

APPRAISAL OF THE LEGAL FRAMEWORK GOVERNING CHILD DOMESTIC WORKERS AND KINSHIP FOSTERAGE IN NIGERIA

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ABSTRACT

One of the most underregulated categories of child labour in Nigeria is child domestic work under kinship fosterage arrangements. It occupies a grey area between customary childcare and forced servitude. This study assessed the legal framework surrounding child domestic workers and kinship fosterage in Nigeria to examine to what extent existing laws protect children involved in domestic labour in their foster homes. The study adopted a doctrinal research approach, analysing primary sources such as the Constitution, Labour Act, Child's Rights Act 2003, Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015, and Evidence (Amendment) Act 2023, together with secondary sources like international and regional instruments including the United Nations Convention on the Rights of the Child 1989, African Charter on the Rights and Welfare of the Child 1990, and selected International Labour Organisation Conventions. The study revealed that while Nigeria's laws effectively criminalise child trafficking and hazardous child labour, they continue to create an exception known as the "family-work exemption" in the Labour Act and the Child Rights Act that allows children to engage in domestic chores under the same conditions as if they were adults and in domestic settings outside of the age restrictions and work limits set for regular employment. These factors, along with partial domestication of the Child's Rights Act across states, lack of ratification of ILO Convention 189 by Nigeria and the incapacity of the relevant agencies such as NAPTIP to monitor informal household-based child placement, led to exploitation of children through family arrangements largely remaining invisible to regulatory bodies. The study suggested that to prevent exploitation in fosterage through kinship relationships, there is no need to introduce new legislation; instead, close existing exemptions in current laws, domesticate Convention 189, and develop monitoring systems.

Keywords: *Child, Labour, Trafficking, Child Labour, Domestic Workers, and Kinship Fosterage.*

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1. INTRODUCTION

Children play a prominent role in all societies, forming a valuable human asset critical to a nation's development. Laws, both domestic and international, acknowledge the well-being, education, and overall welfare of children as of utmost importance. However, despite having legal protection, children in Nigeria are still subjected to abuse and exploitation on the pretext of domestic work and family fostering. Although the work done by children within the house could be considered as socialisation or a family obligation, in most cases, it leads to exploitation of children, denial of their education, and physical abuse, among others.

Children engaged in domestic work have become quite prevalent in Nigeria, and this is influenced by a number of socio-economic factors such as poverty, lack of jobs, rural-urban migration, breakdown of families, cultural expectations, and lack of proper educational facilities. Children, especially young females, work as domestic help in cities to do household tasks without pay or, at times, for meagre pay.¹ While some of the children find themselves comfortable in their working environment and are well taken care of, many suffer from dangerous work environments, heavy workloads, and the danger of being physically and sexually abused. Some children fall prey to deception from people claiming to take them under foster care by family members or family friends, promising education and improved living standards but finally using them as cheap or unpaid domestic servants.

In light of the above, this paper makes an evaluation of the legal framework for the regulation of child domestic workers and fosterage in Nigeria. In this regard, this paper will conduct a critical analysis of the legal frameworks governing these forms of child exploitation and will assess the efficacy of the present legal system to protect the rights of children. Further, the paper will identify challenges within the legal framework and propose possible reforms to Nigeria's child protection laws. The paper highlights that Nigeria has comprehensive laws for protecting children's rights, but their effectiveness depends on proper implementation, accountability, public awareness, and legal reform.

1.1 Statement of the Problem

The following are the two key legal issues which this article attempts to explore:

Non-Harmonization of Statutes: The continuous clash between the statutes of the federal and state governments, which create conflicting age thresholds and standards as far as the legality of using children for domestic labour is concerned.

Procedural and Constitutional Challenges: Evidentiary and constitutional challenges, especially the conflict between the constitutional right to private and family life contained in

¹ International Labour Organisation (ILO), *Compendium of Legal Framework on the Elimination of Child Labour and Protection of Children in Nigeria* (ILO 2023).

section 37 of the Constitution of Nigeria 1999 (as amended) and the responsibility of the government to enforce the law.

