁶⁸ Although the engagement of children as domestic servants is generally recognised as a

⁵⁹ *Ibid.*

⁶⁰ S Lyon, C Valdivia, “Towards the effective measurement of child domestic workers: Building estimates using standard household survey instruments” understanding children’s work programme working paper series, September 2010 , 1,1 available at www.ucw-project.org/attachment/st_measuringchild_work20110517-125820pdf (Accessed: 17 October 2017).

⁶¹ UNICEF 2000 Nigeria and the Convention on the Rights of the Child, Lagos: UNICEF Country Office cited in A Nseabasi, JO Abiodun, “The menace of child abuse in Nigeria: A case study of street Hawking in Uyo, Akwa Ibom State (2010) 24(3) *Journal of Social Science* 189.

⁶² D Togunde, A Carter, “In their own words: Consequences of child labour in urban Nigeria” (2008) 16(2) *Journal of Social Science*, 173.

⁶³ O Awosusi, GM Adebo, “Domestic servants and rural youth urban migration in Nigeria: Issues for national intervention” (2012)2(5) *International Journal of Humanities and Social Sciences* 271, 272.

⁶⁴ *Ibid.*

⁶⁵ A Pereira, “Domestic child labour: An overview of Brazil’s recent experience” (January 2010) Global Policy Forum available at <https://www.globalpolicy.org/home/219.labor/48669-domestic-child> (Accessed: 4 October 2016).

⁶⁶ *Ibid.*

⁶⁷ MH Therese *et al.*, “The psychological impact of child domestic work: A study from India and the Philippines” (2012) 97 *Archives of Disease in Childhood* 773.

⁶⁸ *Ibid.*

widespread type of child labour, little research exists on it thus limiting the information available on the matter.⁶⁹

Child domestic labour has its roots in the communal living system practiced by communities in the past.⁷⁰ It was an accepted practice to engage family members, especially children, in household chores according to their age and gender.⁷¹ Children are taught to perform tasks needed for social skills and adulthood.⁷² This is a long-standing traditional practice, not only in Nigeria but in many nations of the world.⁷³ Parents living in rural areas encourage their children to live with relatives and family members in urban areas, especially newly married couples, in order to assist them with domestic chores.⁷⁴ Based on mutual agreement, the host family would ensure the child's wellbeing is taken care of⁷⁵ while the child should be sent to school or to learn a trade in exchange for provision of domestic work in the home of such relative for a specified period of time.⁷⁶ It is not customary in most African countries to have parents take care of their children.⁷⁷

The promise of helping the child acquire a decent education or skill was most often not fulfilled; rather the children were exposed to different kinds of abuse.⁷⁸ The tradition has, however metamorphosed into the employment of children as domestic

⁶⁹RF Ali, "No child labour in domestic work" a conference paper presented by the members at Institute of Public Policy Research and Development (June 2013) 1, 10, available at <https://www.researchgat.net/publication/259974801> (Accessed: 6 May 2016).

⁷⁰A Akinrimisi, "Empowerment of young person-in-Non-formal sector: The case of female Adolescent Domestic workers in municipal Lagos" (2002) available at www.cewhin.org/.../Appreciating%20the%20plight%20of%20Domestic%20workersdoc cited in O Awosusi, GM Adebo, "Domestic servants and rural youth urban migration in Nigeria: Issues for National Intervention" (2012) 2(5) *International Journal of Humanities and Social Sciences* 271.

⁷¹OA Adegun, "Practices of child labour among parents in Ekiti State Nigeria: Implication for school Administrators" (2013) 4 (11) *Journal of Education and Practice* 1, 1

⁷²D Thorsen, "Child domestic workers: Evidence from West and Central Africa" briefing paper prepared for UNICEF West and Central Africa (2012) 1, 2 available at <http://www.unicef.org/wcaro/english/Briefing-paper.unicef.org> (Accessed: 8 May 2016).

⁷³M Black, "Child domestic work: A handbook on good practice in programme intervention" *Anti-Slavery International* (2005) 1, 3.

⁷⁴R Evans, M Skovdal, "Defining children's right to work and care in Sub-Saharan Africa; Tension and challenges in polity and practice" (2015) *Polity, Citizenship and Rights* 1, 6.

⁷⁵A Akinrimisi, "Empowerment of young person-in-Non-formal sector: The case of female adolescent domestic worker in municipal Lagos" (2002) available at www.cewhin.org/.../Appreciating%20the%20plight%20of%20Domestic%20workersdoc as cited in O Awosusi, GM Adebo, *op. cit.* note 63 above, 271.

⁷⁶R Evans, M Skovdal, *op. cit.* note 74 above, 6.

⁷⁷J Mukherjee, "Child labour, education, participation and economic growth in Sub-Saharan Africa: An empirical study" (2008) 24(1) *Research Review of the Institute of African Studies* 53, 59.

⁷⁸O Awosusi, GM Adebo, *op. cit.* note 63 above, 271.

servants for a fee.⁷⁹ Married women employ children as young as six years as house helpers.⁸⁰ In Nigeria having a house helper is a necessity to married women, especially the working mothers.⁸¹ In a study on the factors influencing the demand for domestic servants in Oyo State, South Western Nigeria, three categories of employers of child domestic workers were identified: the newly married women about to begin a family and those with little children who need care; women with grown up children; and isolated, widowed women and grandmothers.⁸²

The children are either employed via an agent or intermediary or may be handed over by their parents.⁸³ Sometimes the unlucky ones are kept under lock and key, and they have no contact with the outside world except their employers. The wages of child domestic workers is most times paid to the agents.⁸⁴ These intermediaries could be local traders, job recruiting agencies or aunties who are sometimes not related to the child's family.⁸⁵ Children are also recruited through family and friends or through social media platforms.⁸⁶ Intermediaries are good at deceiving and coercing parents and guardians with promises of a better life, good working conditions, access to education and better opportunities for their children.⁸⁷ This can be referred to as trafficking as defined and accepted internationally by the Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children.⁸⁸ Child domestic work is socially and culturally accepted in many nations of the world.⁸⁹

2.4. The Nature of Child Domestic Work

⁷⁹*Ibid.*

⁸⁰*Ibid.*

⁸¹FI Salami, "Impact of child labour on the behaviour of adolescents in Kaduna State Nigeria", M.Ed thesis, Ahmadu Bello University Zaria (June 2011) 1, 34 available at kubanni.abu.edu.ng:8080/.../Impact%20of%20CHILD%20LABOUR%20ON%20T (Accessed: 11 March 2017).

⁸²O Tade, AA Aderinto, "Factors influencing the demand for domestic servants in Oyo State, Nigeria" (2012) 4 (1) *International Journal of Child, Youth and Family Studies* 521,530.

⁸³O Awosusi, GM Adebo, *op. cit.* note 63 above, 273.

⁸⁴*Ibid.*

⁸⁵J Blagbrough, "Child domestic labour: A modern form of slavery" (2008)22 *Children and Society* 179, 184

⁸⁶RF Ali, *op. cit.* note 69 above, 16-18.

⁸⁷J Blagbrough, *op. cit.* note 85 above, 184.

⁸⁸*Ibid.*

⁸⁹RF Ali, *op. cit.* note 68 above, 10.

Children work in order to assist their parents with financing their education and providing for the home.⁹⁰ A study on the perception of child labour among working children in Ibadan State, Nigeria reported that the majority of the children desired to go to school.⁹¹ Children are the future of every nation and should be given the needed support for their growth and development.⁹² Can this be said in the case of Nigerian children, who are being used as domestic servants and are exposed to deprivation and exploitation?⁹³ The protection of children for a better future is one of the keys to sustainable development.⁹⁴ Whether in the rural or the urban area, child labour is practiced in Nigeria.⁹⁵ It is a common practice to have domestic servants in Nigeria.⁹⁶ While poor parents allow their children to be employed as house helpers, the rich and educated are readily available to employ them.⁹⁷ It has become a norm, especially when it is burdensome for parents to provide for their child or children.⁹⁸ The practice of child labour is prevalent in the domestic sector in Nigeria.⁹⁹ In West Africa, of which Nigeria is inclusive, parents sell the services of children, who are as young as five years, either directly or via an intermediary.¹⁰⁰ These children may be made to live with the employer till adulthood.¹⁰¹

The employment of children as domestic servants is frequently perceived as a harmless type of job.¹⁰² As such the focus of most research is on the environment

⁹⁰FO Omokhodion *et al.* "Perception of child labour among working children in Ibadan Nigeria" (2005)32(3) *Child Care Health and Development* 281, 284.

⁹¹ *Ibid.*

⁹²EE Okafor, "Child labour dynamics and implications for sustainable development in Nigeria" (2010) 12 (5) *Journal of Sustainable Development in Africa* 8, 15.

⁹³ *Ibid.*

⁹⁴F Akwara, AG Soyibo, MS Agba, "Law and children's rights protection: The nexus for sustainable development in Nigeria" (2010) 6(2) *Canadian Social Science* 26, 27.

⁹⁵OA Adegun, "Practice of child labour among parents in Ekiti State Nigeria: Implication for school administrators" (2013) 4(11) *Journal of Education and practice* 1, 2.

⁹⁶O Tade, AA Aderinto, "Factors influencing the demand for domestic servants in Oyo State, Nigeria" (2012) 4(1) *International Journal of Child, Youth and Family Studies* 521,521.

⁹⁷OA Adegun, *op. cit.* note 95 above, 2.

⁹⁸FI Salami, *op. cit.* note 81 above, 38.

⁹⁹OA Adegun, *op. cit.* note 95 above, 5.

¹⁰⁰J Blagbrough, *op. cit.* note 85 above, 183.

¹⁰¹ *Ibid.*

¹⁰²J Blagbrough, E Glynn, "Child domestic workers: characteristics of the modern slave and approaches to ending such exploitation" (1999) 6 *childhood* cited in MH Therese, *et al.* "The psychological impact of child domestic work: A study from India and the Philippines" (2012) 97 *Archives of Disease in Childhood* 773,773.

and conditions of work of the employed children.¹⁰³ According to Bourdillon, “the reality is that the place of work may not be the boundary between harmful and benign work for children but in the demands and whether the children and their interests are respected by the controlling adults.”¹⁰⁴ He opines that the views by the developed countries and the rich in the developing world that childhood is about play, nurturing and learning in a safe home environment under the protective shield and responsibility of an adult is unrealistic.¹⁰⁵ For this is far from the realistic conditions faced by most children.¹⁰⁶ Therese *et al.*, also share in the view that it is not the work that is dangerous to children but the situation and condition in which the work is being carried out in the home of the employer.¹⁰⁷

Child domestic employment is also seen as a means to a better life and climbing up the social ladder.¹⁰⁸ Children are compelled to work in order to see themselves through school.¹⁰⁹ Omokhodion is of the opinion that although the curbing of child labour is greatly desired, parents are forced to send children out to work as this is the family’s only means of survival, therefore children should be allowed to work for lesser hours after school.¹¹⁰ Tackling children as domestic servants as a type of child labour is difficult, not only because of its clandestine nature but because it is generally accepted by society as part of the training of children, especially the girl child.¹¹¹ Due to the hidden nature of the employment, children are marginalised and taken advantage of economically and socially.¹¹² Children employed in a low income household are made to generate extra income by doing other forms of work such as hawking and selling on the streets.¹¹³ Child domestic work is believed to have similar

¹⁰³SR Banerjee, *et al.* “Whole time domestic child labour in metropolitan city of Kolkata” (2008) 45 *India Pediatr* cited in MH Therese, *et al.* “The psychological impact of child domestic work: A study from India and the Philippines” (2012) 97 *Archives of Disease in Childhood* 773, 773.

¹⁰⁴M Bourdillon, “Children as domestic employees: problems and promises” (2009) 15 *Journal of Children and Poverty* 1.

¹⁰⁵*Ibid*, 13.

¹⁰⁶*Ibid*.

¹⁰⁷MH Therese *et al.*, *op. cit.* note 67 above, 777.

¹⁰⁸*Ibid*, 776.

¹⁰⁹OA Adegun, *op. cit.* note 95 above, 2.

¹¹⁰FO Omokhodion, *op. cit.* note 90 above, 285.

¹¹¹J Blagbrough, *op. cit.* note 85 above, 179.

¹¹²*Ibid*.

¹¹³D Thorsen, *op. cit.* note 72 above, 3.

characteristics to slavery.¹¹⁴ Most times how a child is recruited determines the wages to be paid.¹¹⁵

Child domestic workers in Nigeria are paid less than the generally accepted minimum wage¹¹⁶ of N18, 000 (\$60) per month.¹¹⁷ Children are recruited from the rural areas and from neighbouring countries like Togo.¹¹⁸ Both boys and girls are recruited though there is preference for girl domestic workers due to insecurity and domestication.¹¹⁹

Domestic work may have a diverse meaning to different children.¹²⁰ To some it is a survival mechanism and an integral part of their lives, while to others it is work done out of compulsion which they must fulfil.¹²¹ There exists a complex relationship between education, child domestic work and the wellbeing of the employed children.¹²² Education increases the self-esteem of child domestic workers if such children are allowed to go to school and it increases their opportunities for a better a future.¹²³ Child domestic workers are sometimes able to balance school with work.¹²⁴ Sometimes they may also be lucky enough to have a good relationship with their employer.¹²⁵ However, due to the hidden nature of their employment it is difficult, if

¹¹⁴J Blagbrough, *op. cit.* note 85 above, 179.

¹¹⁵D Thorsen, *op. cit.* note 72 above, 6, 7

¹¹⁶SBA Oloko, "Child labour in Nigeria continuities and transformation" Inaugural lecture delivered at the university of Lagos, (Lagos 2004: University of Lagos press) as cited by EE Okafor, "Child labour dynamics and implication for sustainable development in Nigeria" (2010)12(5) *Journal of Sustainable Development in Africa* 8, 11.

¹¹⁷Business Day "Nigeria's N18,000 minimum wage one of world's lowest-labour" Business day 1 may 2017 available at <http://www.businessdayonline.com/nigerias-n18000-minimum-wage-one-worlds-lowest-labour> (Accessed: 12 July 2017).

¹¹⁸A Adepoju, "Review of Research and data on human trafficking in sub-Saharan Africa" (2005)43(1/2) *International Migration* 75, 77.

¹¹⁹MM Afolabi, "Underage housemaids and the problems of educating them in South Western part of Nigeria" A conference paper presented at the 23rd International Association for Feminist Economics Conference Lagon Ghana, 27 June 2014, 1, 2 available at editoriaexpress.com (Accessed: 26 July 2016).

¹²⁰J Gamlin *et al.*, "Is child domestic work a worst form of child labour? The findings of a six-country study of child domestic work" (2013) *Children's Geographies* 1, 11.

¹²¹*Ibid.*

¹²²*Ibid.*

¹²³J Gamlin *et al.*, "Is child domestic work a worst form of child labour? The findings of a six-country study of child domestic work" (2013) *Children's Geographies* 1, 11.

¹²⁴*Ibid.*, 10.

¹²⁵*Ibid.*

not impossible, to measure the extent of harm experienced, and enforcing regulations to protect them is difficult.¹²⁶

The term domestic work may differ according to country, society and culture.¹²⁷ Children may not be aware of the nature of the work they will be doing. These children may be required to work on farms, make bricks, and work as a gate man and gardener.¹²⁸ They have no specified times of work and are not paid for overtime.¹²⁹ The household where a child is employed determines the child's work type and whether he or she will be assisted or not.¹³⁰ Child domestic workers could include performing domestic chores, running errands, caring for others and even helping in running the small businesses of their employer.¹³¹ They could also be paid in kind with provision of food and shelter.¹³² Where they are paid wages for their services, they are expected to work independently, although they may be monitored for fear of theft, carelessness and laziness.¹³³

2.5 Causes of Child Domestic Employment

One factor identified as the major cause of child domestic work is poverty.¹³⁴ According to Ibeme, poverty is the most obvious cause of child labour.¹³⁵ Despite Nigeria's available natural resources, the country is unable to cater for the needs of its population.¹³⁶ Sixty four percent of Nigerians live below the internationally recognised poverty line of US\$1.25.¹³⁷ Poverty is rampant, to the extent that parents

¹²⁶J Gamlin *et al.*, *op. cit.* note 120 above, 2.

¹²⁷RF Ali, *op. cit.* note 69 above, 9.

¹²⁸O Awosusi, GM Adebo, *op. cit.* note 63 above, 274.

¹²⁹*Ibid.*

¹³⁰D Thorsen, *op. cit.* note 72 above, 6

¹³¹J Gamlin *et al.*, *op. cit.* note 120 above, 2.

¹³²*Ibid.*

¹³³D Thorsen, *op. cit.* note 72 above, 10.

¹³⁴MH Therese *et al.*, *op. cit.* note 67 above, 774; O Awosusi, GM Adebo, *op. cit.* note 63 above, 272; OA Adegun, *op. cit.* note 95 above, 2.

¹³⁵NP Ibeme, "Child domestic worker in rural and urban areas of Nigeria: Implication for national development" (2014)1(12) *International Journal of Emerging Knowledge* 219, 220.

¹³⁶O Tade, AA Aderinto, "Factors influencing the demand for domestic servants in Oyo State, Nigeria" (2012) 4(1) *International Journal of Child, Youth and Family Studies* 524-525.

¹³⁷UNPD Human Development Report, multidimensional poverty index Table 5 (2011), UNICEF, The state of the world's children/special edition (2010) economic indicator cited in LFC Ntoimo "Recycling poverty through domestic service and adolescent motherhood" (2011) 9 *The Nigerian Journal of Sociology and Anthropology* 56,57.

abandon their children to their fate.¹³⁸ About one million children in Nigeria are forced to abandon school due to poverty and parental pressure to support the family.¹³⁹ Approximately six million working children, both boys and girls, do not attend school but only work.¹⁴⁰ It has become part of poor families for children to contribute to the earnings of the family.¹⁴¹ It is argued that domestic work not only promotes child adolescent motherhood but fosters generational recycling of poverty and constrains the future of child domestic workers.¹⁴² However, there exists a few who are able to overcome the negative effects and have been able to achieve a sustainable livelihood for themselves.¹⁴³

Another factor is the growing number of offspring born to deprived parents who are unable to provide them with the basic amenities.¹⁴⁴ The size of a household can be a factor to children's involvement in child labour.¹⁴⁵ Parents with a large number of children but insufficient income to provide for them would send their children into the labour market.¹⁴⁶ Jinta believes that if families started to limit the number of children they have it could reduce child labour as there would be a reduction in the number of children parents would have to provide for.¹⁴⁷

The death of a child's parents can lead to the withdrawal of the child from school, and subsequent employment of such child as a house helper in another household.¹⁴⁸ Poor families whose children have lost one or both of their parents as

¹³⁸ *Ibid.*

¹³⁹ O Awosusi, GM Adebo, "Domestic servants and rural-youth urban migration in Nigeria: Issues for national intervention" (2012) 2(5) *International Journal of Humanities and Social Science* 271, 273.

¹⁴⁰ *Ibid.*

¹⁴¹ *Ibid.*, 272

¹⁴² LFC Ntoimo "Recycling poverty through domestic service and adolescent motherhood" (2011) 9 *The Nigerian Journal of Sociology and Anthropology* 56, 56.

¹⁴³ *Ibid.*, 68.

¹⁴⁴ Jintajinta "Are the poor to blame for their poverty?" (2007) as cited in O Awosusi, GM Adebo, "Domestic servants and rural youth urban migration in Nigeria: Issues for national intervention" (2012) 2(5) *International Journal of Humanities and Social Sciences* 271, 272.

¹⁴⁵ L Ndjanyou, S Djenouassi "Characteristics and determinants of child labour in Cameroon" (2014) 1,8 *African Economic Research Consortium Nairobi* (research paper 274) <http://citeseerx.1st.psu.edu/viewdoc/download?doi=10.1.1.192.6457&rep=rep/&type=pdf> (Accessed: 17 October 2017)

¹⁴⁶ S Yared, G Shiferaw "The role of birth order in child labour and schooling" (2015) 1,5 *Georgia State University* (working paper) available at <http://uwrg.gsu.edu/files/2015/02/Yared-andGurmu-2015-working-paper-pdf> (Accessed: 17 October 2017).

¹⁴⁷ Jintajinta, "Are the poor to blame for their poverty?" (2007) as cited in O Awosusi, GM Adebo, "Domestic servants and rural youth urban migration in Nigeria: Issues for national intervention" (2012) 2(5) *International Journal of Humanities and Social Sciences* 271, 272.

¹⁴⁸ O Awosusi, GM Adebo, *op. cit.* note 63, 272.

a result of HIV/AIDS or other causes of death, are often forced to work to provide for themselves and their young siblings, if any.¹⁴⁹ Another causal factor includes a change in the economy of a country which can lead to the participation of children in child labour.¹⁵⁰ Other factors also identified as causes of child labour include ignorance, population increase and illiteracy.¹⁵¹ Parents of children who are involved in child labour are illiterate so they do not understand the importance of education in the future of their children but would rather they work.¹⁵²

Also mentioned is natural disaster, misplaced priority and misinformation.¹⁵³ While some children work in order to offset bills, some may be forced to work due to the death of their parents.¹⁵⁴ Children also take up employment as domestic workers just to escape stressful family situations.¹⁵⁵

The experiences of women in a study on adolescent child bearing and its link to poverty among Akwa Ibom State women of Nigeria showed that negative cultural beliefs and adolescent motherhood encourages domestic employment.¹⁵⁶ In some cultures priority is placed on sending male children to school and not female children.¹⁵⁷ Rather female children are made to work to fund the education of the male children thereby denying the female children their right to education and an opportunity for a better future.¹⁵⁸ This is not to say that male children are not sometimes deprived of their right to education too.¹⁵⁹

¹⁴⁹R Bill, "HIV/AIDS and child labour in Sub-saharan Africa: A synthesis report no 6" (2003) available at www.oit.org/wcmsps/groups/public/---/protect/---ilo-aids/documents/publication/wcms-119222.pdf (Accessed: 17 October 2017).

¹⁵⁰OA Adegun, *op. cit.* note 95 above, 1.

