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AHMADU BELLO UNIVERSITY, ZARIA
Journal of Public and International Law
(A.B.U.J.P.I.L)

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A Publication of:
DEPARTMENT OF PUBLIC LAW
Ahmadu Bello University, Zaria

This Journal is to be cited as:
(A.B.U.J.P.I.L) Vol. 1 NO. 5 2011

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First published in 2007

Printed and Published in Nigeria, by Faith Printers International, Block 6 Flat 36
New Estate Estate, Kofor, Tel. 08022067248, 08062241889

This Journal is to be cited as
J.P.I.L. Vol. 1 No. 3 2011

ISSN 2159-9141 3508

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AN ANALYSIS OF THE LEGAL FRAME FOR COMBATING HAWKING BY CHILDREN IN NIGERIA.

By
BOSE LAWAL*

1.1 INTRODUCTION

Hawking by a child is a form of child labour,¹ and the increase of children in the act of hawking in Nigeria is alarming.² A look at various bus stops, motor parks, major and minor streets, amongst others declares this trend. This act is not only conducted during the off school hours, but also those hours when children ought to be in school. Children hawk various items including pure water, bottled water, biscuits, sweets, cooking ingredients, kerosene, palm oil and vegetable oil. The children run after cars, buses, trucks as well as oil tankers in order to make sales of those goods they are hawking. This mode of trading invariably has negative impact on their education and general welfare and constitutes violation of the children's rights. The issue of human rights is about human beings and it relates to adults, children, males and females. According to Yerokun, O., without human or children rights, human being is nothing but a slave in the society.³ Despite this fact, for several years, Nigeria has been criticized for the violations of the human rights as well as children's rights.⁴

The question agitating the mind of this writer is whether there is any law providing and protecting children against child abuse through the act of hawking, either where the children are trading for themselves or for their parent(s) or guardians, against their fruitful future of becoming responsible men and women of Nigerian society in the future. However, this paper reveals the existence of laws, the question then is: how far have these laws been enforced by States of the Federation,⁵ What are the obligations of

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¹ According to the Black's Law Dictionary, hawking is an "*act of offering, by outcry, goods for sale from door to door or on a public street.*" See Bryan A. Garner, (ed.), *Black's Law Dictionary*, 9th ed., (West Group, 2009), p. 786.

This definition makes hawking by a child, a form of child labour which results in child abuse. According to the Dictionary, child abuse is an act or failure to act that presents an imminent risk of serious harm to a child. *Ibid*, at p 11.

² A study undertaken by Bolanle M. Fetuga, Fidelis O. Njokama and Adebiyi o. Olowu of 1675 randomly selected Primary and Secondary School Pupils aged between 5 and 17+ years in the Sagamu Local Government Area of Ogun State revealed major economic activities in the area, which include 43.6% of street trading including hawking, 25.4% of selling in kiosks and shops and 23.65% of farming. See Bolanle M. Fetuga, Fidelis O. Njokama and Adebiyi o. Olowu, "Prevalence, Types and Demographic Features of Child Labour Among School Children in Nigeria", available online: <<http://www.biomedcentral.com/1472-698X/5/2>>.

³ Yerokun, O., "Human Rights in Nigeria", (1996) 7 JLSA/OSU, pp. 89 – 105 at p. 89.

⁴ See OMCT: *Report on the Human Rights Situation in Nigeria (Human Rights Committee)*, Geneva, October 2002, p. 3, cited in E.E.O. Alemika, et. Al., *Report on the Implementation of the Convention on the Rights of the Child by Nigeria*, A Report Prepared for the Committee on the Rights of the Child, 38th Session, Geneva, January, 2005.

⁵ States like Lagos State, Kano State, Akwa Ibom State, Sokoto State, and Kogi State.

the parents, guardians and the government under the laws, and what is the way forward towards curtailing this abuse in order to safeguard the affected or to be affected children?. These are some of the issues examined in this paper.

The rest of the paper is divided into seven parts. The introduction forms part one of the paper. Part two of the paper discusses the meaning of child under international, regional and national laws. The causes of hawking among children are examined in part three while part four analyzes the legal regimes for the protection of children against hawking under the international and regional instruments and part five examines the general provisions under national laws for the protection of children against hawking. In part six, the roles of parents, guardians and the government towards the provision of education and welfare services to children in order to curb hawking is discussed while part seven makes recommendations on how to combat the trend of hawking among children. The last part is the conclusion.

1.2 Definition of a Child

Both international and national instruments define the term "child". The United Nations Convention on the Rights of the Child (CRC), 1989⁶ defines a child as "*Every human being below the age of 18 years unless under the law applicable, majority is attained earlier.*"⁷ According to the African Charter on the Rights and Welfare of the Child, 1990 (CRWC),⁸ a child means "*Every human being below the age of 18 years.*"⁹

Under the Lagos State Children and Young Persons Law,¹⁰ and the Labour Act, any person under the age of eighteen years is classified under two terms. These terms are "a child" and "a young person". The Children and Young Persons Law defines a "child" as a person who has not attained the age of fourteen years while a "young person" means a person who has attained the age of fourteen years and is under the age of eighteen years.¹¹ On the other hand, the definition section of the Labour Act defines a child as a young person under the age of twelve years, and further defines a young person as a person under the age of eighteen years.¹²

The most recent law on the rights of children however is the Child's Rights Act (CRA), 2003¹³ According to the Act, a child means a person under the age of eighteen years.¹⁴ To this end, we may conclude that the general view of a child is any person, male or female who is under the age of eighteen years.

