



## An examination of nigeria's legal framework for the protection of children and their mental health

**Chisom Victorious raphael<sup>1\*</sup>, Dr. Ifeoluwayimika Bamidele<sup>2</sup>, Ms Bisola Akinleye<sup>3</sup>**

<sup>1</sup> Department of Law College of Afe Babalola University Ado-Ekiti, Ekiti, Nigeria

<sup>2</sup> Head, Department of Private and Business Law, College of Law, Afe Babalola University Ado-Ekiti, Solicitor and Advocate of the Supreme Court of Nigeria

<sup>3</sup> Lecturer, Department of Law Solicitor and Advocate of the Supreme Court of Nigeria, Afe Babalola University Ado-Ekiti, Nigeria

### Abstract

This article presents a brief overview on rights afforded to a child in alignment with the law/legal framework regulating protection of children in Nigeria. The research used doctrinal methodology. The aim of this research is to assess the effectiveness of the laws governing the protection of children and their mental health. It further explores the legislation governing child protection and mental health, such as the Nigerian Mental Health Act of 2021, the Constitution, and the Child Rights Act of 2003, which serves as a cornerstone for child protection and aligns with certain international and regional regulations. The research argues that despite the legal measures established in Nigeria, children continue to be neglected, and their best interests are not sufficiently prioritized. The study finds that while the Child Rights Act 2003 provides an all-inclusive provision for children in Nigeria, issues including the inadequate protection afforded to children due to shortcomings in the existing laws and ineffective policies for their enforcement. Consequently, the article recommends that existing laws should be reviewed and amended where necessary to address issues related to child protection. By providing insight on these areas, this article contributes to advocating for broader provisions covering mental health amongst children. It also contributes to a better understanding for lawyers, policymakers, and institutions.

**Keywords:** Child, mental health, legal protection, legal frameworks, child rights

### Introduction

Every individual has rights and is therefore entitled to protection. A child is recognized as having rights<sup>[1]</sup>, which encompasses his entitlement to health and healthcare services, among other rights. Children are viewed as a blessing from God and our greatest hope for a brighter future. To transform this belief into reality and allow these children to realize their full potential, they require special and exceptional protection. The World Health Organization, referred to as 'WHO', defines health as 'a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity'. This means that health encompasses more than just the lack of illness; it also involves the wellness of our mental state. Thus, even when free from physical ailments, a child who is subjected to distress physically, mentally, or socially is deemed 'unhealthy'. The definition highlights that health is viewed as a 'fundamental human right', and everyone is entitled to the highest attainable standard of health, as stated in the Child Rights ACT of 2003<sup>[2]</sup>. All legal instruments designed for child protection fall under one principle: 'the best interest of the child.' In Nigeria, there exist laws aimed at addressing children's needs. However, despite these existing laws meant to protect children, the desired outcomes have not been fully achieved. The Child Rights Act of 2003 was enacted over a decade ago to tackle issues of abuse and neglect faced by children. Regrettably, a significant number of Nigerian children are still not reaping some or all of the benefits provided by the Act. The Child Rights Act outlines the comprehensive rights and responsibilities of a Nigerian child. The rights encompass the highest possible level of physical, mental, and spiritual well-being, as well as safeguards against sexual, physical, and emotional abuse,

child trafficking, child labor, ritual killings, and neglect<sup>[3]</sup>. Regrettably, the gaps in these laws have allowed more crimes to occur. Children in Nigeria are currently facing environmental dangers such as trafficking, abuse, rape, child labor, kidnapping, torture, and sexual violence from parents, as well as various forms of cruel and inhumane treatment and punishment, often in places considered to be the safest (like home, school, and society). Various harmful traditional practices have also arisen, including female genital mutilation, forced marriages, and widowhood practices. The severe consequences of these abuses on children have led to significant physical, emotional, and psychological suffering<sup>[4]</sup>.

According to statistics, 60% of children have encountered some kind of violence; one in four girls and 10% of boys have faced sexual violence before reaching the age of 18. Fewer than 5 out of every 100 children who disclose experiencing violence receive any assistance<sup>[5]</sup>. It has been noted that the root causes of violence against children (VAC) include social norms like the application of harsh discipline, domestic violence against women, and community beliefs in witchcraft, all of which elevate the risk faced by children. Reports indicate that incidents of violence against children in Nigeria rose by 5 percent over the past five years<sup>[6]</sup>. Additionally, the implementation of these laws is often treated with neglect, putting children's lives in the country at risk. To analyze these legal structures, we must comprehend the definition of a child and the age bracket included in this protection.