¹⁵¹F Saddiq, H Pathos, "Child labour issues causes and intervention: Human capital development and operations policy" working paper series (2006) cited in OA Adegun, "Practices of child labour among parents in Ekiti State Nigeria: implication for school administrators" (2013) 4 (11) *Journal of Education and Practice* 1, 2.

¹⁵²S Mondal *et al.* "Characteristics of child labour and their health problems: Findings from rural community of India" (2016)8 *Health* 931, 932.

¹⁵³International Labour organisation "Acting against child labour" (2006) 3 *ILO Journal* 3 and 12 as cited in OA Adegun, "Practices of child labour among parents in Ekiti State Nigeria: Implication for school administrators" (2013) 4(11) *Journal of Education and Practice* 1, 2.

¹⁵⁴J Blagbrough *op. cit.* note 85 above, 181.

¹⁵⁵M Black, "Child domestic work: A handbook on good practice in programme intervention" *Anti-Slavery International* (2005) 1, 4.

¹⁵⁶LFC Ntoimi *op. cit.* note 142 above, 70.

¹⁵⁷NP Ibeme, "Child domestic worker in rural and urban areas of Nigeria: Implication for national development" (2014)1 (12) *International Journal of Emerging Knowledge* 219, 224.

¹⁵⁸*Ibid.*

¹⁵⁹*Ibid.*

There is a preference by employers to hire children as domestic workers due to a demand for cheap labour and the desire of employers to be able to control the child worker to be submissive.¹⁶⁰ Other factors which propel the employment of young domestic employees as identified by Tade include companionship, women becoming economically active due to the poor Nigerian economy, and preference for a non-family member rather than a relative in order to guarantee the safety of their domestic matters from the interference of other family members.¹⁶¹

2.6 The Extent of Child Labour in Domestic Work

Though so much has been said to differentiate between child labour and child work, there still exists no clear line between the two.¹⁶² Omokhodion *et al.* define child labour as “any work done outside a child’s home”.¹⁶³ However, Article 32 of the Convention on the Rights of the Child provides for work which constitutes child labour “as exploitative work, any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual moral or social development”.¹⁶⁴ Household chores performed by children as part of the learning process under the guidance of their parents, guardian or an adult at their own homes in a fair condition is not child labour.¹⁶⁵ However, where it becomes greater than what seems reasonable and gets in the way of their education then it could be tantamount to child labour.¹⁶⁶

According to the International Labour Organisation Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour 182 of 1999 (hereinafter Worst Forms of Labour Convention), which provides the definition for the worst forms of child labour “as practices which involve slavery or slave-like practices which include forced labour, bonded labour, being sold or

¹⁶⁰ J Blagbrough *op. cit.* note 85 above, 185.

¹⁶¹ O Tade, AA Aderinto *...op. cit.* note 136 above, 521.

¹⁶² FO Omokhodion *...et al.* “Perceptions of child labour among working children in Ibadan Nigeria” (2005) 32(3) Child Care Health & Development 281, 282.

¹⁶³ *Ibid.*

¹⁶⁴ Article 32 (1) of the United Nations Convention on the Rights of the Child 1989.

¹⁶⁵ RF Ali, “No child labour in domestic work” A conference paper presented by member at Institute of Public Policy Research and Development Jun 2013, 1, 9 available at

<http://www.researchgate.net/publication/259974801> (Accessed: May 6 2016).

¹⁶⁶ *Ibid.*, 9.

trafficked, child prostitution and pornography, hazardous work such as where the workplace is dangerous by definition, and illicit activities.”¹⁶⁷

The Worst Forms of Labour Convention (ILO Convention No.182) accompanied by its Recommendation No.190 defines hazardous work to include work which “exposes children to physical, psychological or sexual abuse” and work done in harsh situations such as working for lengthy hours, working at odd times like at night-time or where children are unfairly restricted to the place of the employer.¹⁶⁸ These, among other situations, apply to child domestic workers.¹⁶⁹ Domestic work is classified as a hazardous kind of child labour.¹⁷⁰ While the worst form of child labour is unacceptable; hazardous child labour is left to countries to decide whether it should constitute a worst form of child labour.¹⁷¹ Child domestic workers in Nigeria have no specified description of work, they are to perform any available chores that need to be done in the employer’s household.¹⁷² Despite being paid wages, it does not correspond with the work the child is required to do.¹⁷³ There is no formal contract of employment signed, neither is there a specified time for resumption and close of work.¹⁷⁴ They resume work early in the morning and retire late at night.¹⁷⁵ As a form of employment, domestic work is categorised as hazardous child labour.¹⁷⁶ Afolabi refers to child domestic workers who are below the internationally acknowledged minimum age of employment as underage housemaids.¹⁷⁷

2.7 The Effect of Domestic Work on the Wellbeing of Children.

Many children involved in child labour are at their social psychological development stage which is important to building their self-esteem, confidence and future

¹⁶⁷ M Black *op. cit.* note 155 above, 6.

¹⁶⁸ *Ibid.*

¹⁶⁹ *Ibid.*

¹⁷⁰ J Gamlin *et al.*, “Is domestic work a worst form of child labour? The findings of a six-country study of the psychosocial effects of child domestic work” (2013) *Children’s Geographies* 1, 1.

¹⁷¹ *Ibid.*

¹⁷² O Awosusi, GM Adebo *op. cit.* note 63 above, 273-275

¹⁷³ *Ibid.*

¹⁷⁴ *Ibid.*

¹⁷⁵ *Ibid.*

¹⁷⁶ J Gamlin *et al. op. cit.* note 120 above, 1.

¹⁷⁷ MM Afolabi *op. cit.* note 119 above, 2.

aspirations.¹⁷⁸ Due to the psychological effect of domestic work on the wellbeing of the child there has been a call to include the employment of children as domestic servants as a worst form of child labour.¹⁷⁹ Other factors influencing the debate to include child domestic work as a worst form of child labour include its clandestine nature, exposure of children to exploitation and abuse and its psycho-social impact on children in the form of feeling incompetent, having low self-esteem and stress.¹⁸⁰ Listing child domestic work as a worst form of child labour means making it a priority for elimination¹⁸¹ but this according to Bourdillon can be counterproductive as government would have to take measures to enforce such policy.¹⁸² This could make child domestic work more hidden and it may lead to children engaging in other worse forms of employment.¹⁸³

Therese *et al.* argue that due to diverse living and the psycho-social impact of domestic work on child domestic workers in India and Philippines it would be inappropriate to list child domestic work as a worst form of child labour.¹⁸⁴ Child domestic workers in India are young and forced to work long hours, live with their families or employers, have no access to education, have poor psycho-social outcomes, work in harsh conditions and are punished.¹⁸⁵ Child domestic workers in the Philippines are older and mostly immigrants, they work to further their education so they combine work with schooling, research has shown that they have a good working relationship with their employer and love what they do.¹⁸⁶ While child domestic work may be viewed as a safe form of employment, it is accompanied by various kinds of harm including physical, verbal and sexual abuse.¹⁸⁷

¹⁷⁸FO Omokhodion *...et al.*, "Perceptions of child labour among working children in Ibadan Nigeria" (2005) 32(3) *Child Care Health & Development* 281, 282.

¹⁷⁹E Estacio, "Marks of child labour and the International Labour Organisation's Convention 182: A critical perspective" (2005) 10 *Journal of Health Psychology* 475-484 cited in MH Therese *et al.*, "The Psychosocial impact of child domestic worker: A study from India and the Philippines" (2012) 97, *Archives of Disease in Childhood* 773, 773.

¹⁸⁰MH Therese *...et al.* "The psychosocial impact of child domestic work: A study from India and the Philippines (2012) 97 *Archives of Disease in Childhood* 773-778.

¹⁸¹*Ibid.*, 773.

¹⁸²M Bourdillon, "Children as domestic employees: Problems and promises" (2009) 15 *Journal of Children and Poverty* 1-18.

¹⁸³*Ibid.*

¹⁸⁴MH Therese *et al.*, note 180 above, 777.

¹⁸⁵*Ibid.*

¹⁸⁶*Ibid.*

¹⁸⁷J Blagbrough *op. cit.* note 85 above, 180.

In Nigeria most house helpers are treated badly; they have no access to good food and good sleeping environment.¹⁸⁸ Female children who are employed as house helpers are more vulnerable to sexually transmitted disease, HIV/AIDS and other forms of abuse.¹⁸⁹ Employers see themselves as the guardians of the children who have the right to punish their wrongful deeds and this may include the use of corporal punishment.¹⁹⁰ This may include being beaten with the use of a belt, sticks, and electrical cords, knocking their heads against the wall, having their skin burnt with a hot iron, chemicals or hot water.¹⁹¹

Michael Agu, a 12-year-old boy in Lagos State of Nigeria, who was alleged to have been cut with a razor blade by his aunt (employer) for misplacing N100, was taken to the Ministry of Youth and Social Development, Alausa Lagos Nigeria, by a concerned neighbour identified as Ike.¹⁹² For fear of being inflicted with more injuries the boy refused to return home.¹⁹³ It was reported that the 12-year-old boy had been living with the employer who was identified as Mama Sarah for over five years but was only enrolled in school after four years of living with her; though he hardly attended school.¹⁹⁴ Investigation showed that Mama Sarah had earlier been arrested and detained for child abuse, but was released after she was made to sign an undertaking not to abuse Michael again, however she continued.¹⁹⁵ She denied having abused Michael and alleged that he ran away to live under a bridge.¹⁹⁶ A letter was sent to her signed by the secretary of the child development department of the Ministry of Youth and Social Development, it read in part, "I am directed to invite

¹⁸⁸ O Awosusi, GM Adebo ...*op. cit.* note 139 above, 273-275.

¹⁸⁹ P Lachman *et al.*, "Challenges facing child protection" (2002) 26 *Child Abuse & Neglect* 587, 598.

¹⁹⁰ J Blagbrough *op. cit.* note 185 above, 185.

¹⁹¹ International Domestic Workers Federation, "Nigeria: Domestic workers are brought in for a huge profit" (January 14 2013), available at <http://idwfed.org/en/update/nigeria-domestic-workers-are-brought-in-for-a-huge-profit> (Accessed: 8 May 2016).

¹⁹² Editorial Board "To curb a rising culture of abuse" Guardian News Online (27 January 2016) available at <http://www.guardian.ng/opinion/to-curb-arising-culture-of-abuse> (Accessed: 11 August 2016).

¹⁹³ *Ibid.*

¹⁹⁴ D Jo, "Woman torture boy with bites and razor blades in Lagos" Information Nigeria (20 January 2016) available at www.informationng.com/2016/01/woman-torture-boy-with-bites-razor-blades-in-lagos-photo-htm (Accessed: 12 July 2017).

¹⁹⁵ *Ibid.*

¹⁹⁶ D Jo, "Woman torture boy with bites and razorblades in Lagos" Information Nigeria (20 January 2016) www.informationng.com/2016/01/woman-torture-boy-with-bites-razor-blades-in-lagos-photo-htm (Accessed: 12 July 2017).

you to a meeting with the Director, Child Development Department, Alausa, Ikeja, at 10am prompt on Wednesday, January 13. The meeting is in respect of the welfare of Michael Agu.”¹⁹⁷ She was contacted after refusing to honour the invitation. She admitted receiving the letter but denied abusing the boy Michael Agu.¹⁹⁸ Having been formerly arrested for child abuse, Mama Sarah was neither charged nor convicted for the offence of abuse or the employment of a minor as a domestic worker, rather she was made to sign an undertaking and was allowed to go. This is not a good enough punishment to deter Mama Sarah or other offenders from committing the same offence. Instead of ordering her immediate arrest and prosecution for abuse and employment of a child as a child domestic worker, she was again asked to report to the child protection unit of the Ministry of Youth and Social Development to discuss the welfare of Michael Agu. It was however, not reported what happened to Mama Sarah after her refusal to honour the letter that was sent to her by the Ministry of Youth and Social Development nor what happened to Michael Agu after him refusing to return back to Mama Sarah.

In another case, a woman Chinwe Obasi was arrested after having poured hot water on her 12-year-old domestic worker Chinedu, who worked both as her house helper and her sales boy.¹⁹⁹ She did this as the boy had been soliciting for money from outsiders to purchase his school socks which she refused to buy for him.²⁰⁰ Whether Chinwe Obasi was charged and convicted remains to be seen or known as it was not reported. It is obvious that these cases most times do not make it to the court, but are treated as domestic matters.

Corporal punishment and deprivation are common methods used by employers to discipline a child domestic worker whom they feel has done something

¹⁹⁷ D Jo, “Woman torture boy with bites and razorblades in Lagos” Information Nigeria (20 January 2016) available at www.informationng.com/2016/01/woman-torture-boy-with-bites-razor-blades-in-lagos-photo-htm (Accessed: 12 July 2017).

¹⁹⁸ *Ibid.*

¹⁹⁹ Editorial Board “To curb a rising culture of abuse” Guardian News Online (27 January 2016) available at <http://www.guardian.ng/opinion/to-curb-arising-culture-of-abuse> (Accessed: 11 August 2016).

²⁰⁰ *Ibid.*

wrong.²⁰¹ Such disciplinary measures are believed to have a good effect on the behaviour of the employed children by their guardians and employers.²⁰²

Violence and abuse towards children who work as domestic servants is seen and treated as an occupational hazard.²⁰³ It is unlikely to be reported due to the children's dependency on the employers.²⁰⁴ Violence against child domestic workers includes name calling, curses, shouting, threats, and insults. This is commonly experienced by girls while the boys suffer more physical abuse.²⁰⁵ Terms used to refer to child domestic workers most times are derogatory and insulting; which reduces their self-esteem.²⁰⁶ When pregnancy occurs due to sexual violence towards girls working as domestic employees they are sent packing by their employers and rejected by their families for bringing shame to them.²⁰⁷

In March 2016 in Lagos Nigeria, 17-year-old Roda Timothy was reported to have been raped, impregnated and kicked out by her Lebanese employer two months after being employed as a house helper.²⁰⁸ Before sending her away, the employer tried terminating the pregnancy twice, but it was unsuccessful.²⁰⁹ The employer, who was identified as Mr Hussein Ali, was arrested by the immigration department in Ikeja Lagos, but was later released. Roda was taken to the National Agency for the Prohibition of Trafficking in Persons where they promised to take care of her until she delivered the baby.²¹⁰ However, Roda's brother was later asked to come and take her when she was due for delivery, which he did.²¹¹ It was reported that the family of Mr Hussein Ali promised to take care of Roda till the birth of the child after which a DNA test would be done to ascertain the paternity of the child.²¹² Roda

²⁰¹ D Thorsen, "Child domestic workers: Evidence from West and Central Africa" (briefing paper prepared for UNICEF West and Central Africa 2012) 1, 7-8 available at <http://www.unicef.org/wcaro/english/Briefing-paper.unicef.org> (Accessed: 8 May 2016)

²⁰² J Thorsen *op. cit.* note 71 above, 7-8.

²⁰³ J Blagbrough *op. cit.* note 84 above, 187.

²⁰⁴ *Ibid.*

²⁰⁵ J Blagbrough *op. cit.* note 85 above, 186.

²⁰⁶ *Ibid.*

²⁰⁷ *Ibid.*

²⁰⁸ E Onyegbula, "How a Lebanese raped, impregnated his Nigerian maid and sacked her" *Vanguard News Online*, (26 March 2016) available at www.vanguardng.com (Accessed: 11 Aug 2016).

²⁰⁹ *Ibid.*

²¹⁰ *Ibid.*

²¹¹ *Ibid.*

²¹² *Ibid.*

delivered a baby girl reported to have the features of Mr Hussein Ali.²¹³ Mr Hussein had promised to take care of the child if the baby resembled him and he did.²¹⁴ The National Agency for the Prohibition of Trafficking in Persons did not charge Mr Hussein for rape because according to the agency it was not a case of human trafficking.²¹⁵ Roda's brother accused the National Agency for the Prohibition of Trafficking in Persons of negligence.²¹⁶ He lamented over the lack of attention shown by the government and relevant authorities towards the plight of helpless victims of societal crimes who are at the mercy of their perpetrators.²¹⁷ Girls who get pregnant whilst working as domestic workers are most times forced to live on the street and to fend for themselves.²¹⁸

Other dangers experienced by child domestic workers include exposure to things like sharp knives, hot irons and hot water, and the use of home appliances they have no knowledge of using which has caused injuries to many and even led to the death of others.²¹⁹ Other hazards identified by the ILO to which child domestic workers may be vulnerable to include lifting of heavy items, use of dangerous chemicals and tools, lengthy and exhausting working hours, poor feeding and accommodation, and being badly treated.²²⁰ Such risks are worse for children who are living with their employers.²²¹ A child domestic worker can live on the premises of the employer working solely for the employer, or could be an employee who comes and goes on a daily basis and could even work for several homes.²²² This depends on what is generally accepted in the said country.²²³ Exposing children to violence at an early age whether as victims or witnesses can disrupt the pace of their maturity and slow

²¹³ Makinde "House girl raped by her Lebanese boss in Lagos gives birth to baby girl" Naijaloaded, (21 May 2016) available at www.naijaloaded.com.ng/news/house-girl-raped-lebanese-boss-lagos-gives-birth-baby-girl (Accessed: 25 October 17)

²¹⁴ *Ibid.*

²¹⁵ *Ibid.*

²¹⁶ E Onyegbula *op. cit.* note 208 above

²¹⁷ *Ibid.*

²¹⁸ J Blagbrough *op. cit.* note 85 above, p.186.

²¹⁹ *Ibid.*, 187.

²²⁰ RF Ali "No child labour in domestic work" A conference paper presented by members at Institute of Public Policy Research and Development (2013), 1, 10. Available at <https://www.researchgat.net/publication/259974801> (Accessed: May 6 2016).

²²¹ *Ibid.*

²²² J Gamlin *et al.*, "Is domestic work a worst form of child labour? The findings of a six-country study of the psychosocial effects of child domestic work" (2013) *Children's Geographies* 1, 10.

²²³ *Ibid.*

down their nervous and immune systems.²²⁴ Violence can lead to social, emotional and cognitive impairments as well as behavioural challenges and disease, injury and social problems.²²⁵ It can lead to health challenges and behaviour such as drug abuse and early sexual activity.²²⁶ Violence in the home can push children into the street which can force them into child labour for self-support.²²⁷ Violence instils fear in children and hinders their functionality.²²⁸

Domestic employment can also turn out to be hazardous.²²⁹ There is concern regarding the health and wellbeing of children working in homes as domestic workers.²³⁰ Some of the effects of child domestic labour on children include bed wetting, insomnia, nightmares, constant headaches, withdrawal, regressive behaviour, premature ageing²³¹ and depression. Child labour is injurious to children's mental and physical wellbeing; it prevents them from experiencing the true meaning of childhood.²³² The consequences of domestic employment on children need to be viewed in association with the violation of the rights of the employed children.²³³ This includes their right to education²³⁴, health care, rest, leisure and play²³⁵ and their right to live with their parents²³⁶ and be cared for by them.²³⁷ Some of these identified factors can leave a permanent impact on the health, development and wellbeing of the children.²³⁸

²²⁴ South African Integrated Programme of Action Addressing Violence against Women and Children (2013-2018), 1, 17-18 Available at www.dsd.gov.za (Accessed: 5 May 2017).

²²⁵ *Ibid.*

²²⁶ *Ibid.*

²²⁷ *Ibid.*

²²⁸ *Ibid.*, 18.

²²⁹ N Jones *et al.* "Promoting synergies between child protection and social protection in Nigeria" A research project by Overseas Development Institute (February 2012) 1, 12.

²³⁰ Salami FI, "Impact of child labour on the behaviour of adolescents in Kaduna State, Nigeria" M.ED thesis, Ahmadu Bello University Zaria (2011) 1, 34 available at <http://www.kubanni.abu.edu.ng:8080/.../IMPACT%20OF%20CHILD%20LABOUR%20ON%20T> (Accessed: 11 Mar 2017).

²³¹ NO Bwibo, P Onyango "Final report of the child labour and health research" (1987) University of Nairobi, Nairobi as cited in J Blagbrough, "Child domestic labour: A modern form of slavery" (2008) 22 *Child and Society* 179, 187.

²³² RF Ali, *op. cit.* note 69 above, 9.

²³³ *Ibid.*, 10.

²³⁴ Article 28 United Nations Convention on the Right of the Child 1989.

²³⁵ Article 31 UNCRC.

²³⁶ Article 9 UNCRC.

²³⁷ Article 7 UNCRC.

²³⁸ RF Ali, *op. cit.* note 69 above, 10.

In a study on the effect of child labour on the education of children in Nicaragua, it was reported that the time dedicated to work by a child in the past affects the future educational achievement of the child.²³⁹ Child domestic workers, especially those living with their employers, are likely to be deprived of the opportunity of attending school because they are under the control of adults whose major interest is not their wellbeing but the contribution they have to make to the household.²⁴⁰

Poor health conditions due to the adverse effect of domestic work on children and deprivation of education can cause the poor developmental process of a child.²⁴¹ Children's development which can be endangered by work, according to UNICEF, includes physical development, this includes their health condition, strength, vision and hearing; cognitive development which will include the ability to learn and acquire knowledge necessary for their daily living and future; emotional development which includes their self-esteem and deprivation of family feelings of love, acceptance and attachment; and social and moral development which includes their ability to mix and cooperate with others having lived in isolation.²⁴² An underdeveloped child cannot make any positive contribution to the national development of a country.²⁴³ A child domestic worker could be aggressive, angry, and violent towards others and the society due to lack of parental care and love.²⁴⁴ Employers portray themselves as being merciful, claiming that the parents of the children are exploiting them by selling them for money and collecting the wages for their use when they are in fact also responsible for the abuse of the child.²⁴⁵

²³⁹ MB Zabeleta, "The impact of child labour on schooling outcome in Nicaragua" (2011) 30 *Economics of Education Review* 1527, 1538.

²⁴⁰ RF Ali, *op. cit.* note 69 above, 21

²⁴¹ NP Ibeme, "Child domestic worker in rural and urban areas of Nigeria: Implication for national development" (2014) 1 (12) *International Journal of Emerging Knowledge* 219, 225.