⁶ Herein-after referred to as CRC. The CRC was adopted by the United Nations General Assembly on the 20th of November, 1989.

⁷ *Ibid*, Article 1.

⁸ Herein-after referred to as CRWC. The CRWC was adopted by the Organization of African Union (OAU) Assembly of Heads of States and Governments in July, 1990.

⁹ *Ibid*, Article 2.

¹⁰ Children and Young Persons Law, Cap C10, Laws of Lagos State of Nigeria, 2003, vol. 1.

¹¹ *Ibid*, Section 2.

¹² Section 91 of the Labour Act, Cap L1, Laws of the Federation of Nigeria, 2004 vol. 8.

¹³ Child's Rights Act, 2003, (herein-after referred to as CRA)

¹⁴ *Ibid*, Section 277. For the purpose of this paper, the definition of a child as provided under the CRA shall be adopted.

1.3 Rationale for Hawking Among Children in Nigeria

Several reasons have been canvassed for the rationale behind hawking by children in Nigeria. Firstly, some parents and guardians hold the view that the economic crises in the country have increased their poverty level of taking care of their children and have eventually led more children to work and/ or hawk. According to Peter A. Anyebe, about 82.2% of the children involved in any form of labour activities did so, on the instruction of one or both parents in order to contribute to family income as children of parents with low socio-economic status or poorly educated parents were significantly involved.¹⁵ This reason is however an aberration as the income achieved from hawking by the children contributes little or nothing to the general welfare of the family. As such, hawking as a form of child labour contributes to poverty, rather than ameliorating it,¹⁶ as children neglect their future as a result of this act.¹⁷ While commenting on this, Mrs. Aishat Ismaila¹⁸ said that "*Poverty is not an excuse for parents to jeopardize the life of their children.*"¹⁹

More so, the act of children contributing to the welfare of the family constitutes a contravention of the Criminal Code Act as the Act states that:

*It is the duty of every person who, as head of family, has charge of a child under the age of fourteen years, being a member of his household, to provide the necessities of life for such child; and he is held to have caused any consequences which result to the life or health of the child by reason of any omission to perform that duty, whether the child is helpless or not.*²⁰

Similarly, section 341 makes a person guilty of felony and liable to imprisonment for five years, where that person unlawfully abandons or exposes a child under the age of seven years, in such a manner that any grievous harm *is likely*²¹ to be caused to such a child.²² It is not unlikely that we found children under the age of seven years hawking from streets to streets and through minor and major roads, this can lead to grievous harm being done to the children aside from grievous harm done to their future. The question is: what will the effect of contribution from these set of Children

¹⁵ Peter A. Anyebe, "Varying the Approach Towards Eradicating Child Labour in Nigeria: An International Solution to a National Problem", (January 2007) *Labour Law Review*, Vol. 1 No. 1, pp. 145-160 at p. 148.

¹⁶ Timothy A. Glut, "Changing the Approach to Ending Child Labour: An International Solution to an International Problem" in *Vanderbilt Journal of Transnational Law*, (1995) vol. 28, p. 1208.

¹⁷ See Anyebe, note 16 above at p. 149.

¹⁸ Mrs. Aishat Ismaila is a one-time Minister of Women Affairs and Youth Development in Nigeria.

¹⁹ Mrs. Aishat Ismaila in Toyé Olori, "Nigeria: Child Labour Still a Major Problem", available online: <<http://www.ipsnews.net/interna.asp?>

²⁰ Section 301 of the Criminal Code Act, Cap. C38, Laws of the Federation of Nigeria, 2004, vol. 4.

²¹ Emphasis supplied.

²² *Ibid*, Section 341.

had on the income of the family? The contribution is so minimal and has no positive effect on the family. If this is the position, why must the children be exposed to dangers? As earlier said, it is the duty of parents to provide for the needs of the children, as such, poverty should not be the reason why the bright future of these children must be jeopardized.

Secondly, inevitable circumstances could also lead to hawking by children. This is because children that are orphans, street children,²³ children born out of wedlock, disabled children, children that have been neglected or ill-treated, as well as other children who need care and protection²⁴ may face hardship of life which may eventually turn them to either hawk for themselves in order to make living or hawk for their guardians to support in their care and well-being.