2. CONCEPTUAL CLARIFICATION OF TERMS

2.1 Child

The Child's Right Act defines a child as a person below the age of eighteen years.² A child has likewise been defined by the United Nations International Children's Emergency Fund as every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.³ A child has further been referred to as a minor, described as a person of either sex who has not yet reached the age of eighteen (18) years of age.⁴ Similarly, a child, as a minor, has been described differently as an individual of either sex who has not yet reached twenty-one years.⁵ The initial State Party report on the Convention on the Rights of the Child, Swaziland, 2005, also provided different descriptions of a child depending on the context.⁶

From the foregoing, the definition of a child varies from country to country in terms of age limit. In some instances, it would be advisable to put such restrictions in place, for instance, regarding the power to decide on issues related to health care or treatment, and the power to give consent to adoption and change of name.

2.2 Domestic Work

The phrase "domestic work" refers to an extensive array of activities and services that are not universal across all countries and can even differ based on the workers themselves, such as their age, sex, ethnicity, and immigration status, as well as the environment in which they carry out their work. As such, a definition of domestic work based on the tasks alone is always likely to fall short.

Domestic work refers to work done by a household or households, while a domestic worker refers to any individual involved in domestic work within an employment relationship.⁷

² Section 277, Child's Right Act, 2003.

³ <<https://www.unicef.org/child-rights-convention/convention-text>> accessed 2 August, 2026

See also the African Charter on the Rights and Welfare of the Child, 1990, at

<https://clr.africanchildforum.org/Harmonisation%20of%20Laws%20in%20Africa/other-documents-harmonisation_1_en.pdf> accessed 2nd August, 2026.

⁴ Article 459, Child Code Law of Benin Republic,

<https://clr.africanchildforum.org/Harmonisation%20of%20Laws%20in%20Africa/other-documents-harmonisation_1_en.pdf> accessed 2nd August, 2026.

⁵ Article 1, Minority Act, 1920 Côte d'Ivoire.

⁶ Child Care Service Order (1977) considers a child to be below 16,

Employment Act (1980) states a child is a person below 15 years

Reformatory Act (1920) defines a juvenile adult as between 16 and 21 years (for purposes of detention).

The Adoption of Children Act (1952) defines a child as being below 19 years

The Immigration Act (1982) considers a child to be below 18 years of age.

⁷ International Labour Organization's Domestic Workers Convention, 2011 (No. 189)

<<https://www.ilo.org/resource/81-defining-domestic-work>> accessed 2 August, 2026.

Domestic workers provide socially essential services that support their employers' sustenance and families' well-being, usually through direct care (personal care, face-to-face) or indirect care (cooking, cleaning, and other services that help maintain a clean and safe living environment). Millions of these workers provide care services to households. In the same vein, domestic work is defined as an occupation that involves providing personal service, directly or indirectly, from the domestic worker to the domestic employer or to anyone in his/her family, in exchange for money. The list of the names of domestic occupations or the like shall be issued depending on the demands of the labour market as per a decision of a lawful authority.⁸ Therefore, an individual who does domestic work in an occasional or sporadic manner, but not as an occupation, is not a domestic worker.

2.3 Kinship Fosterage

Kinship fosterage is the practice of placing a child under the guardianship of relatives or friends to help him/her receive education, gain an apprenticeship, gain social company, or improve his/her welfare. Kinship fosterage has served as a social safety net throughout history, based on the principles of communal life and shared responsibility among family members. Fosterage within kinship is embedded in African culture in terms of values and has been considered an acceptable social practice in which children have been placed under the custody of their relatives. However, increasing poverty, urbanisation, unemployment, family breakdown, and income disparity have greatly changed its function. Modern-day fostered kinship relationships often become a fine line between rightful care and exploitation of child domestic labour, thus denying the rights of the child.⁹

2.4 Child Labour

Domestic child labour can be defined as cases where domestic work is carried out by children under the legal minimum age for doing so. These include doing so in hazardous circumstances or as slaves. Child domestic work occurs when a child is made to work in someone else's home. It qualifies as modern slavery when a child faces mistreatment and abuse, which include being made to work very young, for too many hours, performing dangerous activities, violence, neglect, or any other condition that may affect the development of a child.¹⁰

Children in foster care in many cases face extreme domestic labour, deprivation of education, economic exploitation, or even trafficking in the name of fostering. As a result, the

⁸ Article 1, Regulation of Domestic Workers and the Like by the Kingdom of Saudi Arabia <<https://www.hrsd.gov.sa/en/knowledge-centre/articles/64441>> accessed 2 August 2026.