²⁴² UNICEF State of the world's children (1997) available at <https://www.unicef.org/sowc97/report/what.htm> (Accessed: 20 Oct 2017).

²⁴³ NP Ibeme, "Child domestic worker in rural and urban areas of Nigeria: Implication for national development" (2014) 1 (12) *International Journal of Emerging Knowledge* 219, 225.

²⁴⁴ *Ibid.*

²⁴⁵ RF Ali, *op. cit.* note 69 above, p.22

Child domestic workers are discriminated against and treated less than every member of the household.²⁴⁶ It is believed that they are treated as second class citizens who have no future hope.²⁴⁷ Sometimes the cruel and inhumane treatment can lead to the death of the child as was experienced in the case of 14-year-old Oliver Orakwe who died at the Eko General Hospital in Lagos on 17 August 2010 after being tortured and locked inside a toilet for two days for misbehaviour, by his employers Elochukwu and Chiamaka Nnajofofor.²⁴⁸ According to the investigating officer there was enough evidence to charge Elochukwu and Chiamaka for abuse causing the death of Oliver Orakwe.²⁴⁹ It was however not reported what became of the matter. In August 2013 a woman identified as Mama Christiana was arrested by the Nigerian police in Lagos State of Nigeria for physically and emotionally inflicting wounds on her 16-year-old house help, Angel, which led to her death.²⁵⁰ The matter was reported to be under investigation by the Lagos State Criminal Investigation Department. Again, what became of the matter was not reported. In the above cases the offence of employing children as domestic servants, which is the root of the matter, was not mentioned.

2.8 Summary

The study of the literature consulted revealed that child domestic work can be traced back to the communal living system of the past where parents encouraged their children to live with family members. It showed that children can also enter domestic service voluntarily to better their lives and to see themselves through school; though most times they are sent to work by their parents. Given the opportunity, most child workers prefer to attend school full time. Identified categories of child domestic workers' employers include: newly married women, women with grown up children,

²⁴⁶RF Ali, "No child labour in domestic work" A conference paper presented by member at Institute of Public Policy Research and Development (2013), 1, 9 available at <http://www.researchgate.net/publication/259974801> (Accessed: May 6 2016).

²⁴⁷FI Salami, "Impact of child labour on the behaviour of adolescents in Kaduna State, Nigeria" M.ED thesis, Ahmadu Bello University Zaria (2011) 1, 91 available at <http://www.kubanni.abu.edu.ng:8080/.../IMPACT%20OF%20CHILD%20LABOUR%20ON%20T> (Accessed: 11 March 2017).

²⁴⁸ Editorial Board "To curb a rising culture of abuse" Guardian News Online (2016) available at <http://www.guardian.ng/opinion/to-curb-arising-culture-of-abuse> (Accessed: 11 Aug 2016).

²⁴⁹Omamokta "Couple in police net for domestic helper's death" Nairaland Forum (2010)available at www.nairaland.com/500291/couple-police-net-domestic-helps (Accessed: 25 Oct 2017)

²⁵⁰ Editorial Board "To curb a rising culture of abuse" Guardian News Online (2016) available at <http://www.guardian.ng/opinion/to-curb-arising-culture-of-abuse> (Accessed: 11 Aug 2016).

and widows and grandmothers. The review also showed that the major cause of child domestic work is poverty, among other factors. Child domestic workers may encounter bosses who treat them nicely, but not in most cases. They are, however, treated badly most times and this should be viewed as a violation of their rights. Child work does not only have negative consequences on children's health and wellbeing but also on their education and future.

CHAPTER 3

ANALYSIS OF RELEVANT INTERNATIONAL CONVENTIONS AND DOMESTIC LAWS

3.1 Introduction

Child labour is not only a national problem but also an international challenge. Children involved in child labour around the world are estimated by the ILO to be about 168 million,²⁵¹ with sub-Saharan Africa having the greatest number of children labourers.²⁵² Until the late 1990s little attention was paid to child domestic work as a kind of child labour.²⁵³ International policy on child labour in the late 1990s and early 2000s was based on the premise that child domestic workers, especially girls, and with the exception of those working for close relatives, could fall victim to trafficking and exploitation.²⁵⁴ As a result, preventive programmes and policies were put in place to save children working and living in households away from their homes and families.²⁵⁵ From the beginning of the 1980s, international desire to safeguard children's rights brought about the creation of instruments on the issues of children, which produced a new understanding of the child labour concept.²⁵⁶ There exist a number of international and regional instruments and national legislation geared towards curbing child labour in Nigeria.

²⁵¹ "International Labour Office Making Progress against Child Labour: Global estimates and trends 2000-2012"(2013)7 available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipecc/documents/publication/wcms_221513.pdf (Accessed:02 September 2014) as cited in T Madziwa, "A critical analysis of child labour protective laws in Southern Africa: A case study of Malawi, South Africa & Zimbabwe (An LLMLS thesis University of Kwazulu-Natal November 2014) 12 available at researchspace.ukzn.ac.za/handle/10413/13573 (Accessed: 11May 2017).

²⁵²"Child Labour: What fruits does it bear for the African continent"available at <http://quarphixfoundation.wordpress.com/2014/05/27/child-labor-in-africa/> (Accessed: on 17 September 2014) as cited in T Madziwa, "A critical analysis of child labour protective laws in Southern Africa: A case study of Malawi, South Africa & Zimbabwe (An LLMLS thesis University of KwaZulu-Natal November 2014) 12 available at researchspace.ukzn.ac.za/handle/10413/13573 (Accessed: 11May 2017).

²⁵³ A Pereira, "Domestic child labour: An overview of Brazil's recent experience" (2010) Global Policy Forum available at <https://www.globalpolicy.org/home/219.labor/48669-domestic-child> (Accessed:4 October 2016).

²⁵⁴ D Thorsen, "Child domestic workers: Evidence from West and Central Africa" (briefing paper prepared for UNICEF West and Central Africa 2012) 1, 11 available at <http://www.unicef.org/wcaro/english/Briefing-paper.unicef.org> (Accessed: 8 May 2016).

²⁵⁵ *Ibid.*

²⁵⁶ TC Nhenga-Chakarisa, "Who does the law seek to protect and from what? The implication of international law on child labour in an African context" (2010) 10 *African Human Right Law Journal* 161, 163.

The International Labour Organisation (hereinafter ILO) is the organisation which has championed the fight against child labour since 1919. It adopted the Minimum Age Convention 138 of 1973, the Worst Forms of Child Labour Convention 182 of 1999²⁵⁷ and the Decent Work for Domestic Workers Convention 189 of 2011 to regulate child labour. The Convention on the Rights of the Child of 1989 was adopted by the United Nations while at a regional level the African Charter on the Rights and Welfare of the child was adopted by the African Union. After such Conventions are ratified, countries take steps to domesticate the provisions of the Convention into their national laws.²⁵⁸ This chapter will examine the available international conventions and regional and national legislation to determine if they also provide for the safeguard of children against child domestic employment. Also, gaps and challenges in the provisions of the relevant instruments will be highlighted and discussed.

3.2 International Conventions Regulating Child Domestic Work

While the UNCRC and the ACRWC is centred on the general rights of children, the Minimum Age Convention and the Worst Form of Child Labour Convention deals with the eradication of child labour.²⁵⁹ These Conventions will be examined below.

3.2.1 United Nations Convention on the Rights of the Child 1989

The driving force behind the protection of children's right is the UNCRC.²⁶⁰ It provides a global acceptance of children's right to be protected, to participation and the best interests of the child principle.²⁶¹

The United Nations Declaration on the Rights of the Child (UNDRC) was adopted in 1959 in confirmation of children's right to be given proper care by their parents as well as the community.²⁶² This gave rise to the adoption of the United Nations Convention on the Rights of the Child in 1989 (hereinafter UNCRC) providing for

²⁵⁷ RA Mavunga, "A critical assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999" (2013) 16 (5) *PER/PELJ* 122, 125.

²⁵⁸ *Ibid*, 122.

²⁵⁹ *Ibid*, 125.

²⁶⁰ P Lachman *et al.*, "Challenges facing child protection" (2002) 26 *Child Abuse & Neglect* 587, 606.

²⁶¹ R Evans, M Skoval, "Defining children's right to work and care in sub-Saharan Africa: Tension and challenges in Policy and Practice" (2015) *Politics, Citizenship and Rights* 1, 2.

²⁶² TU Onyemachi, "Children, status and the law in Nigeria" (2010)4 (3a) *African Research Review* 378, 381

universal consensus on children's fundamental rights.²⁶³ This includes a child's right to be safeguarded from every form of exploitation and abuse.²⁶⁴ The UNCRC provides a new understanding of the concept of child labour though it fails to define the term child labour.²⁶⁵ Child labour focuses on the effect of work on the concerned children, as such any work whether within or outside the home which is harmful to children's development could be deemed unacceptable.²⁶⁶

The Convention provides the definition of a child as any person less than eighteen years of age.²⁶⁷ It also allows for countries whose legislation provides for an age below eighteen years as the age of majority.²⁶⁸ Due to blood ties, parents are seen as the main guardian of their children by right.²⁶⁹ The Convention on the Rights of the Child recognises in its preamble the importance of children being brought up in a "family environment for the full and harmonious development of the children's personality".²⁷⁰ The Convention further urges state parties to make sure that children are not kept apart from their parents against their desire unless it is required for their interests.²⁷¹ It further states that state members should have regard of a child's right to keep regular contact and relationship with both parents, even when such child is separated from one or both parents, unless it is not in the best interest of the child.²⁷² Article 14 (2) provides for parental duties and rights to direct their children while article 16 provides that no child should be made to go through illegal or arbitrary interference with his or her family, privacy or communication, nor be made to experience unlawful attack on his or her honour and reputation.²⁷³ Article 6 provides for every child's right to live and develop and for member nations to see to a great extent the child's development and survival.²⁷⁴

²⁶³TU Onyemachi *op. cit.* note 262 above, 318.

²⁶⁴*Ibid.*

²⁶⁵ TC Nhenga-Chakarisa, "Who does the law seek to protect and from what? The implication of international law on child labour in an African context" (2010) 10 *African Human Right Law Journal* 161, 164.

²⁶⁶*Ibid.*

²⁶⁷ Article 1 of the United Nations Convention on the Rights of the Child 1989.

²⁶⁸*Ibid.*

²⁶⁹ TU Onyemachi *op. cit.* note 262 above, 381.

²⁷⁰The preamble to the United Nations Convention on the Rights of the Child 1989.

²⁷¹ Article 9 (1) of the UNCRC.

²⁷² Article 9 (3) of the UNCRC.

²⁷³The United Nations Convention on the Rights of the Child 1989.

²⁷⁴ PL Mfremfon, UR Ebirien, "Child labour: A public health problem in Nigeria" (2015) 4(3) *Journal of Nursing and Health Science* 28, 28.

The employment of children as domestic workers deprives them of parental care and guidance since most times they live with their employer. Their right to privacy is taken away as the employer dictates what the child can or cannot do. Child domestic employment as a kind of child labour impacts negatively on the development of children,²⁷⁵ it is the obligation of member nations to safeguard the rights of children for their survival and development.

Article 32 of the UNCRC obliges member states “to recognise and take legislative, administrative, social and educational measures to protect the rights of the children from economic exploitation and from performing work that is likely to be hazardous or to interfere with their education, or be harmful to the health or physical, mental, spiritual, moral or social development of the children”.²⁷⁶ The article also states that member states should provide the age limit for employment, regulate the conditions and working time through legislation and provide for effective sanctions and penalties to ensure enforcement.²⁷⁷

The main aim of article 32 is to provide for what kind of work children should not be allowed to perform.²⁷⁸ The article lacks specification on the types of work which can harm the social, mental, physical or spiritual growth of children.²⁷⁹ But it can be inferred that children, by virtue of the provision of article 32, have the right to reject any type of work that will harm them in any form.²⁸⁰ The article does not describe the extent of harm that can lead to a child’s refusal to work.²⁸¹ Long working hours, inadequate remuneration, work that affects the mental and physical development of a child negatively, working full-time at an early age or work that places a huge responsibility on a child are some of the factors identified by UNICEF as elements that amount to exploitation. These factors can guide the determination by a court of law if the facts of a matter can be regarded as exploitative by virtue of article 32

²⁷⁵ UNICEF “State of the world’s children” (1997) available at <https://www.unicef.org/sowc97/report/what/htm> (Accessed: 20 October 2017).

²⁷⁶ Article 32 of the United Nations Convention on the Rights of the Child 1989.

²⁷⁷ Article 32(2) (a)(b) &(c) of the CRC.

²⁷⁸ HV Kistenbroker, “Implementing Article 32 of the Convention on the Rights of the Child as domestic statute: protecting children from abusive labour practices” (2012) 44 (3) *Case Western Reserve Journal of International Law* 921, 931.

²⁷⁹ *Ibid.*

²⁸⁰ *Ibid.*

²⁸¹ *Ibid.*

together with other factors which may be deemed relevant by the court.²⁸² Article 32 (2) (a)-(c) is said to provide wide discretion for state members to decide on how article 32 should be implemented.²⁸³

Article 19 provides that “state parties shall take all appropriate legislative, administrative, social and educational measures to protect children from all forms of physical, or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse while in the care of parent(s), legal guardian(s) or any other person who has the care of the children”.²⁸⁴ Such steps of protection shall encompass the setting up of social services to help children as well as those caring for them, and other forms of preventive measures to identify, report, refer, investigate, treat, and follow up cases of children’s ill-treatment as described and as suitable for legal intervention.²⁸⁵

Other provisions of the UNCRC which protects children from being exploited include article 34 which states that member states should put in place measures of protecting children from sexual abuse and exploitation; article 36 which provides that state parties should protect children from all types of abuse harmful to any aspect of their wellbeing and article 37(a) which protects children from all forms of torment, inhumane, unkind and humiliating chastisement or treatment. Article 39 obliges member countries to take good steps to encourage the emotional and physical recuperation, as well as the reintegration of children who have been victims of abandonment, mistreatment, torment or any form of unkind, inhumane or demeaning treatment or chastisement, and it shall be in an atmosphere that will foster the self-esteem, dignity and wellbeing of the child.

It is argued that the UNCRC provides a global acceptance of western notions of childhood that are based on the belief that children are innocent, vulnerable, in need of education for a good future and deserve to be protected from harm,

²⁸²HV Kistenbroker, “Implementing Article 32 of the Convention on the Rights of the Child as domestic statute: protecting children from abusive labour practices” (2012) 44 (3) *Case Western Reserve Journal of International Law* 921, 931.

²⁸³*Ibid*, 932.

²⁸⁴Article 19 (1) UNCRC.

²⁸⁵Article 19(2) UNCRC.

responsibilities and adult exploitation.²⁸⁶ Parents ought to care for their children and their time should be spent in studying, playing and for leisure.²⁸⁷ Though no international or domestic instrument provides for the amount of time in which a child can play, study, rest or use for leisure.²⁸⁸ This is in contrast with the African notion of childhood which is referred to as a time of learning, training and acquiring of skills, even through work.²⁸⁹

The treaty lacks specification of guidelines on how it should be implemented by state parties²⁹⁰ though a committee was created by virtue of article 43 to examine the progress performance of the Convention by member nations. State members are to present to the committee via the United Nations Secretary General a report of measures taken to implement the Convention.²⁹¹ This, however, is not an enforcement mechanism.²⁹² Member states are allowed to decide on their implementation mechanisms.²⁹³ The committee may also carry out its function through expert advice provided by specialised agencies, the United Nations Children's Fund and other capable bodies in member nations.²⁹⁴

Child domestic work and its effect on the health and development of children, violates children's right to protection against exploitation,²⁹⁵ child labour,²⁹⁶ abuse

²⁸⁶R Evans, M Skoval, "Defining children's right to work and care in sub-Saharan Africa: Tension and challenges in Policy and Practice" (2015) *Politics, Citizenship and Rights* 1, 2.

²⁸⁷*Ibid.*

²⁸⁸TC Nhenga-Chakarisa, *op. cit.* note 256 above, 188.

²⁸⁹*Ibid.*

²⁹⁰HZ Hall, "Convention on the Rights of the Child: Has America Closed Its Eyes?" (2001) 17 *N.Y.L. SCH. J. HUM. RTS* 923, 925-926 cited in HV Kistenbroker, "Implementing Article 32 of the Convention on the Rights of the Child as domestic statute: protecting children from abusive labour practices" (2012) 44 (3) *Case Western Reserve Journal of International Law* 921, 927.

²⁹¹Article 43 and 44 of the UNCRC.

²⁹²AT Glut, "Changing the approach to ending child labour: An international solution to an international problem" (1995) 28 *VAND. J. TRANSNAT'L L.* 1203, 1224-25 cited in HV Kistenbroker, "Implementing Article 32 of the Convention on the Rights of the Child as domestic statute: protecting children from abusive labour practices" (2012) 44 (3) *Case Western Reserve Journal of International Law* 921, 92.

²⁹³*Ibid.*

²⁹⁴Article 45 of UNCRC.

²⁹⁵Article 32 of UNCRC.

²⁹⁶Article 32 of UNCRC.

and maltreatment²⁹⁷, sexual exploitation²⁹⁸ and safeguard from torment, unkind, cruel and humiliating treatment.²⁹⁹

Though the UNCRC has inspired legislative enactment and reforms on children's right by member states,³⁰⁰ it lacks enforcement mechanisms.³⁰¹ It lacks the power to put an end to the menace ravaging society such as child labour, exploitation and abuse.³⁰² The Convention provides for the general protection of children from harmful work without specifying categories of harmful work. It provides for the protection of children from hazardous work³⁰³ without detailing what is considered hazardous. It does not provide for the sanction and punishment of violators, but places much discretion and power on member states to decide on how to comply with the provisions.³⁰⁴ This is evidence of its ineffectiveness.

3.2.2 ILO Convention No. 138 of 1973 on the Minimum Age for Admission to Employment and Work

The ILO Convention No. 138 of 1973 on the Minimum Age for Admission to Employment and Work (hereinafter the Minimum Age Convention) was adopted in Geneva at the 58th International Labour Conference meeting on June 26, 1973, but came into operation on 19 June 1976.³⁰⁵ Before the adoption of the Convention there existed other instruments³⁰⁶ on child labour but they were focused on particular

²⁹⁷ Article 19 of UNCRC.

²⁹⁸ Article 34 of UNCRC.

²⁹⁹ Article 37(a) of UNCRC.

³⁰⁰ Such as the enactment of the Child's Right Act of 2003 in Nigeria and the Children's Act 38 of 2005 in South Africa.

³⁰¹ D Howard, "Does the UN Convention on the Rights of the Child make a difference" (2014) 22(2) *Michigan State International Law Review* 516, 516-522.

³⁰² *Ibid.*

³⁰³ Article 32(1) of the UNCRC.

³⁰⁴ While Article 19(1) provides for state parties to take measures to protect children from all forms of violence, injury or abuse, neglect or negligent treatment and maltreatment and exploitation, Article 32 (2) (a)-(c) which is centered on child labour provides that state parties shall take measures to implement the Provision of the article by providing a minimum age of employment, appropriate regulation of hours and conditions of employment and penalties and sanctions to ensure effective enforcement of the article.

³⁰⁵ Convention No 138- Minimum Age Convention, (1973) available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::12100_INS... (Accessed: 26 May 2016).

³⁰⁶ Preamble to the Minimum Age Convention, 1973 (No.138) it include Minimum Age (Industry) Convention, 1919, the Minimum Age (Sea) Convention, 1920, the Minimum Age (Agriculture) Convention, 1921, the Minimum Age (Trimmers and Stockers) Convention, 1921, the Minimum Age (Non- Industrial Employment) Convention, 1932, the Minimum Age (Sea) Convention (Revised), 1936, the Minimum Age (Industry)

sectors.³⁰⁷ The Convention was created to apply to the employment of children in all kinds of occupations and service in addition to replacing the former Conventions that applied to particular sectors.³⁰⁸ The Minimum Age Convention was ratified by Nigeria in 2002.³⁰⁹ The Minimum Age Convention was adopted by the International Labour Organisation (hereinafter called the ILO).³¹⁰ The ILO is the body responsible for matters relating to child labour at an international level.³¹¹ The Convention provides for the use of a minimum age as a means of regulating child labour and exploitation.³¹² Edmonds and Shrestha define the minimum age of employment as “the youngest age at which it is legal to pay a child to work full-time outside the home”.³¹³ It would appear that the Convention was motivated by the belief that the minimum age limit would contribute to the physical and mental development of children since they would be prohibited from working until mid-adolescence.³¹⁴

Convention(Revised), 1937, the Minimum Age (Non- Industrial Employment) Convention (Revised), 1937, the Minimum Age(Fishermen) Convention, 1959, and the Minimum Age (Underground work)Convention , 1965.

³⁰⁷Gallinetti JS, “An Assessment of the Significance of the International Labour Organisation’s Convention 182 in South Africa with specific reference to the Instrumental Use of Children in the Commission of Offences as a Worst Form of Child Labour” (2007) (A thesis submitted in fulfilment of the requirements for the degree Doctor of Law in the Faculty of Law at the University of the Western Cape, South Africa)1, 51 available on citeseerx.ist.psu.edu/viewdoc/downloads?doi=10.1.1.844.1559&rep=rep/&type=pdf (Accessed: 10 May 2017).

³⁰⁸Van Bueren G, *The International law on the Rights of the Child*, MartinusNijhoff Publishers: Dordrecht, The Netherlands, 1995, p 265 as cited in Gallinetti JS, “An Assessment of the Significance of the International Labour Organisation’s Convention 182 in South Africa with specific reference to the Instrumental Use of Children in the Commission of Offences as a Worst Form of Child Labour” (2007) (A thesis submitted in fulfilment of the requirements for the degree Doctor of Law in the Faculty of Law at the University of the Western Cape, South Africa)1, 51 available on citeseerx.ist.psu.edu/viewdoc/downloads?doi=10.1.1.844.1559&rep=rep/&type=pdf (Accessed: 10 May 2017).

