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A REASSESSMENT OF NIGERIA'S LEGAL FRAMEWORK PROTECTING CHILDREN'S RIGHTS TO DIGNITY AND PROTECTION FROM CORPORAL PUNISHMENT

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ABSTRACT

The protection of the right of children against corporal punishments in Nigeria has not received the due attention as it should, as every now and then, there are sad reports of children who lose their lives or become hospitalized due to injuries sustained from corporal punishments they receive at home or school. Using the doctrinal research methodology, this article examines Nigeria's legal framework for protecting children against violations of their right to personal dignity and protection from corporal punishment. In course of this article, it was found that there are conflicting provisions in Nigeria's legal framework, with some laws such as the Child's Right Act abolishing corporal punishments while others such as the Criminal Code and Penal Code continues to recognize corporal punishments as a form of disciplining disobedient children and as a judicial sentence. This article, however, suggested as part of its recommendations, that there is an urgent need to remove the provisions of any law still recognizing corporal punishment, and the need for government through its agencies to sensitize all stakeholders on the need to stop all forms of corporal punishments against children, and set an example by prosecuting culprits.

INTRODUCTION

Children are unique and precious beings who not only represent the continuance of the cycle of procreation but form an important part of the family unit. Due to their fragile nature at their formative years, it is ordinarily expected that all efforts would be committed towards protecting them and ensuring they grow in an atmosphere of utmost care and love. The implication of the

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above is that all forms of harmful activities that could negatively impact children's development should be eradicated from society. One such harmful activity is the continued practice of corporal punishment in homes and schools. This practice has resulted in the premature deaths of many children and caused life-altering injuries to others. Beyond these physical harms, corporal punishment also infringes on children's constitutionally protected right to personal dignity.

In Nigeria, the present legal framework appears to be conflicting, in terms of the position of the law in abolishing or encouraging corporal punishments against children with reference to the Child's Right Act, the Criminal Code and Penal Code. Consequently, this article will take a cursory look at these laws to decipher their implication on the rights of children in Nigeria.

CONCEPTUAL FRAMEWORK

A quick analysis on the meaning of a number of concepts that apply to this article will be considered below.

CHILD

The Child Rights Act 2003 (CRA) has defined a child as a person below the age of 18 years,³ and appears to have settled the matter of who a child is, when it provided that the definition of the child under section 277 of the Act supersede all enactments relating to children, adoption, fostering, guardianship, approved institutions, remand centers, Borstal institutions, and any other matter pertaining to children already provided for in other enactments.⁴

The Administration of Criminal Justice Act 2015 (ACJA)⁵, defines a child to mean a person who has not attained the age of 18 years. The Children and Young Persons Law⁶ (CYPL) interpret a child to be a person who is under the age of 14 years and the sections of the Immigration Act 1963⁷ suggest that a child to be any person below 16 years of age. According to Merriam Webster Dictionary, a child could mean a young person especially between infancy and puberty⁸.

³ Child Rights Act 2003, s277

⁴ *Ibid*, s274(1)

⁵ Administration of Criminal Justice Act 2015, s494

⁶ Children and Young Persons Law, s2

⁷ Immigration Act 1963, ss18(1)(F), 37(1) and 38(1)(2) ¹² (1924) 5 NLR 33

⁸ Merriam Webster, 'Child' <<https://www.merriam-webster.com/dictionary/child>> accessed on 10th February

Several English dictionaries note a child to also mean a descendant, a son or a daughter of any age, or an unborn or recently born person.

PROTECTIVE RIGHTS

Rights has been defined to represent demand or claims which individuals or groups make on society, some of which are protected by law and have become part of the *lex lata* while others remain aspirations to be attained in future⁹.

According to Collins dictionary, Protective means designed or intended to protect something or someone from harm¹⁰. Therefore, Protective rights are rights that protect an entity or its interests from harm. They are rights fashioned to safeguard its bearer from wrongdoing by external forces or persons. They take into consideration the challenges faced by the right holder and put in place certain provisions that works towards the elimination or significant reduction of such prohibited action or omission.