⁹ Ifeyinwa Mbakogu, 'Child Fostering or Child Trafficking: Questioning Justifications for Children's Departure from Home' (2020) 2(1) International Journal of Social, Educational and Scientific Research.

¹⁰ International Labour Organization, < <https://www.ilo.org/international-programme-elimination-child-labour-ipecc/sectors-and-topics/child-labour-and-domestic-work>> accessed 2 August 2026.

boundary between proper fostering and exploitative child domestic labour has been getting more and more blurred.

3. LEGAL FRAMEWORK REGULATING CHILD DOMESTIC WORK AND CHILD LABOUR IN NIGERIA

To illustrate the statutory overlaps and lacunae noted above, it is useful to consider the primary laws applicable in Nigeria. These indicate differences in jurisdictional coverage, age range, the primary offence of concern, and enforcement limitations.

3.1 The Constitution of the Federal Republic of Nigeria, 1999

The Constitution of the Federal Republic of Nigeria, 1999¹¹ contains key provisions, including fundamental human rights in Chapter Four. Specifically, Section 34(1) provides that every person, including children, since the section refers to "every person", is entitled to the dignity of the human person. Protection from torture or inhuman treatment, no slavery or servitude, and no forced labour are some of the rights provided in this section. This can be considered the closest constitutional prohibition to child exploitation through child labour since the most serious forms of child labour – bonded labour, servitude linked to trafficking and forced labour – can be classified under "slavery," "servitude," or "forced labour."

On the other hand, Section 34(2)¹² allows exceptions, such as labour prescribed by a court order, labour necessary for armed forces or police in the course of performing their functions, and labour necessary as part of normal communal obligations. These exceptions are so broad that some scholars have argued they exempt certain forms of child labour (such as "communal obligations") from consideration.

Section 17, under Chapter II, Fundamental Objectives and Directive Principles of State Policy, mandates the State to provide for the protection of children, youth, and aged people from exploitation and neglect. This is specifically aimed at protecting children from exploitation and child labour, but this is a very big structural defect since not all rights enshrined in Chapter II are justifiable under Section 6(6)(c) of the Constitution. Thus, one cannot litigate in court under Section 17. Section 18(3) obligates the government to endeavour to provide free, compulsory, and universal primary education, as well as free secondary and tertiary education to the extent feasible. Compulsory education is among the most effective indirect means of combating child labour (since a child who attends school cannot be used for full-time labour), but, once again, this falls under Chapter II.

One of the problems faced in the rescue of such abused domestic help is the right to privacy and family life granted under Section 37 of the Constitution of the Federal Republic of

¹¹ Cap C23, LFN, 2004.

¹² Constitution of the Federal Republic of Nigeria 1999 Cap C23, LFN, 2004.

Nigeria (CFRN) 1999 (as amended). Since domestic abuse involves private houses, such guardians always use the provisions of Section 37 to stop the actions of NAPTIP and police personnel.

Although Section 45 of the Constitution provides for statutory limitations on fundamental rights in respect of public safety, health, or the furtherance of the rights of other persons, procedural difficulties arise in such law enforcement situations. Defence lawyers institute a fundamental rights enforcement suit under the Fundamental Rights (Enforcement Procedure) Rules 2009 when NAPTIP operatives or police invade a private residence without a warrant granted under Section 38 of the TIPPEA 2015 or state Child Rights enactments.

3.2 Labour Act

The Labour Act¹³ described a child to mean a young person under the age of twelve years,¹⁴ This contrasts with the definition under the Children and Young Persons Act, which described a child as a person below the age of 14 years. The Child's Rights Act, 2003 described a child as one who is under 18 years,¹⁵ and further provides that the Act takes precedence over any other enactment concerning children.¹⁶ However, the minimum age provisions in the Labour Act conflict with the above and do not comply with ILO Convention 138 and Nigeria's 15 years of compulsory education.

Crucially, the Labour Act does not extend its minimum age provisions to children of all ages working in light duties in agriculture and domestic service when working under a family member. Furthermore, the Labour Act also does not protect the interests of self-employed children. Similarly, the Labour Act allows light duties from age 12 and domestic service by family members of any age.

That is precisely what makes kinship fostering a blind spot in the Act. A child who has been sent away to work for an aunt, uncle, or other distant family member “to be trained,” “to help in the household,” or “to get a better education” would be included within a familial relationship covered by the Act, even when the child performs unpaid domestic labour.