³⁰⁹ ILO National legislation on hazardous child labour (Report on the identification of hazardous child labour in Nigeria submitted by the Nigerian National Steering Committee on Child Labour 2013), Available at <http://www.ilo.org> (Accessed: 5 May 2017).

³¹⁰*Ibid.*

³¹¹ JS Gallinetti “An Assessment of the Significance of the International Labour Organisation’s Convention 182 in South Africa with specific reference to the Instrumental Use of Children in the Commission of Offences as a Worst Form of Child Labour” (2007) *A thesis submitted in fulfilment of the requirements for the degree Doctor of Law in the Faculty of Law at the University of the Western Cape, South Africa* available at citeseerx.ist.psu.edu/viewdoc/downloads?doi=10.1.1.844.1559&rep=rep/&type=pdf (Accessed: 10 May 2017).

³¹²*Ibid.*

³¹³EV Edmonds, M Shrestha, “The impact of minimum age of employment regulation on child labour and schooling” (2012)1 (14) *IZA Journal of Labour Policy* 1,4.

³¹⁴ TC Nhenga-Chakarisa, “Who does the law seek to protect and from what? The implication of international law on child labour in an African context” (2010) 10 *African Human Right Law Journal* 161, 163.

Article 1 states that member states are to pursue policies geared towards ensuring the effectual eradication of adolescent labour, also towards increasing with time the age limit for admittance to employment or jobs, to a point constant with the fullest physical and psychological growth of young people.³¹⁵

The provision persuades member nations to implement laws which would end child labour, however fails to describe child labour anywhere within the treaty.³¹⁶ It is hard for countries to end child employment without having a good understanding of what amounts to child labour.³¹⁷ Since member states are left to decide what will amount to child labour in their territory a global implementation of the Convention becomes difficult.³¹⁸ Article 1 is said to be weak.³¹⁹ It places no obligation on member states to take particular steps, beyond legislation drafting, to end child labour,³²⁰ and does not provide any form of content guidelines on the policies to be made by states in order to abolish child labour.³²¹ Legislation making alone cannot solve a complicated matter like child labour.³²² Compliance with article 1 cannot necessarily provide for the effective abolition of adolescent work intended by the article.³²³ It is also noted that child domestic work is mostly excluded by member states.³²⁴ Celek asserts that the government of some countries argue that strict implementation of child labour laws may cause more harm to already poor families by making them poorer rather

³¹⁵ Article 1 of the Minimum Age Convention No 138 of 1973.

³¹⁶ RA Mavunga, "A critical assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999" (2013) 16 (5) *PER/PELJ* 122, 126.

³¹⁷ *Ibid*, 127.

³¹⁸ *Ibid*.

³¹⁹ J Kooijmans, "The Struggle against Child Labour: A winnable fight", in Alen A, *et al.* (eds), *The UN Children's Rights Convention: theory meets practice*, intersentia: Antwerpen-Oxford, 2007, p 267 – 287 at p 272. cited in JS Gallinetti, "An Assessment of the Significance of the International Labour Organisation's Convention 182 in South Africa with specific reference to the Instrumental Use of Children in the Commission of Offences as a Worst Form of Child Labour" (2007) *A thesis submitted in fulfilment of the requirements for the degree Doctor of Law in the Faculty of Law at the University of the Western Cape, South Africa* 1, 86 available at citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.844.1559&rep=rep&type=pdf (Accessed: 10 may 2017)

³²⁰ B Boockmann, "The Effect of ILO Minimum Age Conventions on Child Labour and School Attendance: Evidence from Aggregate and Individual-Level Data" (2009) *World Development* 679,681 cited in RA Mavunga, "A critical assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999" (2013) 16 (5) *PER/PELJ* 122, 127.

³²¹ RA Mavunga, *op. cit.* note 69, 128.

³²² *Ibid*.

³²³ JS Gallinetti, "An Assessment of the Significance of the International Labour Organisation's Convention 182 in South Africa with specific reference to the Instrumental Use of Children in the Commission of Offences as a Worst Form of Child Labour" (2007) *A thesis submitted in fulfilment of the requirements for the degree Doctor of Law in the Faculty of Law at the University of the Western Cape, South Africa* 1, 51 available at citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.844.1559&rep=rep&type=pdf (Accessed: 10 may 2017).

³²⁴ G Van Beuren, *op. cit.* note 308 above, p.51.

than providing them protection.³²⁵ While Boyden, Ling and Myers argue that article 1 creates a presumption that national laws should focus on the use of an age limit of admittance to work as a great tool against child exploitation.³²⁶ The exemption of children from work to a certain age would enhance their mental and physical development.³²⁷

Article 2(1) of the Minimum Age Convention puts an obligation on member countries to state in a declaration attached to its endorsement an age limit for admittance to service or work in its country. It further states that, subject to article 4 to 8 of the treaty, no individual below such a specified age should be employed in any type of work.³²⁸ In article 2(3) such specified age limit should not be below the age of completion of mandatory education, also in whichever case should not be below 15 years,³²⁹ but could however be higher.³³⁰ Paragraph 4 of article 2 of the Minimum Age Convention recognises member nations whose resources and learning amenities are not well advanced and provides that such nations, after due discussion with the organisation of employers as well as employees involved, may in the beginning state an age limit of 14 years. The article places an obligation on member nations to state an age limit for services or labour for which no child under such age should be allowed to work or be employed in any job.³³¹ The Convention does not define what occupation means. It can be read to include children working in households³³² though child domestic workers were not specifically mentioned. However, monitoring and implementation of legislation with regards to children who are employed in third parties' homes is not easy.³³³

³²⁵ B Celek "The international response to child labour in the developing World international response to child labour in the Developing World: Why are we ineffective?" (2004) *Geo J on Poverty L & Pol'y* 87-99 as cited in RA Mavunga, "A critical assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999" (2013) 16 (5) *PER/PELJ* 122, 129.

³²⁶ J Boyden, B Ling, and W Myers, *What Works for Working Children*, UNICEF and Save the Children Sweden (1998) 195 – 198 as cited in JS Gallinetti *op. cit.* note 312 above, p.87.

³²⁷ *Ibid.*

³²⁸ Article 2(1) of the Minimum Age Convention 1973.

³²⁹ Article 2(3) of the Minimum Age Convention 1973.

³³⁰ Article 2(2) of the Minimum Age Convention 1973.

³³¹ RA Mavunga, *op. cit.* note 257 above, 131.

³³² RA Mavunga, "A critical assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999" (2013) 16 (5) *PER/PELJ* 122, 131.

³³³ *Ibid.*

The Minimum Age Convention was referred to as unjustified for failure to prove its impact on the children it seeks to protect.³³⁴ It was further said that it does not protect children adequately, neither does it promote education.³³⁵ Hanson and Vandale state that the compulsory minimum age of 15 years is not static as the Minimum Age Convention is a “dynamic instrument aimed at encouraging the progressive improvement of standards promoting sustained action to attain the objectives”.³³⁶ However, the provision makes the hiring of young people under 15 years unlawful.³³⁷ The Convention advocates for the importance of schooling by stating that it is compulsory.³³⁸

According to Mavunga the ILO should provide a detailed working standard for children instead of stopping them from working.³³⁹ According to Ngenga-Chakarisa, African societies deem childhood as a period for building character and gaining social and technical skills essential for future adult roles.³⁴⁰ Children are perceived as the hope of the relatives and the community and should carry on the family name.³⁴¹ Child work, in the African culture, is perceived as an important part of a child’s up bringing though the benefits of such work are yet to be recognised by international law.³⁴² This form of training is also a form of education in the African culture which is yet to be considered by international law.³⁴³ There is a need for more studies on harmless work that can be done by children.³⁴⁴ Though article 2(4) was appreciated for its flexibility in considering the economic status of developing

³³⁴ M Bourdillon, W Myers, B White, “Re-assessing Minimum Age Standards for Children’s Work” (2009) 29(3/4) *The International Journal of Sociology and Social Policy*, 106-107.

³³⁵ *Ibid.*

³³⁶ K Hanson and A Vandale “Working children and International Labour Law: A critical analysis” 2003 *Int’l J Child Rts* 73-99 as cited RA Mavunga, “A critical assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999” (2013) 16 (5) *PER/PELJ* 122, 131

³³⁷ RA Mavunga, “A critical assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999” (2013) 16 (5) *PER/PELJ* 122, 131.

³³⁸ Article 2(3) of the Minimum Age Convention.

³³⁹ RA Mavunga, *op. cit.* note 257 above, 132.

³⁴⁰ TC Nhenga-Chakarisa, “Who does the law seek to protect and from what? The implication of international law on child labour in an African context” (2010) 10 *African Human Right Law Journal* 161, 170.

³⁴¹ *Ibid*, 170.

³⁴² TC Nhenga-Chakarisa, *op. cit.* note 256 above, 187.

³⁴³ *Ibid*, 186.

³⁴⁴ *Ibid*.

countries,³⁴⁵ it was also criticised for its failure to specify factors that should be considered by countries in order to later increase their minimum age as required.³⁴⁶ However, the provision is proof of the recognition of the economic difference between the developed and the developing countries.³⁴⁷

Article 3 provides that the age limit for any work which can possibly endanger the wellbeing, security or ethics of young people should not be below 18 years.³⁴⁸ Although the provision was meant to protect children from hazardous work, it was referred to as vague for failure to outline works that can fall within such category.³⁴⁹ However, it places the duty to determine which work or employment can likely jeopardise children's health, safety and morals on member states after due discussion with employers and employees involved.³⁵⁰ Mavunga praises article 3(2) for giving member states the opportunity to decide on issues that directly affect them though it does not provide for the factors that member states should put into consideration to know which work is likely to be harmful.³⁵¹ The Convention also provides in article 3(3) that member states, with due discussion with the organisation of employers and employees, may allow hiring or employment from the age of 16 on the condition that the wellbeing, security and ethics of the adolescent people are wholly safeguarded, and the adolescents have acquired sufficient detailed training or professional teaching in the applicable area of doings.³⁵² The provision is highly praised for its elasticity and for providing for vocational training and specific instruction in order to protect children from harm.³⁵³

Article 4 states that a competent authority, after due discussion with organisations of employers as well as employees, may exclude limited types of labour or employment

³⁴⁵ B Creighton "Combating Child Labour: The Role of International Labour Standards" (1997)*Comp Lab L J*362, 362 as cited in RA Mavunga, "A critical assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999" (2013) 16 (5)*PER/PELJ* 122, 133.

³⁴⁶ RA Mavunga, "A critical assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999" (2013) 16 (5) *PER/PELJ* 122, 133.

³⁴⁷ *Ibid.*

³⁴⁸ Article 3 (1) of the Minimum Age Convention.

³⁴⁹ Mavunga RA, *op. cit.* note 257 above, 133.

³⁵⁰ Article 3(2) of the Minimum Age Convention.

³⁵¹ Mavunga RA, *op. cit.* note 257 above, 134.

³⁵² Article 3(3) of the Minimum Age Convention.

³⁵³ RA Mavunga, *op. cit.* note 256 above, 134-135.

from the application of the treaty.³⁵⁴ This is to provide national authorities with the discretion to apply the Convention to their national situation.³⁵⁵ However, the Convention does not provide an outline of work or employment that may be exempted by member states.³⁵⁶ Though at the introductory stage of the treaty some work mentioned for possible exclusion includes employment or work in a family undertaking, household services, house jobs and jobs that are neither supervised nor controlled by an employer.³⁵⁷

Article 7 of the Minimum Age Convention provides that children between 13 to 15 years might be allowed to perform light work by national laws but fails to provide the definition of light work.³⁵⁸ It however states that such light work has to be that which is unlikely to harm their wellbeing and growth, school attendance, their involvement during professional courses or teaching programmes which are permitted by adequate jurisdiction, or their ability to gain from collected received information.³⁵⁹ Mavunga therefore describes light work to mean every job that is unlikely to be disadvantageous to the wellbeing or growth of children as well as unlikely to cause damage to their schooling.³⁶⁰ According to him, allowing state members to define what may amount to light work provides for flexibility and for countries to deal with situations particular to them which may be affected by territorial, racial, civil, governmental and resource situations.³⁶¹ The lack of a universal meaning can bring about a misinterpretation of the notion.³⁶² It therefore follows that the Minimum Age Convention prohibits the working of persons under 13 years, regardless of whether

³⁵⁴ Article 4(1) of the Minimum Age Convention.

³⁵⁵ *Committee of Experts on the Application of the Conventions and Recommendations (CEACR)* (1981) as cited in RA Mavunga, "A critical assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999" (2013) 16 (5) *PER/PELJ* 122, 135.

³⁵⁶ RA Mavunga, *op. cit.* note 256 above, 135.

³⁵⁷ M Borzaga "Limiting the Minimum Age: Convention 138 and the Origin of the ILO's Action in the Field of Child Labour" as cited in M Pertile, G Nesi and L Nogler (eds) "Child Labour in a Globalized World: A Legal Analysis of ILO Action" *Ashgate Aldershot* (2008) 39-64 as cited in RA Mavunga, "A critical assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999" (2013) 16 (5) *PER/PELJ* 122, 135.

³⁵⁸ RA Mavunga, *op. cit.* note 256 above, 139.

³⁵⁹ Article 7(1) (a) and (b) of the Minimum Age Convention.

³⁶⁰ RA Mavunga, *op. cit.* note 256 above, 139.

³⁶¹ RA Mavunga, *op. cit.* note 257 above, 139-140.

³⁶² *Ibid.*

or not the type of job is harmful to children's wellbeing, ethics or growth or prejudicial to their education.³⁶³

The article further states that adolescents who have reached 15 years, who however have not done with their obligatory education, can be employed in light work, provided the job is not damaging to their wellbeing and growth and not prejudicial to their academics or training.³⁶⁴ The Convention places on member states the obligation to determine light work as well as to determine the hours of work and the condition in which such light jobs can be performed.³⁶⁵

It is argued that the notion of childhood under the Minimum Age Convention does not reflect the African cultural beliefs and circumstances, but focuses on the British, American and European ideology, circumstance and history of childhood.³⁶⁶ Mavunga asserts that "to have a child withdrawn from work is simply not practical in many African cultures and Convention 138 is biased in its ideas of what children should do".³⁶⁷ The Minimum Age Convention provides for a universal standard on child labour despite its shortcomings it has led to the development of a binding legal instrument on children's rights.³⁶⁸ The Convention does not present a uniform age limit for admission of work. Article 3 of the Convention provides for children to be protected from hazardous work but places discretion on national laws to determine which work would probably endanger the wellbeing, security and ethics of children. The treaty does not provide guidelines on the work that could be hazardous to children. Article 4, which states that national laws may exempt some types of jobs from the application of the Convention, presents a gap for non-compliance for countries. Some countries may take advantage of the provision to exclude

³⁶³ *Ibid.*

³⁶⁴ Article 7 (2) of the Minimum Age Convention.

³⁶⁵ Article 7 (3) of the Minimum Age Convention.

³⁶⁶ L Abernethie "Child labour in contemporary society: Why do we care" (1998) *International Journal of Child Rights* 81, 91 as cited in RA Mavunga, "A critical assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999" (2013) 16 (5) *PER/PELJ* 122, 141.

³⁶⁷ RA Mavunga, "A critical assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999" (2013) 16 (5) *PER/PELJ* 122, 142.

³⁶⁸ JS Gallinetti, "An Assessment of the Significance of the International Labour Organisation's Convention 182 in South Africa with specific reference to the Instrumental Use of Children in the Commission of Offences as a Worst Form of Child Labour" (2007) *A thesis submitted in fulfilment of the requirements for the degree Doctor of Law in the Faculty of Law at the University of the Western Cape, South Africa* 1, 99 available at citeseerx.ist.psu.edu/viewdoc/downloads?doi=10.1.1.844.1559&rep=rep/&type=pdf (Accessed: 10 May 2017).

themselves from complying with the requirements of the treaty. The Convention does not define light work, neither does it differentiate harmful work from work which is not harmful. The protection of children from child domestic work is not mentioned in the Convention.

3.2.3 ILO Convention No. 182 of 1999 on the Worst Forms of Child Labour

The ILO Convention 182 on the Worst Forms of Child Labour (hereinafter the Worst Forms of Labour Convention) was ratified by Nigeria in 2002.³⁶⁹ The Convention sets a global criterion to safeguard young people from extreme forms of exploitation.³⁷⁰ This includes the protection of children from any hazardous labour that is injurious to their wellbeing, security or ethics.³⁷¹ The Worst Forms of Child Labour Convention complements the Minimum Age Convention.³⁷²

The Worst Forms of Child Labour Convention admonishes state members to take urgent steps towards combating the most unpleasant types of adolescent work.³⁷³ The Convention applies to every child under the age of eighteen years.³⁷⁴ The worst forms of child labour include labour done which, by its characteristics or circumstance, can cause injury to a child's health, safety or morals.³⁷⁵ National laws or regulations, after due consultation with the competent authority, shall determine the types of labour that can possibly damage the wellbeing, security and ethics of young persons. This, according to Mavunga, would avail member states the opportunity to consider challenges that are particular to them, and the meaning of hazardous labour may be different according to their country.³⁷⁶ Nigerian legislation does not provide for a list of works that can endanger the wellbeing, security and ethics of young people.³⁷⁷ The ILO Committee of Experts on the Application of Conventions and Recommendations (hereinafter CEACR) made known its concern

³⁶⁹ ILO National legislation on hazardous child labour "Report on the identification of hazardous child labour in Nigeria", *National Steering Committee on Child Labour* (2013) Available at <http://www.ilo.org> (Accessed: 5 May 2017).

³⁷⁰ Global March against Child Labour available at www.globalmarch.org (Accessed: 16 March 2016).

³⁷¹ *Ibid.*

³⁷² TC Nhenga-Chakarisa, "Who does the law seek to protect and from what? The implication of international law on child labour in an African context" (2010) 10 *African Human Right Law Journal* 161, 164.

³⁷³ Article 1 of the Worst Forms of Labour Convention.

³⁷⁴ Article 2 of the Worst Forms of Labour Convention.

³⁷⁵ Article 3(d) of the Worst Forms of Labour Convention.

³⁷⁶ RA Mavunga, "A critical assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999" (2013) 16 (5) *PER/PELJ* 122, 149.

³⁷⁷ AN Nwazuoke, CA Igwe "Worst forms of child labour in Nigeria: An appraisal of international and local legal regimes" (2016) 7 *Beijing Law Review* 69, 78.

on the failure of the Child's Right Act and the Nigerian Labour Act to provide for a list of work which can be hazardous to the wellbeing, security and ethics of young people below the age of 18.³⁷⁸ The committee expressed the hope that the Occupational, Safety and Health Bill (hereinafter the OSH Bill), which provides for a list of hazardous labour forbidden to children below 18years, would be adopted by the Nigeria government.³⁷⁹ This includes "work which exposes young persons to physical, psychological or sexual abuse; work which involves the use of dangerous machinery, equipment and tools; work in which young persons are confined to spaces; work in an unhealthy environment which may expose children to hazardous substances, agents, reagents or processes and work that involves working in difficult conditions such as long hours or during the night or being unreasonably confined to the premises of the employer".³⁸⁰ The Occupational, Safety and Health Bill is applicable to all work places in Nigeria, both the formal and informal sector.³⁸¹ However, the Bill has not been passed into law.³⁸²

Paragraph 3 and 4 of the Worst Forms of Child Labour Recommendation of 1999 categorises work that is injurious to the wellbeing, protection and ethics of children as a job that exposes children to bodily, mental and sexual mistreatment as well as labour done in difficult harsh situations like working for lengthy hours or at night,³⁸³ also employment in which children are unjustly restricted to their employer's place.³⁸⁴ Children in domestic services can be said to fall within the ambit of this provision.³⁸⁵ The situation of children working in hidden works like the child domestic workers in the household of others is not expressly mentioned in the Convention.³⁸⁶

³⁷⁸ ILO National legislation on hazardous child labour (Report on the identification of hazardous child labour in Nigeria, submitted by the Nigerian *National Steering Committee on Child Labour* (2013) Available at <http://www.ilo.org> (Accessed: 3 July 2017).

³⁷⁹ *Ibid.*

³⁸⁰ Clause 37 of the Occupational, Safety and Health Bill 2012 (the 7th National Assembly Second Session No 17 held Thursday 27 September 2012) available at <http://placng.org/wp/wp-content/uploads/2016/05/3191.pdf> (Accessed: 6 December 2017).

³⁸¹ Clause 1 of the Occupational, Safety and Health Bill 2012 (the 7th National Assembly Second Session No 17 held Thursday 27 September 2012) available at <http://placng.org/wp/wp-content/uploads/2016/05/3191.pdf> (Accessed: 6 December 2017).

³⁸² *Ibid.*

³⁸³ AN Nwazuoke, CA Igwe "Worst forms of child labour in Nigeria: An appraisal of international and local legal regimes" (2016) 7 *Beijing Law Review* 69, 78.

³⁸⁴ *Ibid.*

³⁸⁵ *Ibid.*

³⁸⁶ *Ibid.*

The worst forms of child labour are considered to be crimes³⁸⁷ and member nations are obliged to set in motion techniques to check the execution of the provisions.³⁸⁸ Such mechanisms might require financial implementation which some governments may not have.³⁸⁹ Member states are urged to take measures to implement and enforce the requirements of the Convention and to put into consideration the use of education in the elimination of child labour.³⁹⁰ The Convention acknowledges education as a significant instrument in child labour eradication.³⁹¹ The availability of free education would motivate parents to register their children in school since they would not acquire additional expenses.³⁹² The provision also acknowledges that free schooling may not be available in all cases, as it is to be made available by member states where possible.³⁹³ Mavunga argues that compulsory and forced schooling cannot eliminate child labour, neither would a total ban on child labour, because there are children from poor homes who have to work to pay their way through school, thus a total ban will negatively affect them.³⁹⁴ He advises that attention should be paid more to socio-economic and development issues affecting child workers.³⁹⁵

The Convention also obliges states to take “effective and time bounding measures to prevent children from the worst forms of child labour; to assist in the removal, rehabilitation and reintegration of children from the worst forms of child labour; to ensure access to free and basic education for children removed from the worst forms of child labour; to identify children at special risk and to take account of the special situation of girls”.³⁹⁶ The Convention, however, does not specify guidelines on how member states are to achieve these obligations nor does it define children with special risks.³⁹⁷ The Convention does not provide for penal sanctions to deter

³⁸⁷ RA Mavunga, *op. cit.* note 257 above, 139.