Thirdly, there is lack of financial resources to support the course of the children. According to E.E.O. Alemika and others;

*there is a severe lack of financial resources allocated to the protection and promotion of children's rights. Consequently, mechanisms for the protection and promotion of children remain weak, uncoordinated and not in line with Nigeria's obligations under the Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child.*²⁵

The above reasons constitute the major causes for hawking by children in Nigeria.²⁶ But, with the above reasons, can we then conclude that there exists no law to protect the children against this act? This question is negatively answered. This is because, there are international and regional instruments that regulate the issue of hawking by children which Nigeria has ratified and has domesticated substantial parts of their provisions.

1.4 Protection of Children against Hawking Under Regional and International Laws

There are international and regional instruments which provide for the protection of children against hawking. Some of these instruments have been ratified by the Nigerian Government, while some are signed, but yet to be ratified.

Nigeria ratified the CRC on April 16th, 1991.²⁷ By this Convention, the General Assembly unanimously passed the "declaration on the rights of the child" which

²³ A street child includes, first, a child that is homeless and forced to live on the streets, in market places and under bridges. Second, a child who, though not homeless is on the streets engaged *inert alia* in child labour.

See section 277 of the CRA.

²⁴ See generally Section 50(1)(a) – (o) of the CRA for categories of children that need care and protection.

²⁵ E.E.O. Alemika, et. al., *Report on the Implementation of the Convention on the Rights of the Child by Nigeria*, see note 5 above.

²⁶ For other causes of child labour in general, in Nigeria, see Jide Ogunsakin, "A Legal Prognosis of Child Labour under the Child Rights Act", (June 2008) *Labour Law Review*, Vol. 2 No. 2, pp. 110 -121 at pp. 114 – 115.

²⁷ See note 7 above.

provides that humankind owes the child the best in terms of protection (adequate healthcare, nutrition, education, social justice) in its early years and preparation for its later years without discrimination.²⁸ At the regional level, Nigeria ratified the African Charter on Human Rights and People's Rights in 1983²⁹ and also signed the CRWC in July 1990,³⁰ but yet to ratify the Charter.³¹

1.5 Legal Regime for the Protection of Children against Hawking under Nigerian Laws

Under Nigerian legislations, there are numerous provisions of laws protecting the interests of the children. These laws include the Constitution of the Federal Republic of Nigeria,³² The Children and Young Persons Laws of various States, and the CRA. For easy digestion of the various provisions of these laws regarding the rights of children against hawking, the relevant provisions will herein be examined.

(a) *The Constitution of the Federal Republic of Nigeria*

Chapter 4 of the Constitution of the Federal Republic of Nigeria provides for the fundamental rights of all citizens of Nigeria.³³ Section 34(1) provides that *"Every individual is entitled to respect for the dignity of his person, and accordingly (a) no person shall be subjected to torture or to inhuman or degrading treatment; (b) no person shall be held in slavery or servitude; and (c) no person shall be required to perform forced or compulsory labour"*.³⁴

Although section 34(2) makes provision for the labour which will not be classified as "forced labour" for the purpose of section 34(1)(c), it however did not include hawking in any form, by children, in the exception.³⁵ This means that hawking is prohibited under section 34 of the Constitution.

As noted above,³⁶ inevitable circumstances might lead some children into act of hawking on their own. There are instances also, where some of these children are serving as house helps to the "influential people" in the society. While the children of these influential people go to school, the disadvantaged ones are most often made to hawk in many of the cronies of the Nigerian roads, bus-stops and streets. This occurs notwithstanding the provision of section 42 of the Constitution of the Federal Republic of Nigeria which prohibits discrimination. This discrimination is really pronounced as a result of which it was stated in the State Party Report to the Committee on the

²⁸ *Ibid*, Article 32.

²⁹ Nigeria domesticated the Charter through the African Charter on Human and Peoples' Rights Ratification and Enforcement Act, Chapter 10, Laws of the Federation of Nigeria, 1990.

³⁰ See note 9 above.

³¹ See E.E.O. Alemika, et. al., note 5 above.

³² The Constitution of the Federal Republic of Nigeria (Promulgation) 1999, No. 24 (herein-after referred to as the Constitution).

³³ Chapter 4 of the Constitution covers Sections 33 to 46.

³⁴ *Ibid*, Section 34(1).

³⁵ See Section 34(2)(a)-(e) for the categories of labour that will not be classified as being forced labour.

³⁶ See pages 5 – 6 above.

Convention on the Rights of the Child of 2002 that *"Despite the laws, in practice ... children born out of wedlock, disabled children, children out of outcast, children from the minority and children from other states often experience discrimination."*³⁷

Aside from the children that found themselves hawking as a result of uncontrolled situations, there are some children that are given out to other people as the children's guardians and care-takers by the children's parents, against the wishes of the children. But, rather than taking care of the children, the guardians most of times engage them in act of hawking amongst others. This is a deviation from the constitutional provisions to the extent that every child has a right to parental care and protection, and no child would be separated from his parents against the wish of such child.³⁸ Although there are exceptions to this general rule, the exceptions did not cover the separation of child from parent for the purpose of hawking. No child will want to be separated from his parents to hawk for another person as against their rights to leisure, recreation and cultural activities under section 12 of the CRA. The only exceptions available to the provisions under section 14(1) of the Constitution are separation of a child from his parents for the purpose of the child's education and welfare, or separation in the exercise of a judicial determination in accordance with the provisions of the CRA, and in the best interest of the child.³⁹