### Conceptual Framework

#### 1. Who is a Child

Persons, legal systems and various jurisprudences have different meaning of a child. For example: in contract law, a

child is a person under the age of 21 years. Typically, a child refers to the stage of development from infancy to puberty<sup>[7]</sup>. The Constitution of the Federal Republic of Nigeria, 1999 did not define a child. The Black's Law dictionary defines a 'child' as 'a person under the age of majority'<sup>[8]</sup>. The Child Rights Act defines a child as 'a person under the age of eighteen years'<sup>[9]</sup>. The definition of the Child Rights Act 2003 aligns with international agreements such as the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child, both of which Nigeria has ratified. The United Nations Convention on the Rights of the child describes a child as "every human being under the age of eighteen years unless, according to the applicable law, they reach adulthood sooner." It is essential for the United Nations Convention on the Rights of the Child to establish a basic age limit, as the absence of clearly defined guidelines places children at risk of being treated improperly. Consequently, children who are capable of making certain decisions for themselves may find their choices overlooked due to the lack of regulations. As part of their rights, children have the ability to participate in decisions regarding their lives. If there is no specific age at which they can exercise that right, as suggested by the United Nations Convention on the Rights of the Child, it further disadvantages them. This is the challenge addressed eloquently by the ruling on Gillick<sup>[10]</sup>. Lord Scarman stated that:

'As a legal principle, a parent's authority to decide whether a child under 16 should receive medical intervention ends when the minor possesses enough understanding and intelligence to grasp what is being proposed'<sup>[11]</sup>.

In legal terminology, an individual under the age of eighteen is referred to as a 'minor' and is typically regarded as being capable of making frivolous choices. The Child Rights Act prioritizes the best interests of children in all matters, asserting that a child's protection is of utmost importance. It also highlights the obligations and responsibilities that the government, parents, guardians, and various organizations, among others, have towards Nigerian children. It should be noted that the legislation regarding matters related to Nigerian children is encompassed in the residual Legislative list and therefore varies by state<sup>[12]</sup>. Nigeria has 36 states and most states of the federation like Abia, Anambra, Bayelsa, Ebonyi, Edo, Ekiti, Imo, Jigawa, Kwara, Lagos, Nasarawa, Ogun, Ondo, Rivers, Taraba, have adopted the Child Rights Act (herein referred to as the 'CRA'). While certain states have embraced the Child Rights Act, others have altered the definition of a 'child' to include individuals under the age of thirteen. For example, in Akwa Ibom State, a child is defined as 'any individual under the age of sixteen years'. The absence of a clear and universally accepted interpretation of the Law presents a significant issue concerning the fair enforcement of its provisions. For the context of this work, a child is defined as an individual under the age of 18 years. The term 'children' denotes more than one child.

## 2. Mental Health

The National Mental Health Act 2021 describes mental health as a person's comprehensive emotional, psychological, and social well-being. Additionally, the Act emphasizes that mental health incorporates intellectual, psycho-social, or cognitive impairments within its definition. Mental health falls within the scope of

disabilities, and the concept of disability has become increasingly complex and debated, leading to the rights of individuals with mental health challenges being included in the National Disability framework<sup>[13]</sup>, but more specifically within the provisions outlined in the National Mental Health Act 2021.

Mental health is a fundamental human right and is viewed as essential for personal, community, and socio-economic progress. The World Health Organization defines mental health as the overall well-being that enables individuals to cope with life's challenges, learn effectively, recognize their strengths, perform well at work, and make contributions to their communities. Our mental health is considered a vital component that supports both our individual and collective capacity to make decisions, as well as our ability to form relationships and influence the world around us.

The term 'mental health,' as defined by the World Health Organization, represents a nuanced and personal journey that encompasses more than merely the absence of disorders. It implies that some individuals may enjoy robust well-being, while others may face difficulties or circumstances that lead to distress. In essence, the results of these experiences can differ significantly, influencing how people engage socially and how they may react to clinical interventions. Mental health conditions encompass mental disorders and psychosocial disabilities (such as depression, anxiety disorders, mood disorders, and schizophrenia, among others), along with other mental states that can lead to considerable distress, reduced functioning, or the potential for self-harm. As stated by the World Health Organization, individuals experiencing mental health issues tend to have lower levels of mental well-being, although this is not universally true. Mental health issues encompass a variety of diagnosable behavioral, emotional, and psychological disorders that are prevalent among teenagers, such as depression, anxiety, adjustment disorders, conduct disorders, eating disorders, and more<sup>[14]</sup>.