Children possess protective rights under human rights law, encompassing the right to life, survival, protection from violence, non-discrimination, and privacy. Safeguarding these rights is a crucial responsibility for governments, families, and communities to ensure the healthy, safe, and happy growth of children. Education about their rights, self-protection, and access to support services are essential components in addressing potential exploitation or harm.

CORPORAL PUNISHMENT

Corporal punishment has been defined as the infliction of physical pain upon a person's body as punishment for a crime or infraction. Corporal punishments include flogging, beating, branding, mutilation, blinding, and the use of the stock and pillory. In a broad sense, the term also denotes the physical disciplining of children in schools, at home or as a form of punishment.

Corporal punishment has also been defined as the intentional infliction of pain with the intent of changing unacceptable behavior--is allowed in schools in 22 States. Two to three million incidents of corporal punishment are estimated to occur each year. Methods of corporal

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⁹ O Eze, *Human Rights in Africa: Some Selected Problems* (Macmillan Publishers 1982) 5

¹⁰ Collins Dictionary, 'Protective' <<https://www.collinsdictionary.com/dictionary/english/protective>> accessed on 20 May 2024

punishment include hitting, slapping, spanking, shaking, punching, kicking, choking, electric shock, confinement in small spaces, excessive exercise, and fixed postures for long periods. Instruments used in corporal punishment include leather straps, switches, baseball bats, and fists. As a result of corporal punishment, 10,000 to 20,000 students request/need medical treatment each year. Serious injuries and long-term damage have been documented as a result of hitting or spanking.

In Nigeria, incidences of corporal punishments continue to occur and reoccur without parents, teachers and government authorities acknowledging the terrible effect it has on children. As recently as the 20th of May, 2024 a case of an 8-year-old child who was beaten into coma by the teacher was reported at a school known as 'Landmark School' located at Mgbakwu in Awka North Local Government Area in Anambra State. According to the reports, the chances of the child recovering from coma is at 20%¹¹. Over the course of 2023 and January, 2024, a few more cases of deaths and hospitalization as a result of corporal punishments have also been reported all over the country¹². It is believed that many more gory details of corporal punishments continue to occur all over the country, with only few of them being reported or the culprits prosecuted.

In the light of these unfortunate occurrences, it is high time a firm position is taken by the government to totally eliminate corporal punishments of children whether at home, schools or anywhere else they find themselves. There are certainly other means of cautioning children that would not lead to cutting short their lives or hospitalizing them. The first step towards abolishing corporal punishment would be to streamline our laws to all provide for the abolishment of same.

THEORETICAL FRAMEWORK

In this article, two theories are adopted for discussion, which are, the positivist theory and the theory based on Dignity.

¹¹ C Unini, 'Anambra Teacher Arrested For Allegedly Beating 8 Year Old Pupil to Coma' *The Nigerian Lawyer* (2024) < <https://thenigerialawyer.com/anambra-teacher-arrested-for-allegedly-beating-8-year-old-pupil-to-coma/> > accessed 21 May, 2024

¹² E Victor, '16-year-old boy dies after receiving 130 strokes of cane from school principal in kaduna' *BarristerNG* (2023) <<https://barristerng.com/16-year-old-boy-dies-after-receiving-130-strokes-of-cane-from-school-principal-in-kaduna/>> accessed 20 May 2024; E Victor, 'outrage as teacher allegedly flogs lagos pupil to death' *BarristerNG* (2024)< <https://barristerng.com/outrage-as-teacher-allegedly-flogs-lagos-pupil-to-death/> > accessed 20 May 2024.