Where any of the fundamental human rights conferred on Nigerian citizens, including the children are violated, the Constitution vests on the affected person the right to institute an action in the court of laws. To enforce these rights, section 46 conferred special jurisdiction on the High Court by providing that *"Any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress"*.⁴⁰

As simple as section 46 sounds, it may be difficult to enforce as the enforcement of any law requires financial obligations. The Constitution has however provides succour as it makes available legal aid for the purpose of enforcing the fundamental rights. Section 46(4) obligates the National Assembly to *"make provisions for the rendering of financial assistance to any indigent citizen of Nigeria where his right under this Chapter has been infringed or with a view to enabling him to engage the services of a legal practitioner to prosecute his claim"*.⁴¹ The National Assembly must however ensure that the allegations of infringement of the fundamental rights are substantial and the financial aid is real.⁴² Thus, any child may institute an action that any his fundamental human rights as enshrined under the Constitution has been violated without any financial hindrance.

³⁷ State Party Report to the Committee on the CRC of 2002 submitted by Nigeria, at p. 31.

³⁸ Section 14(1) of the Constitution.

³⁹ *Ibid*, Section 14(1)(a) and (b).

⁴⁰ *Ibid*, Section 46(1).

⁴¹ *Ibid*, Section 46(4)(b)(i).

⁴² *Ibid*, see Section 46(4)(b)(ii).

All the above constitutional provisions regarding the rights of children are confirmed and re-affirmed under part 2 of the CRA. Section 3 of the Act emphatically states that *"The provisions in Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999, or any constitutional provisions relating to Fundamental Rights, shall apply as if those provisions are expressly stated in this Act"*.⁴³

While commenting on the rationale for the adoption of the CRA, Dr. Muhammed Tawfiq Ladan said:

*First, the Nigerian Constitution under Chapters four and two on Fundamental Human Rights and on Fundamental Objectives and Directive Principles of State Policy respectively, is not child rights specific; second, the various State Children and Young Persons Laws are largely Juvenile Justice Administration biased and not necessarily child's rights and responsibilities specific, as well as not being CRC / OAU Charter friendly in terms of modern conceptions / principles of Juvenile Justice Administration.*⁴⁴

The above reasons, amongst others, necessitated the adoption of the Child's Rights Act, 2003.

(b) The Child's Rights Act, 2003

The sole aim of the CRA is to provide and protect the rights of all Nigerian children.⁴⁵ Re-affirming section 34 of the Constitution, section 11 of the CRA provides that every child is entitled to respect for the dignity of his person and accordingly, no child shall be held in slavery or servitude, while in the care of a parent, legal guardian or school authority or any other person or authority having the care of the child.⁴⁶ Similarly, a child is prohibited from exploitative labour.⁴⁷ Contravention of this provision attracts a fine, not exceeding fifty thousand naira or imprisonment for a term of five years or to both fine and imprisonment.⁴⁸ Specifically, section 30 provides that *"a child shall not be used for hawking of goods or services on main streets, brothels or highways,"*⁴⁹ and *for any purposes that deprives the child of the opportunity to attend and remain in school as provided for under the Compulsory, Free Universal Basic Education Act.*⁵⁰

Although the Act fails to provide penalty regarding the contravention of the provision, it is the view of this writer that recourse may be had to the penal provision

⁴³ Section 3(1) of the CRA.

⁴⁴ Dr. Muhammed Tawfiq Ladan, "The Child Rights Act, 2003 and the Challenges of its Adoption by State Governments in the 19 Northern States", Paper presented at a One-day interactive forum for Sokoto State House of Assembly Legislators, Organized by the Sokoto State Ministry of Women Affairs and UNICEF on July 23rd, 2007 at Sokoto State House of Assembly, Sokoto, p. 2.

⁴⁵ See the Preamble to the CRA.

⁴⁶ *Ibid*, Section 11(d).

⁴⁷ *Ibid*, Section 28(1)(a) – (d). See also Section 30(2)(b). The CRA in its section 29 also provides that the provisions relating to young persons as specified in sections 59 – 64 of the Labour Act, 2004 shall apply to children under the CRA. The provision under sections 59 – 64 of the Labour Act relate to the employment of young person in its general sense and does not make specific provisions for hawking.

⁴⁸ *Ibid*, Section 28(3)

⁴⁹ *Ibid*, Section 30(2)(c).