## 3. Legal Protection of a Child

Child Protection, often known as Child Welfare, refers to the measures taken to prevent and respond to violence, abuse, exploitation, and detrimental activities affecting children<sup>[15]</sup>. It focuses on protecting individual children who may be vulnerable to abuse, violence, or exploitation. Conversely, the legal safeguarding of a child involves 'protecting the child's right to life and healthy development, to parental support and family connections, to education and job opportunities,' as well as to the child's identity, freedom of thought, conscience, and religion. It includes the shielding of a child from any form of physical or psychological harm, neglect, exploitation, or mistreatment<sup>[16]</sup>. In Nigeria, the protection of children's rights is ensured through various laws, including the Child Rights Act of 2003, which is regarded as the primary legislation for child protection, the Constitution of the Federal Republic of Nigeria (specifically Chapter II), and the National Mental Health Act of 2021, among other statutes. These legal provisions are designed to safeguard the rights of children without regard to their gender, race, or ethnicity.

## 4. Extant Laws/ Legal Frameworks/ Laws

The term 'extant' refers to something that currently exists and has neither been destroyed nor lost<sup>[17]</sup>. It is likewise

characterized as something that is present and exists. Each nation has regulations that govern human behavior, and these regulations are established to shield society from disorder and insecurity. In this context, a legal framework pertains to any existing law or statute in the Federal Republic of Nigeria aimed at safeguarding the rights of children.

## **Legal Frameworks for the protection of Children and their mental health in Nigeria**

### **1. The Constitution of the Federal Republic of Nigeria 1999**

The Constitution of the Federal Republic of Nigeria is regarded as 'the grundnorm' and all other laws derive its validity from it. Prior to the constitution, the queen of England was seen as the grundnorm before Nigeria got its independence. The concept of grundnorm is central to Hans Kelson's Pure Theory of Law. The Constitution recognizes that children are particularly vulnerable to violations of their rights and that they have specific and unique interests.

The constitution makes provision for the protection of the fundamental human right. It guarantees the human rights (chapter IV) which include the right to life, the right to life; right to dignity of human; right to fair hearing; right to freedom of thought, religion and conscience; right to freedom of expression and the press; right to peaceful assembly and association; right to freedom of movement; also, prohibition of discrimination on the ground of sex, ethnic group, political opinion, religion or place of origin [18].

It focuses on the fundamental objective and directive principles of the state tailored towards the promotion and protection of the children's interests in Nigeria (chapter II). The government is saddled with the responsibility of providing the essential needs for children such as free compulsory and universal primary education, free secondary education, free university education and free adult literacy program [19].

It goes further to confer fundamental responsibility on all organs and tiers of government to observe, comply and apply the objectives relating to political, socio-economic and cultural matters [20].

Moreover, it provides for state social order founded on the basis of freedom, quality and justice. The state has a responsibility to cater for the needs of all citizens such as employment; providing adequate facilities for social, religious and cultural life; providing health facilities; equal remuneration; protecting children, young persons from exploitation and against moral and material neglect [21]. For the purpose of this work, the question that arises is- whether Chapter II of the constitution of the Federal Republic of Nigeria is justiciable or non-justiciable?

The social objectives are not considered human rights, but instead referred to as 'directive principle'. These provisions are non-justiciable and are merely directive principles of state policy. In other words, no action can be brought against the government to enforce these objectives.

It also provides for an independent judiciary to determine any question as to the civil rights and obligations [22], and it gives the court the power to determine all fundamental rights violation [23].

**Inadequacies of the Constitution of Federal Republic of Nigeria 1999:** The Constitution only provides for fundamental rights of every human but fails to expressly make provision for the protection of a child; the constitution

as a grundnorm does not reflect 18years as the minimum age with reference to a child and has no clear provision that defines the legal age of who is to be considered a child, which can lead to confusion regarding children's rights and their legal capacity to make decisions about their mental health. Also, this can cause inconsistencies in the way children's mental health issues are addressed. Due to overlapping laws (the Constitution provisions sometimes overlap with other laws such as the Child Rights Act, 2003) and scattered provisions on children's rights in the Constitution, it results in inconsistencies in implementation. Also, the Constitution limits itself and focuses more on the physical health and well-being of children under chapter II. With limited attention given to mental health, it contributes to the neglect of children's mental health needs in practice and law. Lack of emphasis on mental health has led to weak institutions, corruption, and lack of awareness of children's rights.