POSITIVIST THEORY

Positive law is that which is man-made, that is to say, defined formally.¹³ Positive law refers to laws created by entities with the authority to legislate, enforced through sanctions, and legally binding on the members of a state or society. These laws detail specific actions or obligations, establishing rights for individuals or groups. Positive law is context-specific, applying within defined temporal and spatial parameters, encompassing statutory law and binding case law.¹⁴ The fundamental principle of positive law, distinguishing it from natural law, lies in its external imposition on something or someone, contrasting with the inherent nature of the latter. Positive laws are those crafted by the state. Common among positivists is the requirement for formal documentation, the presence of command and sanction elements, and the involvement of a sovereign and subject in every law.¹⁵

THEORY BASED ON DIGNITY

The core idea of this theory is that safeguarding the fundamental value of human dignity stands as the central goal of social policy¹⁶. According to Kant, Human dignity is a status which places the life of human beings above all price¹⁷. Major proponents of this theory include Immanuel Kant, John Locke, John Rawls and Hannah Arendt. Human dignity is a fundamental moral and ethical principle that asserts the inherent worth and value of every individual, regardless of age, gender, race, or any other characteristic. When applied to children, this principle emphasizes their right to be treated with respect, protected from harm, to have their individuality recognized, and to have their basic needs met. This extends to various aspects of life including legal, ethical, and social considerations.

The adoption of these theories as part of this article revolves around the fact that it is the duty of the government to make laws and also enforce them in the country. As such, if there are laws abolishing corporal punishments of children, it behoves the government through its agencies to

¹³ L Green and T Adams, 'Legal Positivism' *The Stanford Encyclopedia of Philosophy* (2019) <<https://plato.stanford.edu/archives/win2019/entries/legal-positivism/>> accessed 20 May 2024

¹⁴ E Malemi, *The Nigerian Legal Method* (Princeton Publishing Co. 2016) 41-42

¹⁵ C C Wigwe, *Jurisprudence and Legal Theory* (Readwide Publishers 2011) 224

¹⁶ Ibid

¹⁷ M McManus, 'Kant's Theory of Human Dignity', *Philosophy Now* (2022) <https://philosophynow.org/issues/150/Kants_Theory_of_Human_Dignity> accessed on 20 May 2024 ⁸¹ S Shah, 'Explainer: Social Contracts' *Idea International* (2022) <<https://www.idea.int/blog/explainer-socialcontracts>> accessed 20 May 2024

ensure that these laws are enforced and complied with fully. As part of its enforcement role, is the prosecution of culprits to ensure that others are deterred from continuing with such acts.

Furthermore, the adoption of the theory based on dignity revolves around the idea that children, just like adults, are human beings with fundamental rights, including the right to the dignity of their person. As such, any act which affects this right, such as corporal punishments, should be eliminated in society.

ANALYSIS OF NIGERIA'S LEGAL FRAMEWORK ON CORPORAL PUNISHMENTS AGAINST CHILDREN

Several laws exist that make provisions on the protection of the rights of children and also the application or abolition of corporal punishments in Nigeria. These laws will be considered below.

THE 1999 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (AS AMENDED)

The Nigerian Constitution vide section 34 provides for the right to dignity of human person. Section 34(1) provides that every individual is entitled to respect for the dignity of his person and as such prohibits the subjection of any person to torture or inhuman treatment, slavery or servitude or forced labour.

It is submitted that acts of corporal punishments contravenes the provisions of the Constitution on the right to dignity of the human person and as such is enforceable under the provision of the Fundamental Rights Enforcement Procedure Rules.¹⁸

Furthermore, it is submitted that corporal punishments not falling under the exception of 'forced or compulsory labour' under section 34(2) of the 1999 Constitution, should not have a place in Nigerian homes or schools. While there may be arguments that there are laws such as the criminal code which provide for corporal punishments, it is submitted that such provisions of

¹⁸ 2009

the criminal code and Penal code are inconsistent with the Constitution and therefore null and void.¹⁹

CHILD RIGHTS ACT 2003

In addition to the rights provided by the Nigerian Constitution, the Child's Rights Act expands and provide for more defined rights specific to the protection of the rights of the Nigerian Child. It is the law that guarantees the rights of all children in Nigeria, providing for the best interest of a child to be of paramount consideration in all actions. It also provides for a child to be given protection and care necessary for his or her wellbeing. The Act was fashioned in the likeness of the United Nations convention on the rights of the child and also, the African charter on the right and welfare of the child which were both ratified but yet to be domesticated in Nigeria.²⁰

Section 11 of the Act recognizes the right of children to the dignity of their person. Section 11 of the Child's Right Act provides for this right and expands its application to freedom from physical, mental or emotional injury, abuse, neglect or maltreatment, including sexual abuse, torture, inhuman or degrading treatment or punishment, attacks upon his honour or reputation, and freedom from slavery or servitude at home, school or in any form conceivable.