³⁸⁸ Article 5 of the Worst Forms of Labour Convention.

³⁸⁹ RA Mavunga, *op. cit.* note 257 above, 139.

³⁹⁰ Article 7 (2) of the Worst Forms of Labour Convention.

³⁹¹ RA Mavunga, *op. cit.* note 257 above, 153.

³⁹² *Ibid.*

³⁹³ *Ibid.*

³⁹⁴ RA Mavunga, *op. cit.* note 257 above, 154.

³⁹⁵ *Ibid.*

³⁹⁶ Article 7 (2) (a)-(e) the Worst Forms of Labour Convention.

³⁹⁷ RA Mavunga, *op. cit.* note 257 above, 155-156.

potential offenders neither does it provide guidelines for member states to follow in sanctioning violators, rather it places the discretion on member states to do so.³⁹⁸ Mavunga argues that the Worst Forms of Child Labour Convention focuses more on criminal matters rather than addressing employment that can be children tolerant.³⁹⁹ He states that while Convention 138 deals with the gradual elimination of child employment, Convention 182 focuses on the elimination of intolerable types of adolescent employment, but no international instrument discusses work that is beneficial to children.⁴⁰⁰ Though light work is mentioned in Convention 138 it is not defined, and work which will qualify as light work were not specified. It is suggested by Mavunga that the International Labour Organisation should focus on work that is tolerable to children and will not cause them harm, such as light work.⁴⁰¹ No reference is made to children working in the informal sector like domestic service.⁴⁰²

3.2.4 ILO Convention No. 189 on Decent Work for Domestic Workers of 2011.

The significant contribution of household employees to the global economy is recognised by the ILO, hence the adoption of the ILO Convention no. 189 on Decent Work for Domestic Workers (hereinafter Decent Work Convention).⁴⁰³ It is recorded that there are more than 50 million household employees around the world.⁴⁰⁴ The adoption of the Decent Work Convention is a landmark achievement on setting an international standard for the protection of domestic workers around the globe.⁴⁰⁵ Nigeria is yet to ratify the Convention, though it is argued that some of the provisions of the Convention are already incorporated into existing Nigerian legislation and policies, but it is not obvious to what point the existing laws are applied.⁴⁰⁶ However, there exist gaps that can be remedied by the ratification of the Convention by

³⁹⁸ *Ibid*, 153.

³⁹⁹ *Ibid*.

⁴⁰⁰ RA Mavunga, "A critical assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999" (2013) 16 (5) PER/PELJ 122, 159.

⁴⁰¹ *Ibid*.

⁴⁰² Global March Against Child Labour, "The Convention on the Worst Forms of Child Labour" available at www.globalmarch.org (Accessed: 16 of March 2016)

⁴⁰³ GA Ajaegbo, "Domestic workers in Africa: Legal status, rights and limitations" available at www.thelawyerschronicles.com/domestic-workers-in-africa-legal-status-right-and-limitations (Accessed: 3 July 2017).

⁴⁰⁴ *Ibid*.

⁴⁰⁵ P Taran, P Youtz "Review of Nigerian legislation and policy regarding ILO Convention 189 concerning decent work for domestic workers" *A report for the international organisation for Migration* (2016) 1,7 available at <https://publications.iom.int/system/files/pdf/domestic-workers.pdf> (Accessed: 6 May 2017).

⁴⁰⁶ *Ibid*, 25-27.

Nigeria.⁴⁰⁷ The provisions of the Convention state that member countries shall set an age limit for employment with regards to domestic workers that is in conformity with the requirements of the Minimum Age Convention and the Worst Forms of Child Labour Convention, and which should not be below that provided by the country's laws and regulation for general workers.⁴⁰⁸ The Convention also states that the jobs done by household employees who are below 18 years but over the minimum age limit should not jeopardise their mandatory schooling or vocational training.⁴⁰⁹ The Convention provides that domestic workers should be protected from all types of mistreatment, harassment and cruelty.⁴¹⁰ Article 6 of the Convention states that domestic employees are to take pleasure in decent working circumstances and respect to privacy even if they are living within the employer's household.⁴¹¹ And member states are to take measures to educate domestic workers, in the language they understand, of the terms and conditions of their employment.⁴¹² This could be via written agreements in conformity with national legislation, regulations and collective bargaining.⁴¹³

Gamlin argues that international policies aimed at eliminating child labour in the domestic sector are not suitable owing to the fact that the living and working context of children in domestic work differs from country to country.⁴¹⁴ However, he does not subscribe to a total ban on child domestic work since it has different meaning to different children, and a ban can expose children to other forms of harmful labour.⁴¹⁵

He argues for the enactment of legislation to combat child domestic work.⁴¹⁶ The Decent Work Convention promotes decent labour for household employees but does not define what constitutes decent work for domestic workers.⁴¹⁷ The Convention does not provide any enforcement mechanisms, neither does it provide for penalties

⁴⁰⁷ *Ibid.*

⁴⁰⁸ Article 4 (1) of Decent Work Convention 2011.

⁴⁰⁹ Article 4(2) of the Decent Work Convention.

⁴¹⁰ Article 5 of the Decent Work Convention.

⁴¹¹ Article 6 of the Decent Work Convention.

⁴¹² Article 7 of the Decent Work Convention.

⁴¹³ Article 7 of the Decent Work Convention.

⁴¹⁴ J Gamlin *et al.*, "Is domestic work a worst form of child labour? The findings of a six-country study of the psychosocial effects of child domestic work" (2013) *Children's Geographies* 1, 10.

⁴¹⁵ *Ibid.*, 11-12.

⁴¹⁶ *Ibid.*

⁴¹⁷ Preamble to the Decent Work Convention 2011.

or sanctions against violators. There is no research to determine the effect, success or failure of the Decent Work Convention as only 24 countries have ratified the Convention.⁴¹⁸

3.3 Regional Conventions Regulating Child Domestic Work

3.2.1 African Charter on the Rights and Welfare of the Child of 1990

There was a need to create a separate regional instrument to complement the UNCRC in the safeguard of the rights of the African child.⁴¹⁹ The African Charter on the Rights and Welfare of the Child of 1990 (hereinafter called the ACRWC) reinforced the provision of the UNCRC.⁴²⁰ Article 15 of the ACRWC like article 32 of the UNCRC provides for the safeguard of young people against adolescent work. It states that “every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s physical, mental, spiritual or moral development”.⁴²¹ It adds that state parties should take steps to guarantee the complete execution of the provision that applies to both the official and unofficial sectors of employment.⁴²² State parties are to provide minimum wages for employment, suitable guidelines on time and the prerequisite for employment, penalties and punishments to make certain the effectual implementation of the provision, also to encourage the circulation of information on the dangers of child labour in all parts of society.⁴²³ The provision was stated to provide narrower protection towards African children as compared to article 32 of the UNCRC as no reference is made to work that will get in the way of the children’s schooling or might impair the child’s wellbeing.⁴²⁴ It is, however, praised for its widespread implementation strategy by placing obligation on state parties to

⁴¹⁸Which country already ratified C189 available at idwfed.org/en/campaign/ratify-C189/en/campaign/ratify-c189/which-country-already-ratified-c189 (Accessed: 3 October 2017).

⁴¹⁹ JS Gallinetti, “An Assessment of the Significance of the International Labour Organisation’s Convention 182 in South Africa with specific reference to the Instrumental Use of Children in the Commission of Offences as a Worst Form of Child Labour” (2007) A thesis submitted in fulfilment of the requirements for the degree Doctor of Law in the Faculty of Law at *the University of the Western Cape, South Africa* 1, 86 available at citeseerx.ist.psu.edu/viewdoc/downloads?doi=10.1.1.844.1559&rep=rep/&type=pdf (Accessed: 10 may 2017).

⁴²⁰TU Onyemachi, “Children, status and the law in Nigeria” (2010)4 (3a) *African Research Review* 378, 381.

⁴²¹Article 15 (1) of the African Charter on the Rights and Welfare of the Child 1990.

⁴²²Article 15(2) of the ACRWC.

⁴²³Article 15(2) (a) (b) (c) and (d) of the ACRWC.

⁴²⁴ JS Gallinetti, *op. cit.* note 420 above, 114.

encourage the creation of awareness of the dangers of child labour in all community sectors.⁴²⁵

The ACRWC provides in article 16 for “the protection of children against all forms of torture, inhumane or degrading treatment especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse by state parties through specific legislative, administrative, social and educational measures”.⁴²⁶ Such protective measures should include the creation of a good monitoring section to offer needed support to children along with their careers, and other types of prevention and for recognition, reporting, transfer, enquiry, healing, and follow-up of cases of child exploitation and abandonment.⁴²⁷

Article 19 provides for the right of a child to parental care and protection and the right to live with his or her parents.⁴²⁸ “No child shall be separated from his or her parents against his or her will, except if it has been determined by judicial authority in accordance with the law that it is in the best interests of the child”.⁴²⁹

Article 20 provides that parents or those in charge of children, should be primarily responsible for the raising and advancement of their children as well as having the responsibility to make sure that the best interests of their children are their primary concern; to safeguard within their ability and capability circumstances of living essential for their children’s advancement; and to make sure that home punishment is applied with compassion.⁴³⁰ Further, governments are required to take measures according to their means and national conditions to assist parents and children concerning feeding, healthiness, schooling, clothing and shelter; to support in child-rearing by putting in place organisations in charge of providing children’s care; and to make sure that children of employed parents are provided with care services and amenities.⁴³¹

⁴²⁵ M Gose, *The African Charter on the Rights and Welfare of the Child*, *Community Law Centre* (2002)64 cited in JS Gallinetti, *op. cit.* note 420 above, 114.

⁴²⁶ Article 16 (1) of the ACRWC.

⁴²⁷ Article 16 (2) of the ACRWC.

⁴²⁸ Article 19 (1) of the ACRWC.

⁴²⁹ *Ibid.*

⁴³⁰ Article 20 (1) (a)-(c) of the ACRWC.

⁴³¹ Article 20 (2) (a)-(c) of the ACRWC.

The African Charter on the Rights and Welfare of the Child recognises the rights of children to leisure, play, rest and recreational activities appropriate to their age.⁴³² It also places some form of responsibility on children towards their community and family.⁴³³ This lacuna can be taken advantage of by member states and family members to exploit children.⁴³⁴ The ACRWC provides a wider provision for the safeguard of young persons against adolescent domestic employment by including the informal sector in the provision against child labour and placing a responsibility on parents to provide for the needs of their children. But this provision is watered down by the discretion placed on member nations to take steps to implement the provisions of the Charter, and the Charter provides no sanction against defaulters.

3.4 National Laws Regulating Child Domestic Work in Nigeria

3.4.1 The Constitution of the Federal Republic of Nigeria of 1999

The Constitution of the Federal Republic of Nigeria (herein after Nigerian Constitution) provides for the general human rights of every Nigerian citizen, including children.⁴³⁵ It provides in Chapter IV, for the basic rights of all Nigerian citizens.⁴³⁶ This includes the right to dignity,⁴³⁷ the right not to be put through torment, cruel or humiliating treatment,⁴³⁸ slavery or servitude,⁴³⁹ and forced or mandatory labour.⁴⁴⁰ It also provides for the right to personal freedom,⁴⁴¹ as well as the right to privacy, and states that in the case of violation of these rights the person whose right was violated can seek redress in court.⁴⁴² Child domestic workers are victims of numerous rights violations.

Chapter 2 of the Constitution provides for the socio-economic rights of all Nigerians. Section 18(1) states that government should direct its guidelines in the direction of

⁴³²Article 12 of the ACRWC.

⁴³³Article 31 of the ACRWC.

⁴³⁴TC Nhenga-Chakarisa, "Who does the law seek to protect and from what? The implication of international law on child labour in an African context" (2010) 10 *African Human Right Law Journal* 161, 166.

⁴³⁵Chapter IV of the Constitution of the Federal Republic of Nigeria 1999.

⁴³⁶*Ibid.*

⁴³⁷Section 34(1) of the Constitution of Nigeria 1999.

⁴³⁸Section 34(1)(a) of the Constitution of Nigeria 1999.

⁴³⁹Section 34(1)(b) of the Constitution of Nigeria 1999.

⁴⁴⁰Section 34(1)(c) of the constitution of Nigeria 1999.

⁴⁴¹Section 35 of the Constitution of Nigeria 1999.

⁴⁴²Section 46 of the Constitution of Nigeria 1999.

equal educational opportunities for all. It provides for government's obligation to strive towards the eradication of illiteracy by providing practicable, free, mandatory and general primary schooling and free secondary and tertiary education. However, this is provided for under the fundamental objectives and directives principle of state policy, which means that action cannot be brought against the government for not enforcing the provision.⁴⁴³ Where the rights of children are not enforceable, government will not be compelled to provide education for children, and poor children whose parents are unable to sponsor their education would engage in child labour.⁴⁴⁴

There are other legislations that deals with matters concerning children and child labour, they are as follows:

3.4.2 The Nigerian Child Rights Act of 2003

The protection of children's rights in Nigeria is rooted in the Child Rights Act of 2003 (hereinafter the CRA).⁴⁴⁵ Nigeria domesticated the provisions of the UNCRC through the enactment of the Child Rights Act of 2003.⁴⁴⁶ Under the Child Rights Act a child is defined as "a person under the age of 18 years".⁴⁴⁷ The CRA supersedes all other legislation with regards to matters relating to children.⁴⁴⁸ The Act outlines the protection and care necessary for the development, survival and wellbeing of children.⁴⁴⁹ Although the Act has been passed at a federal level, it can only be effective if adopted at a state level.⁴⁵⁰ Nigeria as a federation has its governing powers distributed between the federal government sitting at the Federal Territory Capital, Abuja (hereinafter FCT), the state government at the regional level, and the

⁴⁴³ OI Tajudeen, "Legal framework for the protection of child rights in Nigeria" (2015) 3 *Agora International Journal of Juridical Science* 46, 48.

⁴⁴⁴ Poverty is the major cause of child labour and child domestic work.

⁴⁴⁵ UNICEF Nigeria 2007 as cited in N Jones *et al.* "Promoting synergies between child protection and social protection in Nigeria" (A research project by Overseas Development Institute February 2012) 1, 18 available at <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7579.pdf> (Accessed: 6 December 2017).

⁴⁴⁶ N Jones *et al.* "Promoting synergies between child protection and social protection in Nigeria" A research project by Overseas Development Institute (2012 1, 21 available at <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7579.pdf> (Accessed: 6 December 2017).

⁴⁴⁷ Section 277 of the Child's Right Act 2003.

⁴⁴⁸ Section 274 (1) (a) of the CRA.

⁴⁴⁹ N Jones *et al.*, *op. cit.* note 447 above, 18.

⁴⁵⁰ *Ibid*, 21.

local government at the local level.⁴⁵¹ It consists of 36 regional states and the FCT sitting at Abuja.⁴⁵² The Federal House of Assembly, comprising of the House of Senate as the upper chamber, and the House of Representatives as the lower chamber, reserve the power to legislate on matters listed in the exclusive legislative list.⁴⁵³ The State House of Assembly has the power to legislate on matters which are not listed in the exclusive list but on the residual list.⁴⁵⁴ Both the federal government and the state government can jointly legislate on matters on the concurrent list.⁴⁵⁵ Where there is an inconsistency between federal and state laws, the laws made by the National Assembly prevails.⁴⁵⁶ However, the issue of children's rights and protection falls within the powers of the state government.⁴⁵⁷

The CRA has only been adopted by 24 out of 36 states in Nigeria, hindering its efficacy.⁴⁵⁸ The remaining states relenting in adopting the Child Rights Act are majorly from the northern part of Nigeria.⁴⁵⁹ It is said to contradict the tradition, belief and values of Islam as majority of Nigerian northerners are Muslim.⁴⁶⁰ The non-adoption of CRA into state laws means the provisions of the Act are not binding on the states and the violation of children's rights in such states cannot be prosecuted in court.⁴⁶¹

⁴⁵¹ GM Brown, "Nigerian political system: An analysis" (2013) 3(10) *International Journal of Humanities and Social Science* 172,173-174.

⁴⁵² *Ibid.*

⁴⁵³ Section 4(2) of the Constitution of Nigeria 1999.

⁴⁵⁴ Section 4(7) of the Constitution of Nigeria 1999.

⁴⁵⁵ Section 4(4) (a) and Section 4(7) (b) of the Constitution of Nigeria 1999.

⁴⁵⁶ Section 4(5) of the Constitution of Nigeria 1999.

⁴⁵⁷ OS Akinwumi, "Legal impediment on the practical implementation of the Child Rights Act 2003" (2009)37 (3) *International Journal of Legal Information* 384,387.

⁴⁵⁸ Defence for Children International (2010) "Information Notes on Juvenile Justice-related Issues, Argentina, Belgium and Nigeria." 54th Session of the UN Committee on the Rights of the Child. Geneva: 25 May-11 June as cited in N Jones *et al.* "Promoting synergies between child protection and social protection in Nigeria" A research project by Overseas Development Institute (2012) 1, 18 available at <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7579.pdf> (Accessed:6 December 2017).

⁴⁵⁹ United States Department of Labour's Bureau of International Labour Affairs "Nigeria moderate advancement" Findings on the worst forms of child labour (2013) 1, 4 available at <https://www.dol.gov/ilab/report/child.labour/findings/2013TDA/Nigeria.pdf> (Accessed: May 5 2017).

⁴⁶⁰ OS Akinwumi, *op. cit.* note 458 above,385.

⁴⁶¹ *Ibid.*, 391.

Like the UNCRC⁴⁶² and ACRWC,⁴⁶³ the CRA provides that the best interests of the child should be of primary consideration in all actions concerning them.⁴⁶⁴ It also provides for children's right to dignity,⁴⁶⁵ to rest, play and ethnic pursuit.⁴⁶⁶ The rights of children to parental care, safeguard and maintenance,⁴⁶⁷ their right to free, mandatory and general basic schooling;⁴⁶⁸ the responsibility of children towards their family and society;⁴⁶⁹ and the duty of the parents to provide guidance with respect to children's responsibility.⁴⁷⁰

Section 28 of the Child Rights Act prohibits children from being made to go through any compulsory or abusive labour; from being engaged in work in any way apart from light work of an agricultural, horticultural or domestic character; from lifting or carrying heavy things that are likely to have an adverse effect on their bodily, psychological, religious, ethical or social growth; and from being hired as house helpers outside their own house or family environment.⁴⁷¹ Any person who violates these provisions is liable to a fine of fifty thousand Naira or a term of five years imprisonment, or both.⁴⁷² Where it is committed by a corporate body, the person heading such body corporate is jointly and severally liable to a fine of two hundred and fifty thousand Naira.⁴⁷³ Section 29 affirms the requirements of the Labour Act as it applies to children. The Act also provides in section 30 that no child should be used for the reason of pleading for alms, leading beggars, prostitution, household or sexual labour or for illegal or dishonest motives⁴⁷⁴; or for which ever reason that will deprive the young person of the chance to be present at school and stay in school as required under the Compulsory Free Universal Basic Education Act.⁴⁷⁵ However, this

⁴⁶²Article 3 of the UNCRC.

⁴⁶³Article 4 of the ACRWC.

⁴⁶⁴Section 1 of the CRA.

⁴⁶⁵Section 11 of the CRA.

⁴⁶⁶Section 12 of the CRA.

⁴⁶⁷Section 14 of the CRA.

⁴⁶⁸Section 15 of the CRA.

⁴⁶⁹Section 19 of the CRA.

⁴⁷⁰Section 20 of the CRA.

⁴⁷¹Section 28 (1) (a)- (d) of the CRA.

⁴⁷²Section 28(3) of the CRA.

⁴⁷³Section 28(4) of the CRA.

⁴⁷⁴Section 30 (2) (a) of the Child Rights Act.

⁴⁷⁵Section 30 (2) (d) of the Child Rights Act.

provision does not provide for sanctions against violators and as such does not create an offence.⁴⁷⁶

While the passing of the CRA is a landmark in the protection of Nigerian children and also shows Nigeria's commitment to the UNCRC, the implementation of the Act is poor.⁴⁷⁷ The Act in sections 28 and 29 addresses child labour and affirms the relevant provisions of the Labour Act which does not apply to children in domestic service.⁴⁷⁸

3.4.3 The Nigerian Labour Act

The Nigerian Labour Act (hereinafter Labour Act) provides for the general protection of children in section 59 to 64, but these provisions do not apply to young persons employed as domestic workers. The Act prohibits the employment of children to labour in whichever capacity, unless the child is engaged by a relative in light work of a farming, agricultural, gardening or household nature permitted by the minister;⁴⁷⁹ and it also forbids children from lifting, carrying or moving heavy objects which could possibly injure their bodily growth.⁴⁸⁰ Children under the age of 14 may only be working on a day by day earnings, on a day-to-day basis, and they are to return to the home of their parents or custodian or individual permitted by their parents or custodian each night.⁴⁸¹ This provision does not pertain to children engaged in household service.⁴⁸² Section 59(4) states that no person less than that age of 16 should be employed in conditions in which he or she may not be able to return home to the parent each day, except with the consent of an approved labour official and a written agreement.⁴⁸³ Again, this is not applicable to children engaged in household service.⁴⁸⁴ The Labour Act states that no young child below sixteen years shall be required to work on a public holiday.⁴⁸⁵ It also states that no child should be engaged

⁴⁷⁶ AN Nwazuoke, CA Igwe "Worst forms of child labour in Nigeria: An appraisal of international and local legal regimes" (2016) 7 *Beijing Law Review* 69, 78.

⁴⁷⁷ N Jones *et al.*, *op. cit.* note 445 above, 18.