Although the constitution provides for state responsibility, the government usually at the local level is fraught with difficulty in providing the basic needs of children (chapter II). Most times, the government makes use of funds that are meant for the provision of children's needs to satisfy their selfish desires and because these responsibilities are non-justiciable, the government cannot be held accountable. In alignment with the state responsibility provision, there is lack of specific resource allocation for mental health services which can lead to limited access to basic care for children's mental health and inadequate funding [24].

### **2. Child Rights Act 2003**

The CRA is the paramount law that protects children in Nigeria. It is considered a domestication of the United Nations Conventions on the Rights of the Child and the Organization of African Unity in Nigeria.

The Act is divided into 24(twenty-four) parts and 11 schedules, addressing the rights, responsibilities, protection, welfare of the children, duties and responsibilities of the government as well as other diverse matters. The CRA emphasizes on the principle of best interest of a child in all matters concerning children.

The Act delineates specific rights, which encompass the right to survival and development; the right to a name; the right to freedom of association and peaceful assembly; the right to thought, conscience, and religion; the right to privacy and family life; the right to freedom of movement; the right to non-discrimination; the right to uphold a child's dignity; the right to leisure, recreation, and cultural engagement; the right to access healthcare services; the right to parental care, protection, and support; the right to free, compulsory, and universal education; and the right of an unborn child to safeguard against any harm caused recklessly, willfully, or negligently before, during, or after their birth. These rights are stipulated in this Act to implement preventative measures against any harm to children in Nigeria.

Additionally, the Child Rights Act of 2003 outlines the contractual rights of a child solely concerning essential items, among other provisions. While this Act grants rights to children, it also specifies the mechanisms for safeguarding these rights. This is done through the prohibition of Child trafficking, exposure to use, production of narcotic drugs [25] and psychotropic substances, Child marriage, Child betrothal, infliction of tattoos and skin

marks, the use of children in any criminal activity, abduction, and unlawful removal and transfer of a child from lawful custody, buying, selling, hiring or dealing in children for the purpose of Hawking, begging of alms, prostitution [26], unlawful sexual intercourse [27], forced, exploitative or hazardous child labor [28], and other forms of sexual abuse harmful to the welfare of the child.

In addition, the CRA prevents the importation of harmful publication which shows information such as the commission of crimes, acts of violence, immoral and indecent representation which tends to corrupt a child. While the Act has established sufficient measures for the legal safeguarding of children, it also faces several challenges and shortcomings that contribute to its ineffective enforcement. A key question to explore in this article is whether the existence of child rights legislation in Nigeria's compliant states has improved the situation of children in those areas. Addressing this question poses one of the challenges that this article aims to tackle. It is truly distressing to note that Nigeria leads in the ratification of many international human rights and child-specific agreements. In reality, there appears to be little or no impact on the lives of the Nigerian child.

According to a report by UNICEF which noted *inter alia*: ‘...ongoing challenges such as elevated poverty levels, insufficient availability of quality education, inadequate nutrition, high rates of newborn mortality, and rampant violence impacting children’ [29].

This research and various reports indicate that numerous children are frequently subjected to physical, sexual, and psychological violence within their homes, educational institutions, and care facilities. It is concerning that 18 years later, the conditions remain unchanged, and in fact, they have worsened, particularly with the increasing incidents of kidnapping involving schoolchildren (both boys and girls). This has resulted in children experiencing post-traumatic stress, which will undoubtedly have long-term effects on their lives. The development of the Child Rights Act did not include the thorough examination and preparation necessary to create a strong document. Additionally, it lacked inclusivity and a broad range of consultations, which other state parties involved in the process contributed to the introduction of the Child Rights Act 2003. The Nigerian courts have enforced the laws to better the lives of the Nigerian child such as in *Emeakuana v Umeofiako* [30] - the court invalidated a marriage between the respondent and an under-aged girl. Other cases are: *Boniface Adonike v State* [31] and *Ezigbo v State* [32] based on defilement of girls between the ages of 5, 6 and 8 years old.