⁵⁰ *Ibid*, Section 30(2)(d).

under section 28(3)⁵¹ as hawking of goods and services by children may as well be classified under exploitative labour of which penalty has been expressly stated, though the penalty may be too minimal compared to the damage that would be caused to the future of the child affected. Nevertheless, it was reported that children drawn all over the country converged in Abuja, the capital of Nigeria, where they held a children's parliament with the former president, Olusegun Obasanjo, and called for harsher punishments prescribing jail terms ranging from ten (10) years to life imprisonment for violators.⁵²

In the hearing and determination of any matter concerning the enforcement of the child's rights, including rights against hawking, a child has the right to be represented by a legal practitioner and to free legal aid.⁵³ Also, the child must be allowed to freely express himself and participate in the proceedings.⁵⁴ Exclusive jurisdiction is however conferred on the family court⁵⁵ in any proceedings regarding the children, but this shall not affect the jurisdiction of the normal criminal courts to try cases or offences by adult offenders as specified under sections 21 to 40⁵⁶ or in any other law.⁵⁷

To aid the implementation of the CRA, the Act makes provision for the establishment, membership procedures, and functions of the Child Rights Implementation Committee at the National, State and Local Government levels.⁵⁸ The roles of the National, State and Local Government Committees include the initiation of actions to ensure the observation and popularisation of the rights and welfare of children as provided for under the CRA, CRC, CRWC and other international Conventions, Charters and Declarations relating to children and to which Nigeria is or becomes a signatory. The Committees are also obliged to continually keep under review, the state of implementation of the rights of a child, and to develop and recommend to the Federal, State and Local Government, through their respective Committees, specific programmes and projects that will enhance the implementation of the rights of a child.⁵⁹

(c) Other State Laws

Aside from the Constitution and the CRA that prohibits hawking by children, various States in Nigeria have different laws that prohibit street trading and hawking. For instance, the Lagos State Street Trading and Illegal Markets (Prohibition) Edict generally prohibits all persons, including children, from selling, hawking or exposing

⁵¹ See note 49 above.

⁵² See, Toyé Olori, "Nigeria: Child Labour Still a Major Problem", note 20 above.

⁵³ Section 155 of the CRA.

⁵⁴ *Ibid*, Section 158.

⁵⁵ The court operates at two levels. Firstly, as a division of the High Court at the High Court level and secondly, as a Magistrate Court, at the Magistrate Court. See Section 150 of the CRA.

⁵⁶ Part III of CRA.

⁵⁷ *Ibid*, Section 162.

⁵⁸ See generally, Sections 260 – 271.

⁵⁹ *Ibid*, Section 261, 265 and 269 respectively.

for sale any goods, wares, articles or things whether or not from a stationary position in specified streets and places, or within the vicinity of public building in the State.⁶⁰

Similarly, Regulation 3 of the Children and Young Persons (Street Trading) Regulations, 2003⁶¹ prohibits the engagement of children in street trading.⁶² However, the Regulations allow a young female⁶³ to be engaged in street trading only by her parent or person appointed by the courts to be her guardian, but she must not be engaged in street trading between the hours of 6 a.m. and 6 p.m.⁶⁴ This provision recognizes the importance of education and confirmed section 30(2) of the CRA to the effect that a child shall not be used for any purpose that deprives him the opportunity of being in school.⁶⁵ This is because the hours between 6 a.m. and 6 p.m. will afford the child the education opportunity. Nevertheless, "*no child and no young female shall be engaged in street trading at or in the vicinity of any bar-rack, dock or wharf or in, at or near any place or premises selling wines, spirits, beer or native liquors.*"⁶⁶ Contravention of these provisions attracts penalty.⁶⁷

Furthermore, in Kano State, the *Kano State Petty Trading (Prohibition of Female Juvenile) Edict*⁶⁸ prohibits female juveniles under the age of 16 years from hawking goods, setting up stalls, table, or kiosks for the display of goods. This law restricts its application to only females, probably to protect the girls against abuses by adults, as they are more vulnerable than boys. However, in my opinion, the law should be made to protect the male counterpart as well.

Having discovered that there are laws that frown at the act of hawking by children in Nigeria, then who deserves to be blamed for this act of servitude? Is it the "poor parents, the influential masters, or the Nigerian government? These questions cannot be answered without going through the obligations of the parents and governments towards the children, as provided for under the Constitution and the CRA.

1.6 The Obligations of Parents and Governments towards Eradicating Hawking among Children

In order to curtail the practices of hawking among children in Nigeria, the welfare of the children must be taken as paramount in all decisions taken by the government. Once their basic needs of education and welfare are taken care of, there will be no defence for the children either hawking for themselves (as a result of the

⁶⁰ Section 1 of the Lagos State Street Trading and Illegal Markets (Prohibition) Edict No. 1, 1984.

⁶¹ Children and Younger Persons (Street Trading) Regulations, Cap. C10, Laws of Lagos State of Nigeria, 2003.

⁶² *Ibid*, Regulation 3(1): Regulation 2 defines street trading to include "*the hawking of newspapers, matches, flowers, food and goods or articles of whatever description*"

⁶³ The Regulations define a young female as "*any girl between the age of fourteen and sixteen*". See Regulation 2.

⁶⁴ *Ibid*, Regulation 3(2).

⁶⁵ Section 30(2)(d) of CRA.

⁶⁶ Regulation 4 of the Children and Younger Persons (Street Trading) Regulations, 2003.

⁶⁷ See generally, Regulation 5.