In this regard, the family/work done at home exemption clause, which was created to ensure the allowance of chores done by relatives within the confines of their family setting, is the particular provision that ensures that kinship fostering does not come under any form of child labour – even if it satisfies the internationally accepted parameters for exploitative or dangerous child labour. The suggested reforms, such as removing the exemption, have not yet been implemented.

¹³ Cap. L1, LFN, 2004.

¹⁴ Section 91, Labour Act, Cap. L1, LFN, 2004.

¹⁵ Section 277, Child Right's Act, 2003.

¹⁶ Section 274 (1), Child's Rights Act, 2003.

3.3 Child's Rights Act (CRA) 2003

First, the Child Rights Act (CRA) 2003 applies in the Federal Capital Territory and in other states in which the law has been internally adopted. The CRA applies the most protective criterion by covering all individuals up to the age of eighteen. In line with the primary offence of child rights violation, the Act makes absolute the prohibition of employment or hiring out of children as domestics outside their own family unit. The primary enforcement limitation of this law is its decentralised application; because child rights fall under state legislative jurisdiction, each state must adopt the CRA individually.

3.4 Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015

The Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015 repealed the 2003 Act (as amended) and provided a framework of measures against trafficking, leading to the creation of the National Agency for the Prohibition of Trafficking in Persons (NAPTIP). The key point here is section 13(6), which provides that the recruitment, transportation, transfer, harbouring or receipt of a child for purposes of exploitation shall be considered "trafficking" whether the means of transportation are used or not. For this purpose, when considering kinship fosterage, the "means" element is not necessary for children. The reason why this is relevant for kinship fosterage is that under the framework of the Palermo Protocol Act¹⁷ follows, trafficking of an adult usually needs evidence of the use of force, deception or coercion; however, for a child, consent (even parent or relative consent to "send the child to stay with an uncle/aunt") does not matter legally.

The Act criminalises child domestic labour by providing that where a person employs, requires, recruits, transports, harbours, receives, or allows a child below the age of 12 to be employed as a domestic worker, the person has committed an offence, which attracts a punishment of at least six months and up to seven years imprisonment.¹⁸ The Act also makes it illegal for any person to employ, require, transport, harbour, or let out a child to engage in labour which is exploitative, injurious, or harmful to the physical, social or psychological development of the child.¹⁹

This is the most obvious case of the provision's application to kinship fostering, whereby the foster child is used to carry out domestic duties in exploitative circumstances (working long hours, denied education and pay, abused), and thereby subjects the hosting relative – as well as any other individual who recruited, transported, or received the child into this situation – to criminal liability despite the family care context.

¹⁷ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

¹⁸ Section 23 (1) (a), Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015.

¹⁹ Section 23 (1) (b), Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015.

Stemming from the above, we can come to the conclusion that the Act provides Nigeria with a legally powerful tool for combating abusive kinship fostering, specifically the trafficking definition, which is not dependent on coercion²⁰ and the offence of employing domestic workers,²¹ Therefore, the mere employment of domestic help below twelve years becomes an offence through the *expressio unius est exclusio alterius* doctrine – that employing a child between 13 and 17 years old as domestic help is legal per se, provided that the prosecution is able to show that the work is "hazardous" or forced Labour. This construction negates the prohibition of absolute nature made in Section 28 of the Child's Rights Act 2003.

But it does not effectively address kinship-related child domestic labour because of poor detection in private family circumstances and inconsistencies with the Labour Act.

3.5 Evidence (Amendment) Act, 2023

The Evidence (Amendment) Act 2023, which received assent on 12 June 2023, amends the Evidence Act 2011 and primarily aligns the legislation with modern technological developments by providing for electronic records, digital signatures, and the admissibility of electronic evidence. The new Act is neither a child protection nor an anti-trafficking law, and makes no significant changes to child witness competency laws or to trafficking or child labour offences. As such, its significance to child domestic workers and kinship fostering lies solely in evidence.