The Child's Right Act also abolishes corporal punishment of children, as it is provided in section 221(1) (b) that no child shall be ordered to be subjected to corporal punishment.

CRIMINAL CODE ACT

The Criminal Code Act²¹ is a piece of legislation that serves as a comprehensive legal framework for defining and regulating various criminal offenses in Nigeria. It outlines the elements of crimes, defences and justification, penalties, and legal procedures related to criminal offenses. It is the peak law in southern Nigeria for the investigation, trial and punishment of criminals. It consists of 55 chapters and 521 sections.

The Act vide section 295 makes provisions for the correction of child, servant etcetera, thereby legalizing corporal punishments against children to the extent that unreasonable force is not used. In essence, section 295 permits parents, guardians, schoolmasters, and even Masters to use

¹⁹ Section 1(3) of the 1999 Constitution provides that if any other law is inconsistent with its provision, the Constitution shall prevail, and that other law shall to the extent of the inconsistency be void.

²⁰ By virtue of section 12 of the CFRN 1999(as amended), all international obligations to which Nigeria has subscribed must be specifically enacted by the National Assembly to be enforceable in Nigeria.

²¹ Cap C38 LFN 2004

'a blow or other force' to discipline their wards, or apprentice/servants for misconduct or disobedience to any lawful command as long as such correction does not cause a wound or grievous harm to the child.

Section 295(4) of the Criminal Code, parents or guardians of a child are allowed to delegate the power to inflict correction on their child to any person whom they entrust permanently or temporarily with the governance or custody of their child. It is however provided that such a delegation shall be presumed, except in so far as it may be expressly withheld, in the case of a schoolmaster or a person acting as a schoolmaster, in respect of a child or ward.

Furthermore, in a bid to restrain parents or guardians in the act of inflicting correction, it is further provided that correction of a child who is of a tender age and as such incapable of understanding the purpose for which the correction is inflicted. Also, no correction can be justified which is unreasonable in kind or in degree, regard being had to the age and physical and mental condition of the person on whom it is inflicted²².

It is submitted, that children are fragile beings in the first place, and there is no justification why they should be flogged or punished corporally at any time, whether at home, school or anywhere else. This law is therefore not in tune with present realities and does not regard the right of children to the dignity of their person.

Furthermore, section 18 of the Criminal Code provides that where a male child under the age of 17 years is found guilty of an offence, the court may in its discretion, order him to be caned in addition to or in substitution for any other punishment to which he is liable.

PENAL CODE

The Penal Code²³ is the law concerning criminal offenses and their punishment and it is applicable in the northern part of Nigeria. The Act was adopted on the 30th day of September 1960 and contains a total of 25 Chapters and 409 sections.

Section 55(1) (a) of the code provides for the correction of a child by the parent or guardian, as long as such correction does not amount to the infliction of grievous hurt. This leeway is granted to the parents and guardians for as long as the child is under eighteen years, while the

²² Section 295(6) of the Criminal code

²³ Cap P3 LFN 2004

schoolmaster can discipline a child who is entrusted to his charge as long as that child is under sixteen years²⁴.