⁶⁸ Cap. 109, Laws of Kano State of Nigeria, 1991. See also, Children and Young Persons Law, Cap. 22, Laws of Sokoto State of Nigeria, 1996.

inevitable circumstances they found themselves) or for their parents or guardians in order to contribute their own quotas to their well-being. For this purpose, both the Constitution and the CRA make provision for the obligations of parents and government towards children.

Section 14(1) of the Constitution provides that "*The Federal Republic of Nigeria shall be a State base on the principles of democracy and social justice*". The Constitution also declared that sovereignty belongs to the people of Nigeria from whom Nigerian government through the Constitution derives all its powers and authority⁶⁹ and as such the security and welfare of the people shall be the primary purpose of Nigerian government.⁷⁰ Furtherance to this, section 17 established social objectives to the extent that the State social order is founded on ideals of Freedom, Equality and Justice. In furtherance of the social order, the State shall direct its policy towards ensuring that "*all citizens, without discrimination on any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment*".⁷¹ The policy of the State is also directed towards ensuring that children, amongst others are protected against any exploitation whatsoever, and against moral and material neglect⁷² and that provision is made for public assistance in terms of need.⁷³

Not stopping at the social obligation of the State towards the children, section 18 makes provision for the educational policy by providing that "*Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels*"⁷⁴ and shall strive to eradicate illiteracy, and to this end, *as and when practicable* provide *inter alia* free, compulsory and universal primary education as well as free university education.⁷⁵ Although section 18(3) is subject to condition of "*as and when practicable*", this clause cannot be said to apply to the provision of free universal primary education because of the qualifying clause of "*compulsory*" in the provision. To effect this provision, the *Akwa Ibom State Child Rights Law* provides that children and young people have a right to free primary and secondary education.⁷⁶

Similarly, the CRA provides that no child shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.⁷⁷ The circumstances of his birth may literally be construed to be his or her poor background amongst others. Where this is the case, he must not *inter alia* be deprived of basic education. Thus, section 15 of the Act states that "*Every child has the right to free, compulsory and universal basic education and it shall be the duty of the Government in Nigeria to*

⁶⁹ Section 14(2)(a) of the Constitution.

⁷⁰ *Ibid*, Section 14(2)(b).

⁷¹ *Ibid*, Section 17(3)(a).

⁷² *Ibid*, Section 17(3)(f).

⁷³ *Ibid*, Section 17(3)(g).

⁷⁴ *Ibid*, Section 18(1).

⁷⁵ *Ibid*, Section 18(3).

⁷⁶ See the Akwa Ibom State Child Rights Act, 2008.

⁷⁷ Section 10(2) of the CRA.

provide such education".⁷⁸ Although, it is the duty of the Government to provide free and universal basic education to every Nigerian child, it is an obligatory duty of the parent or guardian to ensure that the child of which he is the parent, or ward, which he is the guardian attends and complete his primary and junior secondary school education.⁷⁹

Failure by the parent or guardian to do this, such parent or guardian will on first conviction be reprimanded and ordered to undertake community service and on second conviction, he will be liable to a fine of two thousand naira (₦2,000) or imprisonment for a term not exceeding one month or to both fine and imprisonment. On any subsequent conviction, such parent or guardian shall be liable to a fine not exceeding five thousand naira (₦5,000) or imprisonment for a term not exceeding two months or to both such fine and imprisonment.⁸⁰ In Kogi State, the government inaugurated State family court, where children under the age of eighteen (18) years can seek justice where any of their rights under the Law has been breached.⁸¹

In addition to the above duty, it is also the duty of the parent, guardian or person in care and custody of a child that has completed his basic education to send the child to a senior secondary school, and where the child is not sent to senior secondary school, the child must be encouraged to learn an appropriate trade.⁸² The necessities for learning the trade must be provided by the employer of the child.⁸³ To my mind, section 15 of the Child's Rights Act could be said to have cleared the uncertainty under section 18(3) of the Constitution having expressly stated that the Government has the responsibility for free, compulsory basic education to junior secondary school while the parents must ensure the child or ward attend the basic education as well as taking responsibility for the education of the child from post junior secondary school. However, the duty of the parents, guardians and government under section 15 of the CRA does not apply to children with mental disabilities.⁸⁴

By the above provisions therefore, it is the duty of the State to make sure that everyone gains the advantage of the compulsory basic education to junior secondary school, and for the parents and guardians to ensure that their wards attend the basic education and to send them to senior secondary school or training centre. But, if this is the case, there would not be many children that are plying and hawking from street to street, either for their own gain or for the benefit of their wards, from which the children impliedly gain from.⁸⁵ The lack of access to education is mostly pronounced among girls-children, who by virtue of their being females are always discriminated at,

⁷⁸ *Ibid*, Section 15(1).

⁷⁹ *Ibid*, Section 15(2).

⁸⁰ *Ibid*, Section 15(6).

⁸¹ See, Section 152(2) and 153 of the *Child Rights Law of Kogi State*.

⁸² *Ibid*, Section 15(3) and (4).

⁸³ *Ibid*.