⁴⁷⁸ *Ibid.*, 24.

⁴⁷⁹ Section 59(1) (a) of the Nigerian Labour Act.

⁴⁸⁰ Section 59 (1) (b) of the Nigerian Labour Act.

⁴⁸¹ Section 59(3) (a)-(c) of the Nigerian Labour Act.

⁴⁸² *Ibid.*

⁴⁸³ Section 59 (4) of the Nigerian Labour Act.

⁴⁸⁴ *Ibid.*

⁴⁸⁵ Section 59 (5) (c) of the Nigerian Labour Act.

in any labour damaging or dangerous to his wellbeing.⁴⁸⁶ Section 59(7) prohibits the continuous hiring of a child below the age of sixteen against the wishes of the parents or guardian. No child less than sixteen years should be hired to work consecutively for more than 4 hours or for more than eight hours in a day.⁴⁸⁷ However, this is not applicable to persons in household employment.⁴⁸⁸

Section 60 prohibits the employment of children at night except where they are above the age of sixteen and in emergency cases. Section 65 provides that the “minister may make regulations providing for the engagement, repatriation, or supervision of domestic servants; the employment of women and young persons as domestic servants; the housing accommodation and sanitary arrangement of domestic servants and the conditions of domestic service generally”.⁴⁸⁹

The Labour Act sets different age limits for different work, though it forbids the hiring of young persons below eighteen years from jobs that are hazardous to their wellbeing, security and principles.⁴⁹⁰ It does not, however, specify which work may be hazardous to children.⁴⁹¹ The Labour Act permits the engagement of children below the age of 12 years in agricultural, horticultural and domestic service. The ILO Committee of Experts on the Application of Conventions and Recommendation (CEACR) also showed serious concern over the hiring of adolescents less than the minimum age limit as household employees and requested that government take steps to ensure that children below the age of 15 years are not admitted into domestic service.⁴⁹² It also recommended that the government make regulations pursuant to section 65 of the Labour Act to regulate the affairs of women and children in domestic service in Nigeria.⁴⁹³

⁴⁸⁶Section 59 (6) of the Nigerian Labour Act.

⁴⁸⁷Section 59(8) of the Nigerian Labour Act.

⁴⁸⁸*Ibid.*

⁴⁸⁹Section 65 (a)-(d) of the Nigerian Labour Act.

⁴⁹⁰United States Department of Labour’s Bureau of International Labour Affairs “Nigeria moderate advancement” Findings on the worst forms of child labour (2013) 1, 4 available at <https://www.dol.gov/ilab/report/child.labour/findings/2013TDA/Nigeria.pdf> (Accessed: May 5 2017).

⁴⁹¹*Ibid.*

⁴⁹²ILO National legislation on hazardous child labour (Report on the identification of hazardous child labour in Nigeria submitted by the Nigerian National Steering Committee on Child Labour 2013) available at <http://www.ilo.org> (Accessed: 5 May 2017).

⁴⁹³*Ibid.*

3.4.4 The Trafficking in Persons (Prohibition) Enforcement and Administration Act of 2015

The Trafficking in Persons (Prohibition) Enforcement and Administration Act of 2015 (hereinafter the Trafficking in Persons Act) is another legislation that seeks to protect children from domestic employment. The Act prohibits the employment, recruitment, transporting, harbouring, receiving, and hiring out of children below 12 years as household workers, and places a conviction of not less than six months imprisonment but not exceeding seven years on violation.⁴⁹⁴ The Act also imposes a conviction of two years imprisonment but not exceeding seven years without an option of a fine on any person who employs, recruits, transports, harbours, receives, or hires out a child to do any work that is exploitative, injurious or hazardous to the physical, social and psychological development of the child.⁴⁹⁵ The section also states that notwithstanding the punishment provided in section 23(1) a person convicted under the section shall, in addition, be guilty of a term of not less than two years imprisonment where the child is denied payment or reasonable compensation for services rendered,⁴⁹⁶ or a term of not less than three years where the child is defiled or inflicted with bodily harm.⁴⁹⁷

3.5 Summary

This chapter discussed the provisions of international law and the domestic legislations of Nigeria on child labour, specifically focusing on child domestic workers. The UNCRC and ACRWC provide for the safeguard of children against abuse, as well as hazardous labour, or any work which may be injurious to their wellbeing and development. Both the UNCRC and the ACRWC provides for the basic rights of children and recognises the need for children to be brought up in a family setting. The ACRCW provides that the provision of Article 15 on child labour covers both the formal and informal sector, which includes domestic workers. The Minimum Age Convention provides for the use of a minimum age in the regulation of child labour. It places on state members the obligation to set a minimum age of employment for children, which shall not be lower than the compulsory learning age. It acknowledges countries whose economy is not well developed to set an initial age

⁴⁹⁴Section 23 (1) (a) of the Trafficking in Persons Act 2015.

⁴⁹⁵Section 23(1) (b) of the Trafficking in Persons Act 2015.

⁴⁹⁶Section 23 (2) (a) of the Trafficking in Persons Act 2015.

⁴⁹⁷Section 23(2) (b) of the Trafficking in Persons Act 2015.

limit of 14 years. The Convention prohibits the hiring of young persons under 13 years, even if such work is not harmful to them, but permits children between the ages of 13 and 15 to engage in light work which is not harmful to their wellbeing, safety and morals. The Worst Forms of Child Labour Convention protects children from extreme exploitative work. The Convention acknowledges the use of education in the eradication of child labour. The Decent Work Convention provides for the general protection of domestic workers, but Nigeria has not ratified the Convention.

The main legislation that regulates the affairs of children in Nigeria is the Child Rights Act. It prohibits the hiring of children as domestic helpers outside their home. It also prohibits the use of children for domestic labour, or for work which could jeopardise their compulsory schooling, but specifies no sanction for those who violate the provision. The Labour Act of Nigeria does not protect children who are employed as domestic workers. It does, however, provide for the minister to make regulations to regulate the affairs of women and children employed in the domestic sector. The Trafficking in Persons Act forbids the hiring of young persons below 12 years as domestic workers. However, under the Trafficking in Persons Act, hiring of children below 12 years old is treated as a form of human trafficking. The Nigerian National Steering Committee on Child Labour lists domestic work as hazardous which means it can possibly cause damage to the wellbeing and security of children.

CHAPTER 4

COMPARATIVE ANALYSIS OF SOUTH AFRICAN AND NIGERIAN LEGISLATION

4.1 Introduction

Child domestic work as a form of child labour cuts across all nations of the world.⁴⁹⁸ It has existed in Nigeria since the pre-colonial era when parents sent their children to relatives to help in household chores, or children were taken as a ransom for the debt owed by their parents.⁴⁹⁹ During the colonial era it was considered a privilege for parents to send their children to work in the homes of the European missionaries as domestic servants.⁵⁰⁰ It still exists to date as a thing of class due to education and development, with the poor working for the rich.⁵⁰¹

Around the world domestic workers are most times not less than 18 years of age and are very expensive to afford.⁵⁰² They are reported to be between the ages of 25 and 40 in the western world.⁵⁰³ However, that is not the case in Nigeria and other developing countries in Africa, where children are employed as domestic workers and are the least paid.⁵⁰⁴ One factor identified by Ibeme as a reason why child domestic work thrives in Nigeria, is the absence of effective laws and the unwillingness by appropriate authorities to enforce available laws.⁵⁰⁵ According to Jane most developing nations in sub-Saharan Africa have embraced legislation on the eradication of child labour, but this legal protection does not cover the informal sector which includes child domestic service.⁵⁰⁶ This chapter will discuss the position of child domestic workers in South Africa and its measures in curbing child domestic work. It will further discuss the implementation of the available legislative

⁴⁹⁸ NP Ibeme, "Child domestic worker in rural and urban areas of Nigeria: Implication for national development" (2014)1 (12) *International Journal of Emerging Knowledge* 219, 220.

⁴⁹⁹ *Ibid*, 221-222.

⁵⁰⁰ *Ibid*.

⁵⁰¹ *Ibid*.

⁵⁰² S Alolada, "NATIP: Any protection for under aged domestic helps in Nigeria" available at www.thelawyerschronicles.com/naptip-any-protection-foe-underaged-domestic-helps-inNigeria (Accessed: 3 July 2017).

⁵⁰³ *Ibid*.

⁵⁰⁴ *Ibid*.

⁵⁰⁵ NP Ibeme, *op. cit.* note 499 above, 220.

⁵⁰⁶ RA Mavunga, "A critical assessment of the Minimum Age Convention 138 of 1973 and the Worst Forms of Child Labour Convention 182 of 1999" (2013) 16 (5) PER/PELJ

provision in comparison with Nigeria, identifying their similarities, gaps and differences, while lessons are drawn.

4.2 An Overview of the Position of Domestic Workers in South Africa

According to Mpfariseni, child labour has diverse meanings to different societies according to the country's definition of a child and how work is categorised against which children should be protected.⁵⁰⁷ Thus, whether work constitutes child labour will depend on the age of the child and the conditions under which the work is performed.⁵⁰⁸

As a result of the apartheid era, domestic work was performed by Black unskilled women who saw it as an opportunity to gain employment and also to obtain a permit to reside in the urban areas.⁵⁰⁹ Most employers of domestic workers during the era were White, however since the post-apartheid era there are Black families employing domestic workers too.⁵¹⁰ With the existence of unemployment in South Africa the domestic sector has contributed to job provision.⁵¹¹ There are over one million Black female domestic workers in South Africa.⁵¹²

4.3 South African Legislative Provision and Policy on Child Domestic Work

The future of every nation lies with the children.⁵¹³ The rights of children are enshrined in various international instruments and national legislation which includes the Constitution of the Republic of South Africa.⁵¹⁴ Since the end of the apartheid era South Africa has taken steps to protect the right of all individuals including children.⁵¹⁵

⁵⁰⁷ B Mpfariseni, "Children's Rights and protection against child labour in South Africa" (2012) 1 (2) *Commonwealth Youth and Development* 1, 3.

⁵⁰⁸ *Ibid.*, 4.

⁵⁰⁹ PR Ngambaza, "Sectoral Determination 7 of domestic workers: A catalyst for change" (2013) available at www.polity.org.za/article/sectoral-determination-7-of-domestic-workers-a-catalyst-for-change-2013-11-21 (Accessed: 27 July 2017).

⁵¹⁰ *Ibid.*

⁵¹¹ *Ibid.*

⁵¹² M Motala "Domestic workers in South Africa: It's modern day slavery" *SACSI*(2010) available at SACSI.org.za (Accessed: 3 July 2017).

⁵¹³ B Mpfariseni, *op. cit.* note 508 above, 1.

⁵¹⁴ *Ibid.*

⁵¹⁵ South African Integrated Programme of Action Addressing Violence against Women and Children (2013-2018) 1, 21 available at www.dsd.gov.za (Accessed: 6 December 2017).

This includes the enshrinement of the Bill of Rights in the Constitution,⁵¹⁶ the ratification of international instruments,⁵¹⁷ and the enactment of national legislation.⁵¹⁸

4.3.1 The Constitution of the Republic of South Africa

Chapter two of the Constitution of South Africa of 1996 includes the Bill of Rights, of which all South African citizens, including children, are beneficiaries. The Constitution states that “when interpreting the Bill of Rights, the court, tribunal or forum must consider international law and may consider foreign law”.⁵¹⁹ This means that when South Africa ratifies an international instrument it becomes part of South African law which must be put into consideration.⁵²⁰ South Africa has ratified a number of instruments against child labour. This includes the United Nations Convention on the Rights of the Child, the ILO Convention on the Worst Forms of Child Labour, the ILO Minimum Age Convention, and at a regional level, the African Charter on the Rights and Welfare of the Child. It has also ratified the Convention 189 on Decent Work for Domestic Workers.⁵²¹

The rights of children are specifically provided for and protected in Section 28 of the Constitution of 1996. These rights include the rights to family or parental care, or appropriate alternative care when separated from relatives,⁵²² the right to be safeguarded from mistreatment, abandonment violence or humiliation,⁵²³ the right to be safeguarded from abusive work practices,⁵²⁴ the right not to be mandated or allowed to do jobs or offer services that are unsuitable for an individual of the child’s age, or work that will put at jeopardy the child’s health learning, bodily or psychological wellbeing or religious, ethical or communal growth.⁵²⁵ The Constitution

⁵¹⁶Chapter 2(Sections 7-39) of the Constitution of the Republic of South Africa 1996.

⁵¹⁷The CRC, the ACRWC, Convention 138, Convention 182 and Convention 189.

⁵¹⁸ The Children’s Act 38 of 2005, The Basic Condition of Employment Act and the Schools Act.

⁵¹⁹Section 39 (1) (b) &(c) of the Constitution of South Africa 1996.

⁵²⁰ B Mpariseni, *op. cit.* note 508 above, 6.

⁵²¹GA Ajaegbo, “Domestic workers in Africa: Legal status, rights and limitations” available at www.thelawyerschronicles.com/domestic-workers-in-africa-legal-status-right-and-limitations (Accessed: 3 July 2017).

⁵²²Section 28 (1) (b) of the Constitution of South Africa 1996.

⁵²³Section 28 (1) (d) of the Constitution of South Africa 1996.

⁵²⁴Section 28 (1) (e) of the Constitution of South Africa 1996.

⁵²⁵Section 28 (1) (f) of the Constitution of South Africa 1996.

also defines a child as “a person below the age of 18 years”.⁵²⁶ It also provides that in any matter concerning a child, the best interests of the child is paramount.⁵²⁷ Section 29 of the Constitution provides for the right of everyone to basic education, which includes adult basic education and a right to further education which the state must progressively make available and accessible through reasonable measures.

4.3.2 The Children’s Act 38 of 2005

The Children’s Act 38 of 2005 (hereinafter the Children’s Act) is the core legislation which controls the affairs of children in South Africa. The Act states in section 9 that “in all matters concerning the care, protection and wellbeing of a child the standard that the child’s best interest is of paramount importance, must be applied”.⁵²⁸ The Act also provides for the factors that should be considered whenever the best interest standard is to be applied and it includes the “age, maturity and stage of development of the child”.⁵²⁹ Section 18 of the Act provides for parental responsibility and the right to care for their children, to keep contact with their children, to guide their children and to contribute to the maintenance of their children.⁵³⁰

The Children’s Act as amended by the Children’s Amendment Act 41 of 2007 provides for the placement of children in foster care by a children’s court to protect and nurture them.⁵³¹ It also provides for partial care facilities,⁵³² strategies for the protection of children,⁵³³ alternative care which may be a foster care or in a child and youth care centre by a court.⁵³⁴ The Children’s Act also established the children’s court to preside on matters arising from the application of the Children’s Act.⁵³⁵

This implies that parents have the duty to pay attention to and provide for their children, but where a child requires attention and safeguarding, the government can intervene by providing an alternative carer for the child. Children in need of care and

⁵²⁶Section 28 (3) of the Constitution of South Africa 1996.

⁵²⁷Section 28 (2) of the Constitution of South Africa 1996.

⁵²⁸ Section 9 of the South African Children’s Act 38 of 2005.

⁵²⁹Section 7 of the South African Children’s Act.

⁵³⁰Section 18(2) of the Children’s Act.

⁵³¹Section 180 &181 of the Children’s Act 38 of 2005 as amended by the Children’s Amendment Act 41 of 2007.

⁵³²Section 76-90 of the Children’s Act 38 of 2005 as amended by the Children’s Amendment Act 41 of 2007.

⁵³³Section 104 of the Children’s Act as amended by the Children’s Amendment Act.

⁵³⁴Section 167 of the Children’s Act as amended by the Children’s Amendment Act.

⁵³⁵Section 42 of the Children’s Act 38 2005.

protection would include abused and neglected children. Children who are being abused by their parents by engaging them in labour that is injurious to their wellbeing and education, such as child domestic work, can be removed by a designated social worker to an alternative carer by an order of the court. However, the Act does not provide for child domestic workers.

4.3.3 The Basic Conditions of Employment Act 75 of 1997 as amended by the Basic Conditions of Employment Amendment Act 20 of 2013.

The Basic Conditions of Employment Act of 1997(hereinafter BCEA) as amended by the Basic Conditions of Employment Amendment Act 2013(hereinafter BCEAA) regulates the affairs of workers in South Africa. This legislation protects children against child labour. Section 43 of the BCEA as amended by section 3 of the BCEAA prohibits the hiring of children below 15 years, or children who are under the minimum school leaving age in terms of any law in any form of work.⁵³⁶ It prohibits the requirement or permission of children to do any work or provide services that are unsuitable for their age or that places a risk on the “wellbeing, learning, bodily, or psychological healthiness, or religious, ethical or communal growth of the child”.⁵³⁷ Anyone who employs a child in contravention of this section is guilty of an offence⁵³⁸ and is liable to a maximum of three years imprisonment.⁵³⁹ The Act forbids the engagement of children below the minimum age of 15 years, or compulsory school age, in any form of work with no exception. It therefore follows that the section prohibits the employment of children below the age of 15 or children who are subject to compulsory schooling in child domestic work.

Section 44 of the BCEA as amended by section 4 of the BCEAA provides that the minister may on the counsel of the commissioner “make regulations to prohibit or place conditions on the employment of children who are at least 15 years of age and no longer subject to compulsory schooling in terms of any law”.⁵⁴⁰ Anyone that violates the provision of this section is liable to a penalty of three years

⁵³⁶Section 43 of the Basic Conditions of Employment Act.

⁵³⁷Section 43(2) (a) & (b) of the Basic Conditions of Employment Act.

⁵³⁸Section 43(3) of the Basic Conditions of Employment Act.

⁵³⁹Section 93 of the Basic Conditions of Employment Act as Amended by section 16 of the Basic Conditions of Employment Amendment Act of 2013.

⁵⁴⁰Section 44(1) of the Basic Conditions of Employment Act.

imprisonment. This section provided for the opportunity to protect children older than 15 years of age from child labour.

The BCEA regulates the domestic workers' conditions of work and wages through the Sectoral Determination which provides for the domestic workers' minimum wage.⁵⁴¹ The Sectoral Determination provides for an annual increase of the domestic workers' wages.⁵⁴² The Sectoral Determination 7 was enacted to protect and improve the lawful standing of domestic employees in South Africa.⁵⁴³ The Commission for Conciliation, Mediation and Arbitration seeks to defend the rights of domestic workers as provided in the Sectoral Determination 7.⁵⁴⁴ With such a structure put in place to defend the rights of domestic employees, and the recognition of domestic jobs as a form of employment by the BCEA, adults would be willing to work as domestic workers. Also, rather than run the risk of being charged with the violation of section 43 of the BCEA, employers would prefer to employ adults who are more mature to do the work, thereby enhancing the eradication of child domestic work in South Africa.

4.3.4 South African Schools Act 84 of 1996

The South African Schools Act 84 of 1996 provides for learners mandatory attendance at school from the first day of school of the year in which such learner reaches the age of seven years to the last day of school in which the learner reaches the age of fifteen years, or the ninth grade which is the age and time of compulsory attendance at school.⁵⁴⁵ The Act places an obligation on the Head of Department to investigate non-attendance at school by learners who are subject to compulsory school attendance and to take measures to remedy the situation or issue a written notice to the learner's parents requiring the learner's compliance.⁵⁴⁶ The Act provides for a liability of a fine or imprisonment of not less than six months on parents or any persons who, without just cause, prevent a learner from attending school.⁵⁴⁷

⁵⁴¹M Motala "Domestic workers in South Africa: It's modern day slavery" *SACSIS* 3May 2010 available at SACSIS.org.za (Accessed: 3 July 2017).

⁵⁴²*Ibid.*

⁵⁴³PR Ngambaza, "Sectoral Determination 7 of domestic workers: A catalyst for change" (2013) available at www.polity.org.za/article/sectoral-determination-7-of-domestic-workers-a-catalyst-for-change-2013-11-21 (Accessed: 27 July 2017).

⁵⁴⁴*Ibid.*

⁵⁴⁵ Section 3 (1) of the South African Schools Act 84 of 1996.

⁵⁴⁶ Section 3 (5) of the South African Schools Act 1996.

⁵⁴⁷ Section 3(6) of the South African Schools Act 1996.

Also, section 5 of the Act states that no learner may be denied admittance into communal school on the grounds of non-payment of school fees.⁵⁴⁸ This means that children do not have to skip school to work as domestic workers due to poverty. They are compelled to attend school on a daily basis until they complete their compulsory education. Parents are held liable for their children's absence from school.

4.4 Implementation of South African's Legislative Provision

Section 28 of the South African Constitution, which protects children against child labour, and the provisions of the Basic Conditions of Employment Act, illustrate South Africa's commitment to the eradication of child labour.⁵⁴⁹ The provision of education is one way of combating child domestic employment. Despite being a socio-economic right, the right to education is justiciable.⁵⁵⁰ Meaning that claims can be brought to court on the basis of the right to education, and the court will determine the nature and extent of duty the right imposes, and if it has been complied with.⁵⁵¹ This is not the case in Nigeria where actions cannot be brought against the government on the children's right to education.

In 2010 South Africa, the Community Agency for Social Enquiry (CASE), conducted a socio-economic research on domestic workers and their employers in six provinces for the ILO, to ascertain the impact of the BCEA on the affairs of domestic workers, thereby creating room for improvement.⁵⁵² This will enhance the protection of children from child domestic work by further promoting the rights of domestic workers in South Africa and showing that domestic employment, like every other job is for adults and not for children.

4.5 Implementation of Nigerian's Legislative Provision

Chapter two of the Constitution of Nigeria provides for the fundamental objectives and directive principle of state policy aimed at protecting the interests of the people

⁵⁴⁸ Section 5(3) (a) of the South African Schools Act 1996.

⁵⁴⁹ B Mpfariseni, *op. cit.* note 508 above, 13.

⁵⁵⁰ P De vos, *et al. South African Constitutional Law in Context*, Cape Town: Oxford University Press Southern Africa (Pty) Limited, (2014) 666, 667.