The penal code, however, provides that a form of correction that is unreasonable, shall not be justified

CHILDREN AND YOUNG PERSONS ACT 1943

The Children and Young Person's Act²⁵ is the primary piece of legislation that governs the juvenile justice system dealing with the treatment of young offenders and was initially enacted as an Ordinance in 1943. It was subsequently amended through several legislations. The Act was promulgated to make provision for the welfare of the young, the treatment of young offenders and the establishment of Juvenile Courts. As a form of correction, it emphasizes rehabilitation and reformation rather than punitive measures. The Act establishes a system of probation and supervision for young offenders and aims to provide support for their rehabilitation and reintegration into society. Additionally, the act addresses the needs and protection of children who may be neglected, abandoned, or subjected to abuse or exploitation. It provides for the appointment of guardians and custodians to care for such children. It also contains provisions on child labour and enforcement procedures and penalties for violation.

The Act, however, in section 11(2) provides that no young person shall be ordered to be imprisoned if he can be suitably dealt with in any other way such as by prohibition, fine, corporal punishment, committal to a place of detention or to an approved institution or otherwise. Also, section 14(f) of the Act also provides that where a child or young person is tried and found guilty, the court may consider whipping (canning) as a form of punishment for the offence.

ADDRESSING THE CONFLICTING POSITION OF NIGERIA'S LEGAL FRAMEWORK ON CORPORAL PUNISHMENT OF CHILDREN

The abuse of children occurs in different ways; however, it has to be said, that these abuses in whatever form they may appear, is an outright infringement on the dignity of these children²⁶.

²⁴ Section 55(1)(b)

²⁵ CYPA 1958

²⁶ Chiluba Edo, 'Child Abuse and Neglect in the Nigerian Context' <
<https://deliverypdf.ssrn.com/delivery.php?ID=63509009802601800909209910401702811303505500802706305709712608307110512712302512102310305305802802106311309802800011608000812111802503600100912011406607>>

With respect to corporal punishment in Nigeria, there exist some disparity in the provisions of a number of statutes in the country. For instance, section 55 of the Penal Code²⁷ states that; 'nothing is an offence, which does not amount to the infliction of grievous hurt upon any person and which is done by a schoolmaster for the purpose of correcting a child under eighteen years of age entrusted to his charge.'

Furthermore, the purport of section 295 of the Criminal Code is that Parents and guardians in Nigeria may use force to correct misconduct or disobedience by children under sixteen. They can delegate this authority to schoolmasters or others temporarily or permanently for correction purposes, with the presumption of such delegation unless expressly withheld, as long as this use of force for correction does not result in wounds or grievous harm.

Before the advent of the CRA 2003, the position of the law in Nigeria as it concerns corporal punishment as a sentence for juvenile offence was quite different²⁸. Consequently, under the Children and Young Persons Act 1943, it is provided that imprisonment should be avoided for young offenders if alternative methods of correction are suitable, including fines, corporal punishment, detention, or other means. When a child or young person is found guilty of an offense, the court must consider the appropriate way to address the case, which may include corporal punishment²⁹. Also, Section 18 of the Criminal Code provided that if a male under 17 is found guilty of an offense, the court can, at its discretion, order corporal punishment (whipping) as part of or as substitution of other penalties.

The Child's Right Act however, provided in section 221(1) (b) that no child shall be ordered to be subjected to corporal punishment. This provision is contrary to the provisions of Sections 18 and 295 of the Criminal Code, Sections 11(2) and 14(f) of the CYPA and Section 55 of the Penal Code, all of which endorse the use of corporal punishment as a disciplinary method for persons below the age of eighteen ³⁰.

[6122095087093032069067099126024096069099009112076126107068067083106092114070066095030107106068111127&EXT=pdf&INDEX=TRUE](https://www.ajol.info/index.php/naujilj/article/download/82391/72546) > accessed 20 May 2024 at p.2

²⁷ Applicable to Northern Nigeria

²⁸ Okpaloabi Nkechi, Onyi -Ogelle Obioma, 'Corporal Punishment -A Global Trend Towards Child's Rights Protection in Nigeria' (2012) (1) (5) *Kuwait Charter of Arabian Journal of Business and Management Review*

²⁹ S11(2) and 14(f) of the CYPA

³⁰ N A Iguh and O Nosike, 'An Examination of the Child Rights Protection and Corporal Punishment in Nigeria' <<https://www.ajol.info/index.php/naujilj/article/download/82391/72546>> accessed 20 May 2023