The Act defines electronic record as "data, a record, an image or sound stored, transmitted or received in electronic form or on microfilm, in circumstances analogous to the circumstances of a computer-generated document".²² Under the Act,²³ an electronic record, which has been printed, recorded, or copied, is considered to be a document and can be accepted as evidence of the matter stated in such document.²⁴

Criminal proceedings against those who have violated the Labour Act, Child's Rights Act, or TIPPEA 2015 and whose victims are domestic workers placed within the kinship-based arrangement can now rest assured about using WhatsApp conversations for the placement of the child worker, mobile money transfers to the recruiting agent/kin, or call logs/video/audio recordings of statements — all of which are increasingly becoming the tools of informal kinship placements (phone conversation with aunt, money transfer as upkeep money, and so forth).

²⁰ Section 13(6), Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015.

²¹ Section 23(1)(a), Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015.

²² Section 10, Evidence (Amendment) Act, 2023.

²³ Section 84B, Evidence (Amendment) Act, 2023.

²⁴ Amarachi Nickabugu and Oluwatosin Iyayi, Highlights of the Evidence (Amendment) Act 2023, <<https://www.aluko-oyebode.com/insights/highlights-of-the-evidence-amendment-act-2023/>> accessed 4 August, 2026.

The Evidence (Amendment) Act, 2023 represents a general modernisation of Nigeria's evidence rules, but it is important primarily for enhancing the tools (digital communication, transfers, recordings) that can help in prosecuting exploitative kinship fostering cases using the provisions of the Labour Act, Child Rights Act, or TIPPEA 2015. However, this Act does not address two crucial factors that inhibit prosecuting these cases: the lack of child-specific witness safeguards beyond the 2023 provisions and the informal nature of the kinship fostering system.

3.6 Violence Against Persons (Prohibition) Act (VAPP) 2015

The Violence Against Persons (Prohibition) Act (VAPP) 2015, introduced in the Federal Capital Territory of Nigeria and endorsed by most Nigerian States, generally applies to all people and covers domestic violence. Its primary concern is physical battering, torture, starvation and emotional cruelty inside the domestic environment. The main drawback of using this law in cases of child domestic help abuse relates to procedural and evidentiary difficulties in proving abuse if there were no physical injuries inflicted; it would be especially hard when dealing with young victims of intimidation.

3.7 United Nations Convention on the Rights of the Child, 1989

The UN Convention on the Rights of the Child:²⁵ Nigeria ratified it in March 1991 and went further by implementing the Child Rights Act in 2003 following ratification. This is because Nigeria has a dualist system of law, which means any international treaty must be constitutionally domesticated before it can apply under Nigerian law. For federal law, all thirty-six states and the FCT must domesticate the legislation, which helps explain why some statutes are domesticated inconsistently.²⁶

Article 20 of the UNCRC acknowledges the possibility of providing care to a child who lacks a family setting through kinship care, which should be done with due regard to the continuity of the child's upbringing and to the child's ethnicity, religion, culture, and language. This implies that the Convention views kinship fosterage per se as an issue, and that the conditions imposed on the child (work, abuse, lack of education) trigger other articles of the Convention. This is exactly why kinship fosterage in Nigeria is a legal gap.

²⁵ United Nations Convention on the Rights of the Child (UNCRC) 1989, 1577 UNTS 3.

²⁶ Zaynab Bashir, An Evaluation of the Impact of the Child Rights Act In Regulating the Rights of a Child in Nigeria, < https://iawj.org/content.aspx?page_id=2507&club_id=882224&item_id=4600,> accessed 4 August, 2026.

Article 32 of the UNCRC recognises the right of the child to be protected from economic exploitation and any activity which is likely to be hazardous, interfere with the child's education, or harm the child physically, mentally, spiritually, morally or socially.²⁷

Poverty is one of the major causes of child abuse in Nigeria, forcing some parents to expose their children to hawking and domestic employment; the same economic force that forces many family-related placements of children.²⁸

UNCRC provides a good normative framework as far as Article 20 recognises kinship care, Article 32 bars the exploitation of the labour aspect of kinship care, and Articles 34 to 36 criminalise the worst aspects of it, but because the Convention itself prefers kinship care as an alternative care system and due to the poor implementation of the CRA in Nigeria, the child working as an unpaid domestic worker in his/her kin's house will never benefit from the provisions of the Convention.