⁵⁵¹ *Ibid.*

⁵⁵² M Motala, *op. cit.* note 513 above.

of Nigeria, including children.⁵⁵³ The chapter provides for free, compulsory and universal primary education; free secondary education; free university education and free adult literacy education by the government, when practicable.⁵⁵⁴ However, these are only directive principles in which actions cannot be brought against the government for non-enforcement.⁵⁵⁵ They are referred to as goals that can be pursued by the government but are not legally binding.⁵⁵⁶

The Nigerian government has adopted various legislation and polices aimed at eradicating child labour, but it is centred on the worst forms of child labour.⁵⁵⁷ In 2015 it enacted the Trafficking in Persons Act, which also prohibits the employment of children below the age of 12 as domestic workers.⁵⁵⁸

The available laws on child labour are not adequately enforced.⁵⁵⁹ Employers are rarely prosecuted for hiring children as domestic workers, although they are sometimes charged for domestic violence where a case of abuse is reported.⁵⁶⁰ In September 2015, Mrs Onyekachi Okafor was arrested for wilfully inflicting bodily injury on her ten-year-old house boy (name withheld).⁵⁶¹ She had used a blade to cut the boy on different parts of his body including his thighs, belly and buttocks.⁵⁶² This is in contravention of section 2 of the Violence against Persons (Prohibition) Act of 2015 which prohibits “the cause or infliction of physical injury on a person by means of any weapon, substance or object”.⁵⁶³ Whoever contravenes the provision is liable to incarceration of not more than five years or a fine not higher than N100, 000.00, or both, upon conviction.⁵⁶⁴ Mrs Okafor pleaded guilty to the charge and was sentenced

⁵⁵³ OI Tajudeen “Legal framework for the protection of child rights in Nigeria” (2013) 3 *Agora International Journal of Juridical Sciences* 46, 47.

⁵⁵⁴ Section 18 (3) (a)-(d) of the Constitution of Nigeria 1999.

⁵⁵⁵ OI Tajudeen, *op. cit.* note 553 above, 48.

⁵⁵⁶ De vos p, *et al. op. cit.* note 550 above, 667.

⁵⁵⁷ NP Ibeme, *op. cit.* note 499 above, 227

⁵⁵⁸ Section 23 of the Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015.

⁵⁵⁹ GA Ajaegbo, “Domestic workers in Africa: Legal status, rights and limitations” available at www.thelawyerschronicles.com/domestic-workers-in-africa-legal-status-right-and-limitations (Accessed: 3 July 2017).

⁵⁶⁰ *Ibid.*

⁵⁶¹ V Adekoye, “National Agency for Prohibition of Trafficking in Persons: Housewife jailed for cutting houseboy with razor blade as another is jailed for purchasing a baby” available at www.naptip.gov.ng/105-housewife-jailed-for-cutting-houseboy-withrazor-blade (Accessed: 3 July 2017).

⁵⁶² *Ibid.*

⁵⁶³ Section 2 of the Trafficking in Persons Act.

⁵⁶⁴ Section 2 of the Trafficking in Persons Act

to nine months imprisonment without an alternative of a fine, but the victim was not awarded any compensation.⁵⁶⁵ Mrs Okafor was not charged for employing a ten-year-old boy as a houseboy which is in contravention of section 23 of the Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015. Lack of enforcement of labour legislation is one cause for the occurrence of child labour in not only Nigeria but most countries around the world.⁵⁶⁶

4.6 Comparison of Legislation in South Africa and Nigeria

Under the Constitution of South Africa, children, apart from benefiting from the general Bill of Rights,⁵⁶⁷ have a section of the Constitution dedicated to their affairs.⁵⁶⁸ The Constitution also provides for the rights of children to be protected from exploitative labour practices⁵⁶⁹ and work that is inappropriate for their age or will be a risk to their wellbeing, education and development. It provides for the paramountcy of the best interests of the child in any matter concerning children,⁵⁷⁰ and also action can be brought against the government for non-compliance to the provision of the right to education. By virtue of these provisions, South African children are protected from working as domestic workers in the homes of others.

This is not the case under the Nigerian Constitution, which does not have any provision dedicated to the affairs of children, neither does it provide for the paramountcy principle. Actions cannot be brought against the government with regard to the right to education provided by the Constitution.⁵⁷¹ While the government of South Africa is to progressively make available and accessible, through reasonable measures, the right to education, the Nigerian government is to provide education when practicable.⁵⁷² The South African provision connotes a duty to perform by the government towards the citizens while the words “when practicable” in the provision of Nigeria connotes that it not realisable, except at the

⁵⁶⁵V Adekoye, “National Agency for Prohibition of Trafficking in Persons: Housewife jailed for cutting houseboy with razor blade as another is jailed for purchasing a baby” available at www.naptip.gov.ng/105-housewife-jailed-for-cutting-houseboy-withrazor-blade (Accessed: 3 July 2017).

⁵⁶⁶K Srivastava, “Child labour issues and challenges” (2010)20 (1) *Industrial Psychiatry Journal* 1-3.

⁵⁶⁷Sections 7-39 of the Constitution of South Africa 1996.

⁵⁶⁸Section 28 of the Constitution of South Africa 1996.

⁵⁶⁹Section 28(1)(e) of the Constitution of South Africa 1996.

⁵⁷⁰Section 28 (2) of the Constitution of South Africa.

⁵⁷¹OI Tajudeen, *op. cit.* note 553 above, 48.

⁵⁷²Section 18 of the Constitution of Nigeria 1999.

decision of the Nigerian government. Though the Constitution provides for the protection of all from coerced or mandatory work,⁵⁷³ it does not provide for the safeguard of children from abusive or harmful employment. This provision shows that, unlike the Constitution of South Africa,⁵⁷⁴ the Nigerian Constitution does not protect children from child labour.

The South African Basic Conditions of Employment Act as amended by the Basic Conditions of Employment Amendment Act prohibits the employment of children below the age of 15 years, or those who are by any law under the age of compulsory schooling, in any form of employment.⁵⁷⁵ This is in line with the international standard of minimum age.⁵⁷⁶ The Act also forbids the engagement of children in employment that is unsuitable for their age or puts their wellbeing, schooling or development at risk. It further protects the rights of domestic workers through Sectoral Determination.⁵⁷⁷ By virtue of these provisions children are protected against child domestic work, making it difficult for employers to engage the service of a child as a domestic worker.

The Nigerian Labour Act provides for different age limits for different work.⁵⁷⁸ Though the Act provides for the safeguard of young people from other types of labour, it does not prohibit the employment of children in domestic services. It places an obligation on the Minister of Labour to make regulations concerning the employment of domestic workers in Nigeria, however this provision has not been utilised.⁵⁷⁹ It follows that the Act does not yet recognise domestic employment as a form of work performable by adults. The above clearly shows that children are not protected from child domestic work by the Nigerian Labour Act.

While the South African Children's Act 38 of 2005 states that in any matter concerning the child, the interests of the child shall be paramount and must be

⁵⁷³Section 34 (1) (c) of the Constitution of Nigeria.

⁵⁷⁴Section 28 (1) (e) & (f) of the Constitution of South Africa.

⁵⁷⁵Section 43 of the Basic Conditions of Employment Act 1997 as amended by section 3 of the Basic Conditions of Employment Act 2013.

⁵⁷⁶Article 2(3) of the Minimum Age Convention.

⁵⁷⁷Section 51 of the Basic Conditions of Employment Act 1997.

⁵⁷⁸Section 59-62 of the Nigerian Labour Act.

⁵⁷⁹Section 65 of the Nigerian Labour Act.

applied,⁵⁸⁰ the Nigerian Child Rights Act of 2003 states that the best interests of the child shall be the primary consideration,⁵⁸¹ which connotes that there may be other conflicting interests that may take priority over the best interests of the child. This shows why the religious and cultural interests of some states in Nigeria is considered more important than the protection of children, rather than the adaptation of the Child Rights Act by the states.⁵⁸² This has rendered the uniform implementation of the CRA ineffective.⁵⁸³

The South African Schools Act places an obligation on the school administrator and parents to account for the absence of a school pupil under their care and guardianship, making it difficult for pupils to skip school and for parents to send their child to work. This is a good measure in combating child labour. There is no Nigerian legislation that provides for such accountability in schools. In Nigeria implementation of available child labour laws is a challenge due to the clandestine nature of domestic work.⁵⁸⁴

4.7 Efforts made by the Nigerian Government to Eradicate CDW

One major legislation enacted by the Nigerian government to combat the employment of children as domestic workers is the Child Rights Act. Section 28(1) (d) of this Act expressly states that “no child shall be employed as a domestic help outside his own home or family environment”. However, this provision is yet to receive its due implementation due to rejection of the Act by various states in Nigeria and financial constraints by the implementation committee.⁵⁸⁵

The Trafficking in Persons Act of 2015 on the fight against human trafficking also prohibits the engagement of young persons below 12 years as domestic workers and imposes a penalty of a minimum of six months imprisonment but not exceeding seven years upon conviction.⁵⁸⁶ The Act also prohibits the employment of children in

⁵⁸⁰Section 9 of the South African Children’s Act 38 of 2005.

⁵⁸¹Section 1 of the Child Rights Act of Nigeria 2003.

⁵⁸²FD Nzarga, “Impediments to domestication of Nigerian Child Rights Act by the states” (2016) 6 (9) *Research on Humanities and Social Sciences* 123, 125-126.

⁵⁸³*Ibid.*

⁵⁸⁴B Mpfariseni, *op. cit.* note 508 above, 1.

⁵⁸⁵FD Nzarga, *op. cit.* note 582 above, 126.

⁵⁸⁶Section 23 of the Trafficking in Persons Act.

work that is exploitative, injurious or hazardous to their wellbeing and development, and imposes a minimum penalty of two years but not exceeding seven years upon conviction.⁵⁸⁷ The National Agency for the Prohibition of Trafficking in Persons is the body responsible for the implementation of the provision of the Act and related matters.⁵⁸⁸ Since its creation NAPTIP has made numerous efforts to combat child labour in Nigeria. The 2017 Trafficking in Persons Report on Nigeria by the United States Department of State Diplomacy in Action stated that NAPTIP identified 426 child labour victims, which included 261 children in domestic servitude.⁵⁸⁹ However, most cases handled by the agency dealt with human trafficking and not the employment of children as domestic workers. This was shown in the case of Mrs Onyekachi Okafor who wilfully inflicted physical injury on her ten-year-old child domestic worker.⁵⁹⁰ She was charged for abuse by NAPTIP, for which she pleaded guilty and was sentenced to nine months imprisonment without an option of a fine.⁵⁹¹ She was not charged for violating Section 23 of the Trafficking in Persons Act which prohibits the employment of children less than 12 years in domestic work. Legislation enactment alone cannot combat child domestic work; it has to be backed up with enforcement mechanisms.

The use of educational policies as an instrument in combating child labour by countries is influenced by international law and actions.⁵⁹² Countries are obliged to fight child labour through adaptation and implementation of educational policies.⁵⁹³ Education secures the future of children and empowers them with knowledge, hence the provision of the right to education in most national legislation, including Nigeria.⁵⁹⁴ The Constitution of the Federal Republic of Nigeria of 1999 states that the government shall provide free and compulsory primary education when practicable, while the Universal Basic Education Act of 2004 provides that the

⁵⁸⁷Section 23 of the Trafficking in Persons Act.

⁵⁸⁸Section 5 of the Trafficking in Persons Act of Nigeria 2015.

⁵⁸⁹US Department of State Diplomacy in Action, 2017 Trafficking in Persons Report Country Narrative : Nigeria available at <http://www.state.gov/j/tip/rls/tiprpt/countries/2017/271255.htm> (Accessed: 2 Nov 2017)

⁵⁹⁰V Adekoye, "National Agency for Prohibition of Trafficking in Persons: Housewife jailed for cutting houseboy with razor blade as another is jailed for purchasing a baby" available at www.naptip.gov.ng/105-housewife-jailed-for-cutting-houseboy-withrazor-blade (Accessed:3 July 2017).

⁵⁹¹*Ibid.*

⁵⁹²AS Ukommi, "The role of education in child labour eradication in Akwa Ibom state: A review of literature"(2012) 5(4) *International Journal of scientific Research in Education* 292, 292.

⁵⁹³*Ibid.*

⁵⁹⁴*Ibid*, 293.

government shall provide free and compulsory education for children until they are 15 years of age.⁵⁹⁵

The availability of free and compulsory education would afford poor parents the chance to send their children to school without having to worry about payment of fees, in addition a child would not have to work to further their own education. This would prevent child domestic employment.

Nigeria introduced the Universal Basic Education Policy in 1999(hereinafter UBE Policy) to provide for free universal and compulsory basic and secondary education for children from ages six to fourteen in Nigeria.⁵⁹⁶ This gave birth to the Universal Basic Education Act.⁵⁹⁷ A high number of registered school children was recorded initially,⁵⁹⁸ however this began to reduce after some years due to poverty, poor educational facilities, parents' attitudes towards education and children's inability to access schools.⁵⁹⁹ In line with the free and compulsory education at a federal level, some states like Yobe and Akwa-Ibom promoted free and compulsory education by providing educational materials, uniforms and payment of fees to learners to encourage them to stay in school.⁶⁰⁰ Also, the National Poverty Eradication Programme (NAPEP) launched a programme to provide financial assistance to families, on condition that their children remain in school.⁶⁰¹ Corruption and many years of mismanagement of national funds has made investment in education and social stability of the country a challenging task.⁶⁰² Ukommi argues that provision and implementation of educational policies without addressing the challenge of poverty would not provide much result in combating child labour; he further argues that while the number of children who enrol in school increases, so does the rate of school

⁵⁹⁵ ILO National legislation on hazardous child labour (Report on the identification of hazardous child labour in Nigeria, submitted by the National Steering Committee on Child Labour December 2013) Available at <http://www.ilo.org> (Accessed: 5 May 2017)

⁵⁹⁶ Centre for public impact "Universal basic education in Nigeria" (2017) available at <https://www.centreforpublicimpact.org/case-study/universal-basic-education-nigeria/> (Accessed: 7 December 2017).

⁵⁹⁷ *Ibid.*

⁵⁹⁸ AS Ukommi, *op. cit.* note 588 above, 294

⁵⁹⁹ *Ibid.*

⁶⁰⁰ *Ibid.*, 294-294.

⁶⁰¹ LP Blanchard, TF Husted, "Nigeria: Current issues and U.S. policy" (2016) Congressional report 1, 5 available at <http://fas.org/sgp/crs/row/RL33964.pdf> (Accessed:6 May 2017).

⁶⁰² *Ibid.*

dropout children increase due to poverty.⁶⁰³ The UBE Policy failed to address the concerns of parents and children on the relevancy of education to the future of children, since working is perceived as an important preparation to the future of children.⁶⁰⁴

Though international agencies like the ILO and UNICEF are also committed to combating child labour in Nigeria, especially the worst forms of child labour, by rescuing children and facilitating their integration into the society,⁶⁰⁵ the progress made by NGO's and government agencies to enlighten Nigerian parents on the ills of child labour is not clear.⁶⁰⁶

Neither the Nigerian Child Rights Act nor the Nigerian Labour Act specifies labour that is hazardous to the wellbeing, security and morals of children.⁶⁰⁷ However, child domestic work is listed as a form of hazardous work by the Nigerian National Steering Committee on Child Labour.⁶⁰⁸ Some states in Nigeria, like Abia, have taken steps to curb child domestic employment by forbidding the engagement of children below 18 years old as domestic workers through the enactment of the Child Rights Law.⁶⁰⁹

In Nigeria domestic employment is seen as a form of help rather than a form of work.⁶¹⁰ There is no statutory recognition of domestic workers in Nigeria, not even in

⁶⁰³ AS Ukommi, *op. cit.* note 588 above, 293.

⁶⁰⁴ N Jones *et al.* "Promoting synergies between child protection and social protection in Nigeria" (A research project by Overseas Development Institute February 2012) 1, 25 available at <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7579.pdf> (Accessed: 6 December 2017).

⁶⁰⁵ *Ibid*, 26.

⁶⁰⁶ *Ibid*.

⁶⁰⁷ United States Department of Labour's Bureau of International Labour Affairs "Nigeria moderate advancement" (Findings on the worst forms of child labour 2013) 1, 4 available at <https://www.dol.gov/ilab/report/child.labour/findins/2013TDA/Nigeria.pdf> (Accessed: 5 May 2017).

⁶⁰⁸ ILO National legislation on hazardous child labour (Report on the identification of hazardous child labour in Nigeria, submitted by the Nigerian National Steering Committee on Child Labour December 2013) Available at <http://www.ilo.org> (Accessed: 5 May 2017).

⁶⁰⁹ United States Department of Labour's Bureau of International Labour Affairs "Nigeria moderate advancement" (Findings on the worst forms of child labour 2013) 1, 4 available at <https://www.dol.gov/ilab/report/child.labour/findins/2013TDA/Nigeria.pdf> (Accessed: 5 May 2017).

⁶¹⁰ GA Ajaegbo, "Domestic workers in Africa: Legal status, rights and limitations" available at www.thelawyerschronicles.com/domestic-workers-in-africa-legal-status-right-and-limitations (Accessed: 3 July 2017).

the Labour Act.⁶¹¹ It is suggested that “good governance, healthy political competition, and equitable economic growth” would help to tackle the development challenges facing Nigeria.⁶¹²

4.8 Lessons from South Africa and Other Nations

In line with the ratification and provisions of the Decent Work Convention, which regulates the affairs of domestic workers in South Africa and other countries such as Zambia and Jordan, have taken steps to guarantee domestic workers’ good working conditions, payment and protection.⁶¹³ Since the ratification of the Decent Work for Domestic Workers Convention in 2011 it has become a catalyst for change in the affairs on domestic workers worldwide.⁶¹⁴

There are structures provided to monitor the implementation of the available legislation in South Africa.⁶¹⁵ Apart from legislative enactment, the other measures devised by the South African government to combat child labour include fighting poverty through provision of grants and support to poor families.⁶¹⁶ More than ten million children benefit from the child support grant and over 500,000 children are beneficiaries of foster care grants provided by the government.⁶¹⁷ Though there exists the challenge of parents using the child grant for their own benefit.⁶¹⁸

⁶¹¹ *Ibid.*

⁶¹² Testimony of U.S assistant secretary of state for African Affairs Linda Thomas-Greenfield, House subcommittee on Africa, Global Health, and Human Rights, Countering the threat posed by Boko Haram, November 13 2013 cited in LP Blanchard, TF Husted, “Nigeria: Current issues and U.S. policy” (March 11 2016 Congressional report) 1, 5 available at <http://fas.org/sgp/crs/row/RL33964.pdf> (Accessed: 6 May 2017).

⁶¹³ GA Ajaegbo, “Domestic workers in Africa: Legal status, rights and limitations” available at www.thelawyerschronicles.com/domestic-workers-in-africa-legal-status-right-and-limitations (Accessed: 3 July 2017).

⁶¹⁴ *Ibid.*

⁶¹⁵ This includes the National Child Care and Protection Forum (NCCPF) with the function of monitoring the implementation of the Children’s Act and the National Domestic Violence Inter-Sectoral Committee tasked with the function of monitoring the implementation of the Domestic Violence Act.

⁶¹⁶ B Mpfariseni, “Children’s rights and protection against child labour in South Africa” (2012) 1 (2) *Commonwealth Youth and Development* 1, 14.

⁶¹⁷ South African Integrated Programme of Action Addressing Violence against Women and Children 2013-2018, 1, 21 Available at www.dsd.gov.za (Accessed: 5 May 2017).

⁶¹⁸ B Mpfariseni, *op. cit.* note 610 above, 14.

Children's rights are promoted by including the teaching of rights in the school curriculum, and health care facilities are made available to children.⁶¹⁹ South Africa in addressing the issue of poverty, inequality, unemployment, and absentee fathers in order to protect the rights of South African children and women, and developed the white paper on families.⁶²⁰ The High Court acts as an upper guardian of all minor children in South Africa, which means that the High Court can step in to protect a child from a parent or guardian who places the child in harm's way.⁶²¹ In South Africa domestic work is a form of employment protected by the BCEA and the Sectoral Determination 7.

4.9 Summary

The main legislation against child labour and exploitation, and by extension child domestic work in South Africa, are the Constitution and the Basic Conditions of Employment Act. Section 28 of the Constitution provides for the right of every child to be protected from exploitative labour practices. The BCEA as amended provides for the minimum age restriction for any work which is not harmful to the wellbeing of children, as 15 years. Other means employed by the South African government to prevent child labour include the provision of grants to poor families, and the provision of mechanisms to monitor and enforce the compulsory attendance at school.

Following the adoption of the Decent Work Convention for Domestic Workers, South Africa and other nations have made progress in improving the wages and working conditions of domestic workers in their countries. South Africa, through the Sectoral Determination 7 provides job security and legal protection to its domestic workers. Workers can seek job protection from the Commission for Conciliation, Mediation and Arbitration if they feel that the provision of the Sectoral Determination 7 is not being complied with by their employer.

⁶¹⁹ South African Integrated Programme of Action Addressing Violence against Women and Children 2013-2018, 1, 21 Available at www.dsd.gov.za (Accessed: 5 May 2017).

⁶²⁰ South African Integrated Programme of Action Addressing Violence against Women and Children 2013-2018, 1, 18 Available at www.dsd.gov.za (Accessed: 5 May 2017).

⁶²¹ A guide of the Department of Justice and Constitutional Development (2016) Office of the Master of the High Court available at www.justice.gov.za/juscol/docs/2016-Guide-MOH.pdf (Accessed: 27 July 2017).

CHAPTER 5

CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

The lack of global definition on what child labour is has led NGOs and bodies like UNICEF to define child labour in relation to age, the nature of the work, its effect on the health, development and morals of children, the hours spent working, the effect of the work on the children's education, and also the economic benefit of such work to the children or third party.⁶²² According to the ILO child labour is defined as "children permanently leading adults lives, working long hours for low wages under conditions damaging to their health and physical and mental development, sometimes separated from their families, and frequently devoid of meaningful educational and training opportunities that could open up to them a better future".⁶²³ The ILO also defines the worst forms of child labour as "any work that is likely to jeopardise children's health and safety".⁶²⁴

It is without a doubt that child domestic work falls within the ambit of the ILO's definition of child labour and can be categorised as a worst form of child labour if done by children below the international accepted minimum age of 15 years. Child domestic work, like other forms of child labour, infringes on children's basic right to survival and development. It denies them the right to leisure, play and education, and exposes them to neglect and abuse. Child domestic work is neither classified as light work or as hazardous or as a worst form of child labour by international law nor national law.