**Inadequacies of the Child Rights Act 2003:** Lack of coordination- Although the Child Right Act 2003 is a law that focus on nationalizing the United Nations Convention on child rights, it still experiences irregular adoption across states in Nigeria. However, in Nigeria, there are 36 states and these states have the power (autonomy) to make their own laws, which leads to non-compliance of the Act (CRA) between states to promote and protect children's rights. In other words, some states have not domesticated the legislation or law (Child Rights Act 2003) in their various jurisdictions. Most states are still yet to adopt the CRA and this implies that the CRA has no force of law in those states. Consequently, protection and rights of children are not fully guaranteed in those states including their mental health. Due

to lack of coordination of the CRA, it has led to several implications including uneven protection; children in states that have domesticated this Act, tend to benefit from the provisions in cases where their rights have been violated while in non-adopting states, victims of violation are left endangered. Other implications includes diverse standard of care (lack of implementation of the CRA in some states often result to harmful practices or no access to mental health services for children. This is because some states have weak laws or no laws protecting rights of these children) and inadequate recourse (under this, children in non-adopting states become victims of violation or vulnerable to violation, because they cannot rely on the Child Rights Act to find protection or seek justice).

**Lack of awareness-** Persons are not aware of the Act that provides protection for children leading to weak enforcement. In Nigeria, the Child Rights Act is not widely known to the public, thereby hampering the effectiveness of the Act. The enforcement agencies are well trained to resolve matters related to violation of child's rights. Although the CRA provides for a child's privacy [33], it does not state clear provisions for mental health care (in this, the question that may arise is; in what ways can a child's right be safeguarded when seeking therapy? What details can be disclosed to parents and how is it managed if the child has a differing perspective or point of view?). The CRA does not outline clear guidelines on what should be considered private for children and how health care practitioners should handle confidential information of children, thus, resulting in inconsistencies in practice. Also, the Constitution provides for privacy [34] and family life but fails to extend its privacy provisions to children.

**Housing and Employment-** although the CRA makes provision for a child's right to health [35], it doesn't expressly address the responsibility of the state to guarantee that these children in adopting states would have access to safe and healthy housing. The persistent situation in Nigeria is that many children are involved in hard labor, some of which are risky in nature, thereby posing significant health danger (including exposure to hazardous substances, vicious working conditions, and lengthy working hours). While the CRA recognizes child labor [36], it doesn't address the increased vulnerability to mental health problems involved in the course of engaging in these activities. The issue of housing and employment in this context is quite intertwined. In this, a child who stays in poor housing is likely to be compelled into exploitative child labor, thereby causing a cycle of ill health and poverty. This in turn affects the child's mental health.

### 3. National Mental Health Act 2021

Mental health is regarded as an essential aspect of human well-being. Although individuals worldwide have faced mental health challenges, it still lacks the attention it truly deserves. Stigmatization remains a significant barrier that prevents patients from seeking mental health treatment. In response to the rising prevalence of mental health issues, several countries, including Ghana, Zambia, Uganda, Kenya, and South Africa, have enacted laws to protect the rights of those with mental health conditions. In 1916, Nigeria introduced its first legislation known as the Lunacy Ordinance, empowering magistrates and medical professionals to detain individuals with mental health issues. Nigeria established its mental health policy in 1991,

focusing on promotion, advocacy, prevention, treatment, and rehabilitation. In 2003, the National Assembly of Nigeria received a mental health bill aimed at addressing the shortcomings of the 1958 legislation. Unfortunately, the bill was not enacted into law in April 2009. Even though it was reintroduced in 2013, it failed to gain sufficient support for passage. Historically, Nigeria's health and development policy agenda has overlooked mental health issues.<sup>[37]</sup>

Elements influencing mental health primarily include misunderstandings and negative societal attitudes towards mental health issues, which inhibit nearly 80% of individuals with significant mental health needs from obtaining the necessary care. Additionally, individuals experiencing mental health challenges are frequently subjected to mistreatment. On January, 5 2023, President Muhammad Buhari signed National Mental Health Act, 2021, updating the obsolete Lunacy Act that had been in effect for 65 years. The primary objective of this Act is to safeguard the rights of individuals with intellectual, psychosocial, or cognitive disabilities and to facilitate the establishment and oversight of mental health services in Nigeria, along with any other pertinent issues.

The National Mental Health Act ensures the safeguarding of children. It stipulates that regardless of any other regulations or statements in the National Mental Health Act, 2021, a child with a mental health condition may only be admitted if: the living area is separate from that of adult patients; the facility has been evaluated by the Federal Ministry responsible for health or a state agency and has received written certification that treatment will occur in the least restrictive environment possible. Additionally, a child can only be admitted if the facility is properly equipped with the essential resources to meet the developmental needs of the child, as well as any other requirements necessary for the growth of a child with mental health disabilities.<sup>[38]</sup>

It suggests that the parent or guardian of a child with mental health disabilities is responsible for representing the child in any matters outlined in the Act, and this representation must prioritize the child's best interests. The word 'best interest' is a paramount key word used in the Child Rights Act, 2003<sup>[39]</sup>. The legislation allows for a proxy in situations where a parent or guardian cannot make decisions that serve the child's best interests. It requires healthcare professionals to petition the court for the designation of an independent legal representative<sup>[40]</sup>.