3.8 African Charter on the Rights and Welfare of the Child (ACRWC) 1990.

Nigeria acceded to the African Charter on the Rights and Welfare of the Child²⁹ in July 2001, an international document that stresses culturally specific child protection. Despite the fact that the Child's Rights Act is usually understood as the domestication of both the UNCRC and the ACRWC. In practice, courts and enforcement bodies treat the CRA as the only legal document; therefore, where the CRA is not domesticated in the states, the provisions of the ACRWC cannot be domesticated separately.

Article 20 legitimates kinship care as a preferred form of care, not an inherently suspect one. This is underscored by the African Charter's drafting history, which recognises the need to preserve and enhance positive African morals, values, and culture, where children have traditionally been placed with relatives for upbringing, apprenticeship, or education. The African Child's Rights Convention hence provides ample normative protection for the actual act of kinship placement. The concern is that it may provide the same cultural deference to cover up exploitation once the child is placed with the host family.³⁰

²⁷ This is captured in Article 28(1)-(2) of the Child Rights Act which states that a child should not be employed for any work other than domestic work within his/her household as a domestic servant or any work that would require the child to carry, drag, or lift things that might affect the development of the child.

²⁸ Amanda Adaeze Anyogu, Legal Protection of Children in Nigeria: Examining the Extant Laws and Policies, Nnamdi Azikiwe University Journal of Private and Property Law, Vol. 1(1), July, 2024, <file:///C:/Users/SECRETARY/Downloads/LEGAL+PROTECTION+OF+CHILDREN+IN+NIGERIA+EXAMINING+THE+EXTANT+LAWS+AND+POLICIES.%20(1).pdf> accessed 4 August 2026.

²⁹ African Charter on the Rights and Welfare of the Child (ACRWC) 1990, OAU Doc. CAB/LEG/24.9/49 (1990), Adopted by the 26th Ordinary Session of the Assembly of Heads of State and Government of the OAU, Addis Ababa, Ethiopia, July 1990. Entered into force on 29 November, 1999.

³⁰ <<https://www.ohchr.org/en/resources/educators/human-rights-education-training/2-african-charter-rights-and-welfare-child-1990>>.

Article 25 of the Charter on "Separation from Parents" directly addresses the issue of alternative care: according to Article 25 of the Charter, a child who is orphaned or deprived, either temporarily or permanently, of his/her family environment, or whose own best interests require that he/she be separated from it, shall have the right to special protection and assistance in order to provide for him/her a family type of care, including foster placement and institutional care, as well as the right to be traced and reunited with parents or relatives if separation results from any form of conflict or disaster.

3.9 International Labour Organisation (ILO) Conventions

Nigeria's implementation of ILO conventions³¹ on this matter is one of full-scale ratification on the child labour side, but a history of no ratification on the domestic labour side – thereby creating precisely the vacuum into which kinship-induced child domestic workers slip.

Convention No. 182 (Worst Forms of Child Labour, 1999) – ratified, universal convention. By August 2020, Convention 182 had been ratified by all 187 ILO member nations, demonstrating an international commitment that there is no room in society for practices involving child labour such as slavery, sex trafficking, the employment of children in warfare, and other activities harmful to a child's health, morals, and mental wellbeing. In doing so, Convention 182 mandates that ratifying countries take urgent action to prohibit and eliminate such worst forms without undermining their ultimate aim to eradicate all forms of child labour. This binds Nigeria to international law regarding its most extreme examples of fosterage through kinship resulting in exploitation (domestic servitude and placement via trafficking).³²

3.10 Socio-Legal Context of Kinship Fosterage

The system of sending young children to live with relatives or community caretakers is an indigenous institution traditionally viewed as a developmental process in West Africa, documented in Nigeria's socio-legal literature as kinship fosterage or *omugwo*.³³ Traditionally, this system had two socio-economic functions: it facilitated urban formal education and

³¹ The International Labour Organisation (ILO) is devoted to promoting social justice and internationally recognised human and labour rights, pursuing its founding mission that social justice is essential to universal and lasting peace. The only tripartite U.N. agency, since 1919, the ILO brings together governments, employers, and workers from 187 member states to set labour standards, develop policies, and devise programmes promoting decent work for all women and men.