Amazingly, even with the introduction of the Child's Right Act and its provision abolishing corporal punishments, it is surprising that the provisions of the other laws such as the Criminal Code and Penal Code still continue to coexist. With these laws all being federal legislations, none of them has priority over the other, leaving the law enforcement agencies and the courts in a state of conundrum. Besides, those who continue to apply corporal punishments at home or schools may continue to rely on these provisions in the Criminal and Penal Codes as an excuse to maltreat their wards. It should be pointed that the risk involved with allowing the continued existence of these provisions, is that parents and teachers may never become aware of the point at which disciplining their wards becomes unreasonable, and leads to grievous harm, as they may be engulfed in their emotions of anger arising from the disobedience by the child.

In the light of these conflicting positions of the law, it is submitted that the best way out is the outright deletion of the provisions of the Criminal Code, Penal Code and the Children and Young Persons Act and any other law, that provides for corporal punishments as a form of punitive measure in criminal Justice system, at home, school or anywhere else in Nigeria. It is believed that once this is done, there would be better clarity on the provision of the Child's Right Act and ease in enforcing its provisions.

CONCLUSION AND RECOMMENDATIONS

The rights of children are protected under various laws in the country. These rights extend to the right to the dignity of their person and protection against corporal punishments. Section 1 of the Child's Right Act provides that 'in every action concerning a child, whether undertaken by an individual, public or private body, institutions or service, court of law, or administrative or legislative authority, the best interest of the child shall be the primary consideration'. It is submitted, that the protection of children from all forms of corporal punishments, is in the best interest of children and as such, should not be breached by any person, parent, teacher or even imposed as a form of judicial punishment, as there are alternative forms of disciplining children for disobedience or commission of an offence.

Unfortunately, under the extant Nigerian legal framework, there exist some level of conflict between the provisions of the Child's Right Act and other laws such as the Criminal Code and Penal Code. Consequently, while the Child's Right Act abolishes all forms of corporal punishments against children, corporal punishments are still being retained in the provisions of the Criminal Code and Penal Code. These conflicting provisions have certainly affected the level

of enforcement of the Child's Right Act in the eradication of corporal punishments in Nigeria. Every now and then, the gory report of corporal punishments and the life altering consequences on children are reported all over the country. Earlier in 2024, a female lawyer, Adachukwu Okafor, was arrested in Onitsha for allegedly brutalizing her 10 year old domestic help with a hot iron and a kitchen knife³¹. There have also been reports of these sad occurrences in schools and homes with some of them not even receiving the attention it deserves. In all, the unfortunate thing that continue to exist, is the lack of effort from the government and its agencies in completely eradicating all forms of corporal punishments in Nigeria.

In the light of these sad development, this article suggests the following recommendations:

1. There is need to amend and delete the provisions of the Criminal Code, Penal Code, Children and Young Persons Act, and every other law that provides for corporal punishments for children. Not only are these provisions a breach on the fundamental rights of children to dignity of their person, but it also falls short of international best practices and rules world over.
2. There is an urgent need for the government through its agencies like the Ministry of Women Affairs, National Agency for the Prohibition of Trafficking in Persons (NAPTIP) to work hand in hand with Non-governmental organizations to sensitize parents, teachers and the general public on the abolishment of corporal punishments and the need for them to stop it's continued practice against children.
3. It is also suggested, that there should be prosecution of persons guilty of using corporal punishments against children to serve as deterrence to others. To encourage this, there is need to open a special line to enable victims (children) of corporal punishments, phone in and make their reports.

³¹ J Chukindi, 'Anambra govt declares lawyer who brutalized househelp wanted' *Daily Post* (2024) <https://dailypost.ng/2024/02/12/anambra-govt-declares-lawyer-who-brutalised-house-help-wanted/#:~:text=Anambra%20State%20Ministry%20of%20Women,with%20a%20hot%20pressing%20iron>> accessed 20 May 2024