⁸⁴ *Ibid*, Section 15(7).

⁸⁵ There is the general notion by the wards of these teenagers that the money they realized from the street trading are utilized for the teenagers' needs, such as feeding, clothing, payment of school fees and purchasing of their school needs, (where they are opportune to go to school) etc.

and seen to be of vital tool in the promotion of trade via hawking.⁸⁶ In the Northern part of the country, for instance, the rate of girls attending school is much lower than that of boys.⁸⁷ This attitude is better described as discrimination among children which the Constitution frowns at because section 42(2) of the Constitution states that “No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth”. Similarly, every citizen shall have *inter alia* equality of opportunities before the law⁸⁸ and it is an obligatory duty imposed on them “to respect the dignity of other citizens and the rights and legitimate interests of others”⁸⁹

Aside from education of the children, it is also the obligation of the State government to safeguard and promote the welfare of the children in need within the State of which he is governing, and to promote the upbringing of those children by their families, by providing range of services appropriate to the needs of those children.⁹⁰ The said services may be provided for the family of the particular child in need or for a member of the family of the child with a view to safeguarding or promoting the welfare of the child.⁹¹ To aid the provision of services to the needy children, it is incumbent upon the State government to encourage private organization who may wish to provide such services.⁹²

Furthermore, the State government has obligation to provide accommodation for a child in need within the State where it appears to him that the child requires such accommodation.⁹³ These requirements for the accommodation may occur under any of the three conditions herein stated. First, where the child has no person having parental responsibility towards him,⁹⁴ second, where the person that has care for the child is prevented, for any reason whatsoever, from providing the child with accommodation or care,⁹⁵ and thirdly, where the child is lost, runs away from home or has been abandoned.⁹⁶

The duty of each State government to provide accommodation for the children in need of accommodation includes those children that are from any other State. However, there is a caveat regarding this obligation in that where such State government so provides accommodation for the benefit of a child who is ordinarily

⁸⁶ The lack of access of girls-children to education in the North reflects the local peculiarities which may be cultural, religious or customary in nature. See Dr. Muhammed Tawfiq Ladan, “The Child Rights Act, 2003 and the Challenges of its Adoption by State Governments in the 19 Northern States”, note 45 above, at p. 11.

⁸⁷ Information taken from UNICEF and quoted in Integrated Regional Information Networks (IRIN), *Nigeria: Focus on the Challenge of Enforcing Children's Rights*, November 2002. Available online: <<http://www.irinnews.org/print.asp?ReportID=30878>>.

⁸⁸ *Ibid*, Section 17(2)(a).

⁸⁹ *Ibid*, Section 24(c).

⁹⁰ *Ibid*, Section 171(1)(a) and (b).

⁹¹ *Ibid*, Section 171(3).

⁹² *Ibid*, Section 171(2).

⁹³ The provision of the accommodation is however subject to some conditions. See Section 174(4) and (5) for the conditions.

⁹⁴ *Ibid*, Section 174(1)(a).

⁹⁵ *Ibid*, Section 174(1)(c).

⁹⁶ *Ibid*, Section 174(1)(b).

resident in another State, the State government of that other State *may*⁹⁷ take over the provision of the accommodation for the child within three months of being notified in writing by the home State government that the child is being provided accommodation, or such other longer period as may be prescribed.⁹⁸ It is the view of this writer however that the taking over of the accommodation of the needy child by the resident State government of which the child is ordinarily a resident should be made a compulsory obligation to the Child's resident State government. So, the "*may*" should be substituted for "*shall*". This substitution will encourage the home State government to come to the aid of any child who is in need, whether or not the child is his own liability, pending the time when the home State government will write the resident State government and the latter will subsequently takes over his responsibility from the former State government.

Recognizing the plight of some children with disability, the Act empowers a child development or police officer or any other authorized person to bring a child in need of care and protection before a court for a corrective Order, if he has reasonable grounds for believing *inter alia* that the child is an orphan or deserted by relatives, neglected or ill-treated by his parent or guardian or custodian, wandering, homeless, found destitute or exposed to moral or physical danger.⁹⁹ According to section 50(5) of the CRA, the fact that a child is hawking or street trading is evidence that the child is exposed to moral danger.¹⁰⁰

Further in sections 53 to 62, the CRA makes provisions for the making of care and supervision Orders that are designed to place children in need of care and protection in the care of designated person or appropriate authority or State government in order to safeguard and promote the welfare of the child. Such Orders made may include Education Supervision Orders.¹⁰¹

Having seen the provisions of laws regarding the prohibition of hawking by children in Nigeria and the roles of parents, guardians and the government at curtailing it, the questions thereby lies that what is the way forward towards eradicating hawking among children.

1.7 Recommendations towards Combating the Problem of Hawking among Children

As laudable as the above provisions of laws seem to be, it is disheartening that since the adoption of the CRA in July 2003,¹⁰² many States of the Federation have not

⁹⁷ Emphasis supplied.

⁹⁸ Section 174(2) of the CRA.