5.2 Summary

This study revealed the occurrence of child labour in the domestic sector. Children are employed as house help at a very young age instead of going to school. The social and cultural acceptance of child domestic work in the positive light, and its

⁶²²TC Nhenga-Chakarisa, "Who does the law seek to protect and from what? The implication of international law on child labour in an African context" (2010) 10 *African Human Right Law Journal* 161, 180.

⁶²³B Mpariseni, "Children's Rights and protection against child labour in South Africa" (2012) 1(2) *Commonwealth Youth and Development* 1, 4.

⁶²⁴*Ibid.*

perception as a form of training, especially for the girl child in preparation of womanhood and marriage, has made it a hard nut to crack. Also, the invisible nature of the work by children working in households contributes to the continuous existence of child domestic work as a form of child labour in Nigeria. One resolution common among most studies is that domestic labour has a detrimental impact on the health, social and educational wellbeing of children. Some of these children employed as house helpers are being used for other forms of child labour such as hawking products on the streets and roads, thereby exposing them to more danger. Children in domestic work do not have the time to attend school, and even if they do go to school their performance is always poor due to lack of study time and tiredness from work.⁶²⁵

Though it is suggested that it is not the domestic work but the environment, condition and circumstances of such work that places children at harm's way, the study showed that domestic work can be harmful to the health and wellbeing of young children who are not mature enough to perform such work. It also exposes children to abuse. Children who seek employment as domestic workers risk being trafficked across the border and can be forced into the worst forms of labour like prostitution. It is obvious that the treatment meted out on domestic workers/child domestic workers in Nigeria, and their conditions of work and living, violates their basic human rights as provided by the Nigerian Constitution, the UNCRC and the ACRWC.

Although the UNCRC defines a child as a person below the age of 18, it also allows for situations where national laws provide for ages below the 18 years.⁶²⁶ It provides generally for the protection of children against child labour.⁶²⁷ The Minimum Age Convention sets an acceptable international standard for the employment of children, but does not provide protection for children in domestic service. It provides for "member states to specify a minimum age for admission of children to employment or work, which shall not be less than the age of completion of compulsory schooling and in any case not less than 15 years",⁶²⁸ but it also provides for state members

⁶²⁵ P Chanda, "Impact of child domestic labour on children's education: A case study of Lusaka City in Zambia" (2014) special edition *European Scientific Journal* 179,182.

⁶²⁶ Article 1 of the Convention on the Rights of the Child 1989.

⁶²⁷ Article 32 of the Convention on the Rights of the Child.

⁶²⁸ Article 2 of the Minimum Age Convention 1973.

who are inadequately advanced to state an age limit of 14 years. The Minimum Age Convention also provides that children below the age of 18 should not be engaged in work which will jeopardise their wellbeing, security and morals but also states that where the safety, health and morals are adequately protected then children whose ages are not less than 16 may be employed in such work.⁶²⁹ These provisions are not strict enough to provide compliance by member states. There is so much discretion placed on national authorities by international laws to decide on what amounts to light work, child labour, hazardous work, its violations and penalties. This Convention does not provide guidelines or factors to consider in the determination of what will amount to such labour thereby rendering the Convention weak and ineffective at national level. It is obvious that the eradication of child labour by international and national laws does not explicitly include children employed as domestic workers; though it could be implied that the combating of child labour includes child domestic work. There seems to be more concentration on the worst forms of child labour.

There still exists a gap between international standards and national legislation in Nigeria in curbing the use of children as domestic workers. The available laws are too permissive and lack sufficient protection to cover children working in the domestic sector.⁶³⁰ The regulations are not consistent with the requirement of the ILO Convention 182 and 138 which calls for the abolition of all forms of worst labour and provide for the minimum age of employment respectively.

Domestic work is not recognised as a form of employment in Nigeria so by extension it is not viewed as a form of child labour. Domestic workers are not legally protected by the Labour Act or any other legislation in Nigeria. The Labour Act refers to those employed as domestic workers as domestic servants⁶³¹ rather than workers or staff. This is rather demeaning and implies that they are not recognised as workers. The provision of the Labour Act that regulates the employment of young person and children, by virtue of section 59-62, does not apply to domestic service employment.

⁶²⁹ Article 3 of the Minimum Age Convention 1973.

⁶³⁰ The main labour legislation in Nigeria does not protect children from being employed as domestic workers. The Child Rights Act has not been domesticated by all states at regional level which poses a challenge to the enforcement of the Act, including the provision that prohibits child domestic work.

⁶³¹ Section 65 of the Nigerian Labour Act.

Section 65 places on the Minister of Labour the responsibility of making regulations with regards to domestic servants.

While there is universal consensus on the protection of children against child labour and exploitation, domestic work is viewed differently by Africans and different societies. Clearly it is difficult to define whether domestic work should be grouped as hazardous or as light work, but considering the abuse and exploitation and the harm associated with the employment of children as domestic workers in Nigeria, it should be treated as child labour. Jones argues that there is a need for a clear understanding of what amounts to child labour, identifying acceptable and unacceptable labour as differentiated from home chores.⁶³² The Nigerian National Steering Committee on child labour categorises domestic service as a hazardous form of work with regards to children.⁶³³

The study identified poverty as the leading cause of child domestic work. Children have to work to contribute to their family's earnings and to pay their way through school for a better future, due to poverty. The media has been instrumental in the exposure of the abuse and violence meted out on children employed as domestic workers. However, there is not much report and prosecution of perpetrators on the employment of children as domestic workers.

This research agrees, to an extent, that in Africa childhood is viewed as a time of training and preparation for adulthood, but this should not be done without the supervision of parents or guardians to teach the child how and what to do according to the child's age. There are children living with their parents who do a lot more than the employed children domestic workers.

⁶³² N Jones *et al.* "Promoting synergies between child protection and social protection in Nigeria" (A research project by Overseas Development Institute February 2012) 1, 18 available at <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7579.pdf> (Accessed: 6 December 2017).

⁶³³ ILO National legislation on hazardous child labour (Report on the identification of hazardous child labour in Nigeria, submitted by the Nigerian National Steering Committee on Child Labour December 2013) Available at <http://www.ilo.org> (Accessed: 5 May 2017).

Also, the study argues that no child below the international accepted age of 15 years should be employed as a domestic worker in the home of a third party. Above the accepted minimum age of 15, domestic work may not be considered harmful to children but the condition and environment in which it is performed would be considered, like working for long hours without rest.

Children should be protected from child domestic labour considering its effect on their wellbeing, and this is in line with the provision of the CRA which provides in Section 2 that children should be given the protection necessary for their wellbeing.

Under the Labour Act, a worker is defined as a person who has entered into an oral or written contract with an employer with the exclusion of persons who are not employed under a contract.⁶³⁴ The definition of a worker under the Labour Act does not cover child domestic workers since they are not employed under a contractual relationship. The children employed as domestic workers do not benefit from the protection laid down in the Labour Act. The Nigerian National Steering Committee on child labour requested for the Nigerian government to amend Section 91 of the Labour Act to protect all children.⁶³⁵

The Constitution of South Africa provides for the protection of children against exploitative labour and from employment that is inappropriate for their age.⁶³⁶ The Nigerian Constitution has no such section dedicated to the affairs of children. The Basic Conditions of Employment Act, as the main legislation regulating employment in South Africa, prohibits the employment of all children below the age of 15 or children who are subject to compulsory schooling under any law, from being employed in any form of work.⁶³⁷ The protection of children against child domestic work is lacking in the Labour Act of Nigeria.⁶³⁸ While action can be brought against

⁶³⁴Section 91 of the Nigerian Labour Act.

⁶³⁵ ILO National legislation on hazardous child labour (Report on the identification of hazardous child labour in Nigeria, submitted by the National Steering Committee on Child Labour December 2013) Available at <http://www.ilo.org> (Accessed: 5 May 2017).

⁶³⁶Section 28 (e) &(f) of the South African Constitution.

⁶³⁷Section 43 of the BCEA as amended by section 3 of BCEAA 2013.

⁶³⁸See sections 59 -64 which provides for the protection of young persons against child labour and section 65 which provides for the minister to make regulation pertaining to domestic service.

the South African government on the rights of children to education, such action cannot be brought against the Nigerian government.

The compulsory school attendance by learners from the first day of school to the last day in which they are 15 years or are in grade nine provided by the South African Schools Act⁶³⁹ prevents learners from skipping school to work. Also, the obligation placed on the schools' head of department to monitor the attendance of learners⁶⁴⁰ and the liability of a fine or six months imprisonment placed on parents who do not allow their children to attend school without a just cause, makes it mandatory for parents to ensure that their children attend school.⁶⁴¹ Also, the Act provides that children should not be stopped from attending school because they have not paid their fees.⁶⁴²

The study agrees that a total ban on child domestic work may not be in the interest of children and may expose them to more harmful labour, but rather that children can work after the completion of their Junior West African Examination which can be achieved at 15 years of age. At this age, and with such level of education, they should be able to negotiate better with an employer.

5.3 Research Questions:

The study provides the following answers to the research questions set out in chapter one of this dissertation.

5.3.1 Do national laws exist in Nigeria to protect children against child labour in the domestic sector?

The Constitution does not provide for the protection of child domestic workers in any form. Also, the Labour Act does not protect children from child domestic work neither does it recognise domestic services as a form of employment. However, the CRA and the Trafficking in Persons Act prohibits the employment of children as domestic workers though there is no uniformity in the provisions. While the CRA provides that “no child shall be employed as domestic help outside his home or

⁶³⁹Section 3(1) of the South African Schools Act 84 of 1996.

⁶⁴⁰Section 3 (5) of the South African Schools Act 84 of 1996.

⁶⁴¹Section 3(6) of the South African Schools Act 84 of 1996.

⁶⁴²Section 5(3) (a) of the South African Schools Act 84 1996.

family environment”,⁶⁴³ the Trafficking in Persons Act provides that any person who employs a child below the age of 12 years old as a domestic worker is guilty of an offence.⁶⁴⁴ While the CRA provides for a fine of fifty thousand Naira or a minimum of two years imprisonment, or both upon conviction,⁶⁴⁵ the Trafficking in Persons Act provides for a minimum of six months imprisonment but not exceeding seven years.⁶⁴⁶ The provision of the CRA depicts that all children are protected from child domestic work, while the Trafficking in Persons Act protects children below the age of 12 years but also provides for the protection of children from work that is harmful to their development and wellbeing. Yes, there is legislation to protect children from child labour in domestic work, however there exists numerous gaps that make the regulation and prohibition of child labour a challenge.

5.3.2 How are the laws implemented?

The provision of the CRA is not generally implemented in Nigeria because not all the states have adopted the Act as a state law due to diverse cultural and religious beliefs.⁶⁴⁷ The provisions of the Act are not binding on any state which has not domesticated it as state law, and as such actions cannot be brought to court under the Act in that state. Also most cases of child domestic work treated by NAPTIP under the Trafficking in Persons Act are handled as a case of abuse or child trafficking. The perpetrator is not always charged for employing a child as a domestic worker. Again, the Act provides the age limit for domestic work employment as 12 years old, and no charge seems to be brought under Section 23(1)(b) which provides for the prohibition of the employment of children in harmful or hazardous labour. Again, domestic work has not been categorised as harmful or hazardous by any legislation in Nigeria.

5.3.3 What are the challenges faced in the implementation of the provided laws?

⁶⁴³Section 28 (1) (d) of the Child Rights Act.

⁶⁴⁴Section 23 of the Trafficking in Persons Act.

⁶⁴⁵Section 28 (3) of the Child Rights Act.

⁶⁴⁶Section 23 (1) (a) & (b) of the Child Rights Act.

⁶⁴⁷OS Akinwumi, “Legal impediment on the practical implementation of the Child Rights Act 2003” (2009)37(3) *International Journal of Legal Information*384-391.

The un-enforcement of the provision of the CRA and the Trafficking in Persons Act on child domestic work is a huge challenge that should be tackled. Lack of uniformity in the legislative provisions against child domestic work poses a great challenge to the implementation of the available laws. The refusal of some states to domesticate the provision of the CRA due to diverse cultural and religious belief of the different states is a challenge to the implementation of the Child Rights Act. The belief that child domestic work is part of a child's training and acquisition of skills for adulthood contributes to the challenge of parents in accepting that child domestic work is a form of labour. Lack of financial support and mobilisation from government to facilitate the implementation of the available laws against child domestic work is another challenge. Also, the implementation of available laws against child domestic work is hampered by the hidden nature of the work. The study has been able to show that there exist challenges that hamper the implementation of the available laws.

5.3.4 What can be done to combat child domestic labour in Nigeria?

There should be a uniform minimum age for all work provided for under the Labour Act in conformity with the provision of the Minimum Age Convention, and backed up by stringent penalties in the case of violation. Under the Act, child domestic work should be categorised, either as a hazardous work or as a worst form of labour.

The Constitution should be amended to provide a section dedicated to the protection of children's rights, as is the case in South Africa. The rights of children to compulsory free education should be justiciable and not just a directive principle of state policy. People should be able to seek redress in court for government's failure to provide their children with free education as stipulated in the Constitution.

There should be a legislative enactment to provide for learners' compulsory school attendance with liability placed on parents and appropriate authorities, backed up by sanctions. Nigeria should ratify and domesticate the Decent Work Convention to ensure that domestic employment can be performed by eligible adults and not children.

5.3.5 What are the methods utilised in combating child domestic labour in South Africa?

South Africa, through uniform legislation and strict penalty is able to curb child labour, including child domestic work.⁶⁴⁸

It provides grants for its citizens to alleviate the condition of poor families,⁶⁴⁹ which can prevent children from seeking employment as domestic workers in order to feed. By virtue of the provisions of the Schools Act, action can be brought against a parent who does not allow the child to attend school for no just cause. South Africa has ratified and domesticated the Decent Work Convention and as such domestic work is seen and treated as a form of employment by the Basic Conditions of Employment Act.

It has been shown by this study that through legislative enactments and enforcement, through provisions of grants to poor families and through compulsory schooling, the government is able to curb the menace of child domestic work in South Africa.

5.4 Recommendations

The exploitative and clandestine nature of child domestic work makes it a matter in need of urgent eradication, not only through enactment of legislation but through actions by parents, government and all concerned. While international standards have been set, actions to domesticate laws against child labour remain weak in Nigeria. To curb this menace a more concise and strict approach is needed.

Firstly, the ILO Convention on Decent Work for Domestic Workers should be signed and domesticated as a national legislation for binding and effective enforcement. Also, national laws and policies should be reviewed and repealed to conform to the provisions of ratified international instrument standards against child labour, like the ILO Convention No. 138 and No. 182 respectively.

⁶⁴⁸Section 28 of the Constitution; Section 43 of the BCEA as amended by section 3 of the BCEAA and section 44 of the BCEA as amended by section 4 of the BCEAA.

⁶⁴⁹B Mpfariseni, "Children's rights and protection against child labour in South Africa" (2012) 1 (2) *Commonwealth Youth and Development* 1, 14.

Secondly, the Constitution of Nigeria should be amended to accommodate specific children's rights, and the best interests of the child should not only be made constitutional but should be stated to be paramount in matters concerning children, and not to be the primary consideration as provided for in the Child Rights Act of 2003. 'Paramount', according to the dictionary⁶⁵⁰ means more important than anything else, whereas making actions concerning children a 'primary consideration' connotes that there can be other considerations as secondary.

There is a call on the government by most researchers for the enactment of legislation to regulate the affairs of domestic workers in Nigeria.⁶⁵¹ A legislative difference should be made between child labour and child work. Also, there should be a clear definition of domestic work as part of children's upbringing and domestic work as employment, and the difference between both.

There should be an express legislative provision against the employment of children as house helpers in all the states of Nigeria, backed up by strict sanctions in the case of contravention. And the law enforcement agents should be empowered and well equipped to enforce the available laws, both against employers, agents and parents. According to Blagbrough, "a fundamental shift in the attitude of employers, parents and society at large is absolutely crucial if progress is to be made to protect children from exploitation of this kind".⁶⁵²

Prevention and protection should be the main emphasis in the elimination of child domestic labour, with a focus on addressing the root cause of employing children as domestic servants in Nigeria. Poverty being the major cause of child domestic work should be tackled. Therefore, this research agrees with the opinion of Jones⁶⁵³ that

⁶⁵⁰ Oxford advanced learners dictionary, international student's edition, ninth edition

⁶⁵¹ LFC Ntoimo *op. cit.* note 142 above, 72-73.

⁶⁵² J Blagbrough *op. cit.* note 85 above, 188.

⁶⁵³ N Jones *et al.*, "Promoting synergies between child protection and social protection in Nigeria" (A research project by Overseas Development Institute February 2012) 1, 24 available at <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7579.pdf> (Accessed: 6 December 2017).

provision of education alone cannot combat child labour, but that it should be accompanied with poverty alleviation.

Parents are the primary guardians of their children.⁶⁵⁴ This is recognised by paragraph 2 and 3 of the preamble to the UNCRC, which states that “the family as a group of the society is needed for the growth and wellbeing of children and for the full and harmonious development of children’s personality they should grow up in a family environment, in an atmosphere of happiness and understanding”.⁶⁵⁵ A statutory responsibility, backed up by legal sanction, should be placed on parents to care for their children till the age of 15, or the age of completion of compulsory schooling, whichever comes first. Also, provision should be made to accommodate and maintain orphaned children like it is done in other countries like South Africa.

One universally accepted means of eliminating child labour is through education. Compulsory education programmes and promotion mechanisms should be put in place, accompanied by poverty alleviation programmes to elevate the income of poor parents and to prevent the children from going to work instead of being in school.

Free and subsidised educational materials should be made available for pupils, especially for children in the primary schools, to reduce the educational burden placed upon parents and to discourage the urge to send their children to work. The awarding of scholarships, bursaries and loans by organisations and financial institutions should be encouraged and made available to poor children who cannot afford the cost of education to enable them to acquire education. The curbing of child labour, which includes child domestic work, through education should not only be the planting of schools and provision of free education, but should also include the teaching of children’s rights in schools. It should encompass the creation of awareness, not only to the children, but to parents and guardians through every means available. Ntoimo stresses the need for urgent action on the part of government not only to provide but to create awareness on the available skills acquisition programmes in both rural and urban areas.⁶⁵⁶ She also recommends the provision of special schools for pregnant adolescents to attend after child birth

⁶⁵⁴TU Onyemachi, “Children, status and the law in Nigeria” (2010)4 (3a) African Research Review 378, 382

⁶⁵⁵United Nations Convention on the Rights of the Child 1989.

⁶⁵⁶LFC Ntoimo, “Recycling poverty through domestic service and adolescent motherhood” (2011) 9 The Nigerian Journal of Sociology and Anthropology 56, 72-73.

should they become ashamed of returning to their previous school.⁶⁵⁷ Children's rights, protection and responsibility should be included in the school curriculum.

A monitoring mechanism should be set up to enhance school attendance. Teachers should be made accountable for their students who are absent from school regularly, and should report such students and the parents to the right authority for appropriate action.

Most people are not aware of what amounts to child labour, let alone knowing that child domestic employment is a form of child labour, since it is culturally accepted by many, especially in the rural areas, as a form of training and preparation for adulthood and independence. The notion and belief that domestic servitude is the ladder to character and greatness must be discouraged in every way possible. Also, apart from the hidden nature of child domestic employment, there is a lack of knowledge of the available legislation by the Nigerian population and parents. There is a need for awareness campaigns, not only through radio, television, posters and social media, but also through community gatherings in rural areas. These campaigns should attempt to define child labour; explain child domestic work, how it amounts to child labour and why, and how it should be curbed. Information and the provision of the law should be disseminated through every available means in an understandable and simple language. Actions brought against offenders should be made public through every available means to create awareness and to deter other offenders. Child labour in domestic work should be made known to all through awareness and advocacy, to discredit the acceptance and belief that child domestic work is a safe form of employment for children.

Children should be given the opportunity to be heard. They should be part of the needed change. Children who have suffered harm through domestic service should be provided with victim support programmes to help them find their feet again. Children who are rescued from their employers due to violence should not only be returned to their parents, but should be supported psychologically and empowered with skills or helped to attend school.

⁶⁵⁷ *Ibid.*

Inequality between the rural and urban areas should be addressed to discourage rural-urban migration. There should be statutory abolishment of customary practices that are not favourable to both male and female children, like the preference and education of male children over female children.⁶⁵⁸

Children who are above fifteen years of age and want to work should be provided with some form of identification outlining their details and area of work. Employers should also be encouraged not to employ children without such identification. This will serve as a form of data collection and promote the protection of children by deterring employers from ill-treating such children, since the body in charge of issuing the identification will be aware of the employment.

The curbing and possible eradication of child domestic work as a form of child labour can be achieved by the effort and action of all. It requires the contributive effort and involvement of society, private and public institutions, government agencies, media houses, households, families, communities, men, women and children. Everyone has a responsibility to play.

⁶⁵⁸GA Ajaegbo, "Domestic workers in Africa: Legal status, rights and limitations" available at www.thelawyerschronicles.com/domestic-workers-in-africa-legal-status-right-and-limitations (Accessed: 3 July 2017).

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African Charter on the Rights and Welfare of the Child of 1990

ILO Convention No. 138 of 1973 on the Minimum Age for Admission to Employment and Work

ILO Convention No. 182 of 1999 on the Worst Forms of Child Labour

ILO Convention No. 189 on Decent Work for Domestic Workers of 2011

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NIGERIA

The Constitution of the Federal Republic of Nigeria of 1999

The Nigerian Child Rights Act 2003

The Trafficking in Persons (Prohibition) Enforcement and Administration Act of 2015

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The Constitution of the Republic of South Africa of 1996

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