The Act outlines two methods for a healthcare professional to assess if a decision aligns with the child's best interests. These methods include the worker's own knowledge and experience, as well as considering the child's views on matters concerning their needs, as long as the child is over 13 years old and is capable of comprehending the nature and consequences of such issues. It provides that the rights of a child receiving mental health care shall be in line with the Child Rights Act 2003. The Act further emphasizes on the fact that the best interest of the child shall be the primary consideration in all actions regardless of any other provisions in the Act.

#### **Inadequacies of the National Mental Health Act 2021:**

From the aforesaid, it is clear that the National Mental Health Act, 2021 acknowledges the provisions of the Child Rights Act 2003. Although the National Mental Health Act, 2021 provides for the protection of the child, it is still fraught with some inadequacies such as;

**Inadequate funding-** Though this legislation demonstrates Nigeria's political intention to enhance mental health care, the objectives of the National Mental Health Act 2021 can only be realized through successful execution. A key aspect of this effective implementation is funding. Furthermore, other concerns must also be addressed—such as increasing the budget allocation for mental health services in relation to overall health care spending. The genuine dedication of the Nigerian Government will be essential for the proper execution of the legal framework by ensuring the provision of financial, material, and human resources. The government ought to boost the funding dedicated to mental health services compared to the overall health care spending to ensure effective implementation<sup>[41]</sup>. The NMHA constitutes the prominent step forward in acknowledging and addressing mental health issues in Nigeria, but requires investment and adequate funding to upgrade various facilities, hospitals, clinics and community-based centers in order to achieve its goal. Furthermore, these facilities lack the necessary resources and medicines to aid victims of mental health due to lack of funding. Children dealing with mental health issues are often overlooked and specific funding for this vulnerable group is not allocated. Lack of funding can be directly linked to lack of manpower. In this, funding is often required to train more health care professionals in this field, provision of professional growth and also increase in salaries attracts and retains certified/qualified staff. However, health care workers are forced to quite due to the level of difficulty involved in caring for persons with mental health issues. This in return creates scarcity of health care providers in the mental health unit. As at 2023, the availability of mental health professionals in Nigeria is minimal, with just 0.15 psychiatrists for every 100,000 people, and there is a significant need for support in staffing, safeguarding, and funding<sup>[42]</sup>. A viable strategy would involve training non-specialist mental health workers under the guidance of mental health experts and enhancing their abilities to identify, treat, and manage mental health issues through a stepped care model and collaborative task sharing.

**Lack of awareness-** Most parents and guardians that have children dealing with mental health issues including those that without mental health issues have no knowledge or understanding of the Act. This shows a lacuna for effective implementation. In Nigeria, most people are unaware of the rights the NMHA guarantees to victims of mental health conditions, the services it requires or the way it is intended to transform the field of mental health care. Due to the stigma surrounding mental health, children dealing with these conditions are scared to engage in open discussions making it difficult to disseminate information. Aside parents and guardians who have little to no awareness about the National Mental health Act, health care practitioners or professionals are also not well versed on the NMHA's provisions. Most times, they are unable to implement the Act's rules in their day-to-day practice or activities. In like manner, law enforcement agencies, lawyers including courts do not really protect the rights of children with mental health conditions in the judicial system.

#### **4. Criminal Code**

The criminal code provides for the safeguarding of children and is applicable only in the southern region of Nigeria. According to the Act, minors aged 12 to 18 years are held accountable for their criminal behavior and may face

prosecution under the Children and Young Persons Law (CYPL). It further clarifies that a child under 7 years old lacks the capacity to commit a crime, while a child aged between 7 and 12 years may be deemed criminally responsible if it can be demonstrated that they comprehend the nature and implications of their actions. Inappropriate treatment of boys less than 14 years is classified as a felony, resulting in a punishment of 7 years imprisonment, whereas the defilement of children under 13 years is classified as a misdemeanor, attracting a penalty of less than 2 years imprisonment. Nevertheless, this provision of the Act contradicts the stipulations of the CRA, which indicates that any type of indecent assault on an individual, regardless of being male or female and under the age of 18, is treated as equivalent to rape, with a penalty upon conviction of either 14 years or life imprisonment. In *R v MacDonald* <sup>[43]</sup> a couple was convicted for allowing a 14-year-old girl to die under extreme maltreatment. Also, in *R v Senior* <sup>[44]</sup> a father was sentenced for manslaughter for not providing the basic necessities (medical treatment) which caused the death of the child.