⁹⁹ *Ibid*, Sections 50 – 52.

¹⁰⁰ See Section 50(5)(d), *ibid*.

¹⁰¹ *Ibid*, Sections 53 – 56.

¹⁰² The CRA was ratified in July 2003, though it came into being in September 2003.

implemented the provisions of the CRA.¹⁰³ In fact, in some of the States that have implemented it,¹⁰⁴ the provisions of the Act have not been enforced or put into practice.

To combat the problem of hawking among children in Nigeria, compulsory basic education and provision of the children's needs and welfare by the government may necessarily be a way out. But, in many of the States, basic education is still within the armpit of who can afford it as many primary and secondary schools are not free of charge. Even, the so called government primary and secondary schools have one way or another to make the "poor" parents pay indirectly for the basic education.¹⁰⁵ Parents who cannot leisurely afford the cost invariably engage their children or ward to hawking of goods, in order to meet up with the challenge of life. So, due to failure of enforcement in those States that have implemented the CRA and lack of implementation in other States, child abuse by way of hawking among children has continued.¹⁰⁶ The infringement on the rights of the children continues despite the first Report on the Implementation of the CRC submitted by Nigeria in 1996 to the United Nations committee on the Rights of the Child. One pertinent recommendation made by the Committee was to ensure the domestication of the CRC to enhance full implementation of the CRC under Nigerian law.¹⁰⁷

It is humbly suggested by this writer that State governments should implement the CRA into their respective State laws as well as enforce its provisions accordingly. Also, budgetary allocations to meet the State governments' mandatory obligations as enshrined in the 1999 Constitution and the CRA amongst others should be provided and utilized for the purpose to which it is made for.

Furthermore, to safeguard and promote the welfare of the children in need, each State government may launch and implement a free lunch programme in all public schools as well as a rent rebate programme or special housing scheme in order to ensure accommodation of the children who are in need and their families in accordance with the provision of the CRA.¹⁰⁸

¹⁰³ A Report by the Nigerian chapter of the African Network for the Prevention and Protection against Child Abuse and Neglect (ANPP-CAN) revealed that out of the thirty six (36) States in Nigeria, only twenty six (26) States have so far implemented the Child Rights Act. See Suzan Edeh, "The Road to a Country without Child Abuse", The Vanguard Newspaper, February 10, 2013, available online:

<<http://www.vanguardngr.com/2013/02/the-road-to-a-country-without-child-abuse/>>.

¹⁰⁴ Some of the States that have implemented the Act include Abuja Capital Territory, Ogun State, Nasarawa State, Lagos State, Akwa Ibom State, Kogi State, and Ebonyin State.

¹⁰⁵ Many public schools have no furniture for students to sit and write on. Invariably, their parents or guardians are made to purchase the seats and tables. Similarly, books and other stationeries are provided by the children and during Parents Teachers Association (PTA) meeting, parents are sometimes requested to pay for one thing or another.

¹⁰⁶ In Lagos State for instance, in spite of the Lagos State Child Rights Law, 2007, children are still seen hawking from street to street and in both minor and major roads. Similarly, many primary and secondary schools exist without benches and tables and some other basic amenities needed for the children's education.

¹⁰⁷ See, CRC, concluding observations of the Committee on the Rights of the Child: Nigeria, CRC/C/15/Add.61,30/10/96, Sec.26, available online:

<[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.15.Add.61.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.15.Add.61.En?OpenDocument)>.

¹⁰⁸ See Sections 171 and 174 of the CRA at pp. 18 and 19 above.

In similar vein, the government should protect the rights of children against abuse by ensuring that the parents and guardians that allow their children to hawk while disregarding education in accordance with the provisions of the above stated laws are made to face the wrath of the law. By this sanction, they will be deterred from asking children to hawk at the detriment of the children's future. However, this can only be made possible where government has fulfilled its own obligations of providing *inter alia* full, free basic universal education in order to keep the children educationally busy during the day.

1.8 CONCLUSION

Nigeria has numerous provisions of laws protecting the children against hawking. The most recent of these laws is the CRA which has taken an holistic approach regarding the issue. Nevertheless, one major set-back of this Act is that many States have not enacted State laws reflecting its provisions and those that have done so, fail to enforce the laws. As at now, although in many States, the activities for the protection of the children are still within the whims and caprices of the Non-Governmental Organizations (NGOs), nevertheless, little is seen to be done towards the eradication of hawking among children by the NGOs. With all these impediments, hawking by children continues without being checked. We cannot go ahead with the rights of the children being abused daily and their future jeopardized.

This writer believes that if the recommendations made above are adopted, the act of hawking by children will gradually fade out and the general violation of children's rights would one day be a thing of the past in Nigeria. Thus, where implementation and enforcement of the CRA is made possible, the Nigerian children, as seen as the future leaders of tomorrow, would be armed to fully undertake that future role for the betterment of Nigerian State. So, government should live up to its obligations by seeing to the welfare of the children and enforcing the related laws accordingly. These children deserve to be treated well, and enough of the act of hawking by the children in Nigeria.