## 5. Penal Code

The Penal Code Act is enforceable in northern Nigeria. It offers legal safeguards for children, as reflected in the clause that criminalizes the procurement of an abortion and the act of taking the life of an unborn child. <sup>[45]</sup> It acknowledges the rights of an unborn child and requires parents, guardians, or individuals in loco parentis to provide for the essential survival needs, development, and nourishment of children less than 14 years of age.

## 6. Nigerian Labor Act

The Nigerian Labor Act regulates the hiring, contracts, and safeguarding of individuals, including child employment. It ensures that children are not engaged in or employed for any hazardous work that could harm their health or is morally inappropriate <sup>[46]</sup> or a job where he is unable to return home to his family on a daily basis. Once more, individuals younger than 16 years old are prohibited from engaging in underground work, working on public holidays, or operating machinery in industrial settings <sup>[47]</sup>, or recruited without the consent of parents or guardians. Nevertheless, students enrolled in technical schools or institutions may engage in work as part of their educational training, provided that it is supervised by the Ministry of Education or other appropriate organizations. A child may only work in light duties related to agriculture or household tasks if approved by the minister, and only for family members. Unfortunately, these regulations have been grossly overlooked as children are extensively engaged in child labor, domestic work, and street vending without any support from the Minister.

## Problems hindering Effective Child protection by the extant laws

Although these laws are enacted to protect children and their mental health, there are challenges hampering the effectiveness of these laws and they are as follows:

### 1. Poverty

Poverty is considered a leading cause of child abuse and danger to their mental health in Nigeria. This is why most times we see children hawking, getting involved in domestic jobs and dropping out of school. Poverty is deeply connected to the mental health of children in Nigeria

because it fosters vulnerabilities, restricts access to care, and weakens the impact of the legal framework. Children living in poor conditions (poverty) are usually more likely to encounter severe stress and trauma due to insecurity of food, malnutrition, inadequate access to clean water and healthy living, exposure to violence and conflicts. Due to the high level of poverty in Nigeria, we often times come across children who are unable to access quality education. Lack of quality education most times result in long-term effect on a child's cognitive, social and emotional growth (it could cause low self-esteem, and limited opportunities for personal development among others). Young workers are often favored over adult workers due to their lack of contracts, absence of time off, and minimal or nonexistent wages. Additionally, child begging is a growing form of exploitation, particularly in the northern region of the country. Among the estimated 15 million children not attending school, over 10 million have been compelled to take up begging <sup>[48]</sup>. Moreover, poverty can cause children to engage in exploitative activities, exposing them to lengthy work hours, psychological abuse among others.

### 2. Lack of Political Will

Deficiency in political will is another aspect to consider, as some political leaders prioritize their personal desires or agendas over the needs of their constituents. They demonstrate a lack of political will to enforce laws and develop solutions for the effective protection of children <sup>[49]</sup>. The mental well-being of children is frequently overlooked by policymakers in favor of issues that appear more pressing or easier to address politically. Consequently, this leads to insufficient financial support for children's mental health services, failure to incorporate their mental health needs into broader policies and initiatives, and limited focus from government organizations. Where there is lack of political will, it results in increase in vulnerability of children with mental health conditions or issues, violation of children's rights, and continuation of poor mental health across generations, hampering national growth.

### 3. Slow Judicial Process

The judicial process is often slow due to the high number of cases that receive limited attention. The CRA establishes family courts to address and resolve cases involving children; however, some states have yet to approve or ratify the CRA, resulting in the absence of family courts in those areas. Consequently, child-related issues must navigate the lengthy waiting list along with other cases. Slow judicial process also endangers children dealing with mental health conditions because if court processes are not dispensed at speed, children with these conditions remain in vulnerable states for prolonged periods, thereby increasing their mental health conditions and exposing them to more harm. When there is delay in dispensing justice, it can affect evidence and testimony given by children. In this, the child is unable or may have a hard time recalling events correctly or precisely after long periods, making it difficult to confirm the facts of a case and ensure that justice is served.

## Conclusion

This research has examined the Nigerian legal framework for the protection of the child and their mental health. It assessed the various laws governing the protection of a child and one grey area is that under the Constitution of the

federal Republic of Nigeria, the right to health and provision of the essential needs of children are not enforceable making it difficult to hold the government accountable for any violations (under section 17 and 18). Other challenges highlighted in this research include the lack of trained personnel like law enforcement agencies as well as the lack of statutory limitation; this implies that there is no time frame that determines when a legal proceeding will not be taken up by any court. There is also lack of awareness to the public, and so, they are not able to identify when their rights are being violated. There is urgent need for a priority action to be taken in order to uphold child protection in Nigeria. The Child Rights Act 2003 being the paramount Act for children has taken the right direction in prioritizing the protection of children by providing a robust and all-inclusive child protection principle to cater for their needs. However, aligning with what was stated by Akinlami, this author opines, that the law, in its capacity as a standalone instrument for child protection, is as ineffective as a paper tiger unless it is accompanied by proactive measures and comprehensive awareness [50].

## Recommendations

Recommendations for policy makers are as follows:

- a. The Child Rights Act 2003 should be domesticated all through the states through enactment of policies compelling states to embrace/adopt the CRA 2003. The CRA is relevant and above all includes the best interest of the Nigerian child. In Nigeria, there are 36 states and most states of the federation like Abia, Anambra, Bayelsa, Ebonyi, Edo, Ekiti, Imo, Jigawa, Kwara, Lagos, Nasarawa, Ogun, Ondo, Rivers, Taraba, have adopted the Child Rights Act (herein referred to as the 'CRA'). However, while some states have adapted to the Child Rights Act, other states have changed the meaning of a 'child' to cover persons under the age of thirteen years. For instance: in Akwa Ibom state, a child is 'any person under the age of sixteen years. So, there should also be a unified and specific age limit of who is to be identified as a child across the country (the constitution should be revised or amended to reflect a specific age of a child). Furthermore, the Child Rights Act 2003 should be revised to create provisions addressing mental health concerns among children and also, the Act should establish an institution or institutions that will be responsible for the mental health of children (it should distinguish from that of adults). With this, there will be a consolidated Act which courts can rely on when any provisions have been violated against the child. It is hoped that the policy makers that supported the Act in order for it to be passed at the National level will act together to see that the Act is eventually enacted into all the states of the federation.
- b. A time-frame should be set for legal proceedings relating to children. There should be a statutory limitation set under the law (Child Rights Act 2003) informing when an action can be commenced and concluded. By doing this, justice can be served to persons who are victims (in this case, children). A recommended time frame would be 7months.
- c. Law enforcement officers should be trained on how to respond to issues involving children. The government should put in place measures and ways to enforce and

implement laws or statutes. These policies should set up law enforcement agencies that would focus on the violation of any child rights most especially right to health of the child. This requires adequate funding. In addition to this, there should be a conducive structure or organization put in place in communities for victims to report any case of violation. This will help in making victims at ease when reporting cases of violence.

- d. The government should work towards alleviating poverty by creating employment opportunities, providing free education, improving health care systems and ensuring healthy food (ensuring there is clean water, availability of food etc.) is being sold to the masses or the public. Although, the right to health, education among others are found under chapter II of the constitution, the government should out of compassion create job opportunities and aim to enhance health care systems in communities by funding hospitals, appointing health care agencies to inspect these hospitals, organizing orientations on mental health for children and also moving to the extent of providing therapist sessions for children. This will help reduce and improve the number of persons (in this case, children) dealing with mental health issues (including depression, anxiety disorders, mood disorders, schizophrenia among others). There should also be dissemination of information. That is, intense awareness of these provisions for the protection of the child should be made known to the public in form of campaigns, outreaches, workshops, seminars, and training programs on child protection.

There are a number of countries that have good child protection laws or legal frameworks. Some of these countries include Iceland, Finland and Sweden among others. Many of these nations share certain characteristics that reinforce their effective child protection systems, including thorough legal structures that are strong enough to safeguard children against all types of exploitation, violence, abuse, and neglect (for instance: in Iceland, the Act that guides child protection is the Child Protection Act, No. 80/2002). These laws or legal systems also extend support to families through social welfare initiatives, which help minimize the risk factors that may contribute to child maltreatment. Additionally, they ensure that enforcement mechanisms are effective and allocate resources to provide high-quality services for children, encompassing healthcare, education, and social services. I recommend that policymakers in Nigeria revise the laws regulating protection of children such as the CRA and adopt some provisions from the above-mentioned countries to ensure that children are well-protected across the country.

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Lecturer II, Solicitor and Advocate of the Supreme Court of Nigeria, department of Law, Afe Babalola University Ado-Ekiti, Nigeria, 07069992087, [akinleyeai@abuad.edu.ng](mailto:akinleyeai@abuad.edu.ng)

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