³² <<https://www.ilo.org/international-programme-elimination-child-labour-ipecc/what-child-labour/ilo-conventions-child-labour>>

³³ U.S. Isiugo-Abanihe, "Child Fosterage in West Africa" (1985) 11(1) Population and Development Review 53–73; see also O.A. Ojelabi, *Kinship Fosterage and Child Protection in Contemporary Nigeria* (Malthouse Press 2018) 45.

vocational apprenticeship for rural children while also providing family members with household services.³⁴

Nevertheless, over the last three decades, socioeconomic challenges, rural poverty, and urbanisation have distorted this socio-cultural practice.³⁵ Child fostering through kinship ties has become more of a business that involves selling children into a market for domestic child labour. Poor parents in the rural areas sell their children to recruiters (middlemen), who give them a lump-sum payment of money or promise to send them monthly remittances due to economic insecurity. These middlemen then lease out these children, mostly young girls, to wealthy urban families living in cities like Lagos, Abuja, Port Harcourt, and Enugu.

3.10.1 *The Domestic Abuse Matrix*

Once they become incorporated into domestic homes, child domestic workers become vulnerable. Being behind the shutters of domestic homes, they are exposed to circumstances that qualify as modern-day slavery, forced labour, and child abuse according to international and domestic standards:

Cases of abuse are characterised by:

- i. Deprivation of fundamental access to primary and secondary education;
- ii. Starvation in terms of nutrition and lack of adequate sleep;
- iii. Physical battering, burning, and corporal punishments by their custodians; and
- iv. Risk of sexual molestation and rape by family members.

Even with a full-fledged legislative framework designed to safeguard the rights of the children—the most prominent being the Child's Rights Act 2003³⁶ (CRA)—efforts towards prosecution of such domestic cases of child abuse and abolishing child domestic servitude have proven to be challenging tasks for law enforcement agencies and concerned individuals.

3.11 Analysis of Judicial Precedents

To understand how Nigerian courts treat child protection, fundamental rights, and parental responsibility, this section considers key judgments from the Appellate courts.

3.11.1 *Paramount Importance of Child's Best Interest*

In *Tapa v. Tapa*,³⁷ the Court of Appeal formulated the principle that in any case dealing with the upbringing, custody, and welfare of children, the paramount importance is the "best interest of the child." This means that rigid procedures and custom-made claims of authority cannot override the child's best interests in physical, moral, and emotional terms.

³⁴ C.N. Himonga and A. Armstrong (eds), *The Rights of the Child in Eastern and Southern Africa* (University of Zimbabwe Publications 1995) 112.

³⁵ UNICEF Nigeria, *Child Labour and Exploitation in Nigeria: A Country Profile* (UNICEF 2021) 14–18.

³⁶ The Act provides that the best Interest of a Child to be of paramount consideration in all actions.

³⁷ (2001) 12 NWLR (Pt. 726) 450.

The above principle was broadened in *Okide v. Okide*³⁸ where the Court of Appeal clarified that the power of guardianship or parenting is not absolute. The court stated that in the case where the guardian or parent refuses to provide the necessary care for the child, causes physical or mental suffering to the child or puts the child into degrading conditions, the state has the constitutional right to act and deprive the guardian or parent of custody or guardianship.

The case of *NAPTIP v. Okoro*³⁹ reaffirmed the powers vested in NAPTIP under the TIPPEA Act to search private premises, arrest individuals suspected of such crimes and bring charges against guardians who recruit and exploit children in commercial domestic servitude. The defense's assertion that private arrangements between consenting adults and placement agents were beyond the purview of human trafficking laws was rejected by the Court of Appeal. The Court of Appeal ruled that use of child labour in domestic service was exploitative in nature and therefore a form of child trafficking in Nigeria.

4. ISSUES, CHALLENGES AND PROSPECTS OF REGULATING DOMESTIC WORKERS AND KINSHIP FOSTERAGE IN NIGERIA

4.1 Issues and Challenges

4.1.1 The Statutory Conflict Matrix: Harm-Reduction Vs. Absolute Prohibition

Conflicting laws at the federal level in Nigeria make prosecution for the use of child domestic labour structurally difficult. Nigeria's legal system comprises two contradictory jurisprudential models of child labour laws: the old, regulated labour model and the new absolute prohibitive labour model.

4.1.2 The Conflict between the Labour Act and the Child's Right Act 2003

The Labour Act⁴⁰ reflects colonial-era industrial standards. Section 59(1) of the Labour Act states that it is illegal to employ children below twelve years of age in "industrial undertakings." In contrast, Section 59(2) provides that children may be used for "customary light work" in agriculture or domestic work if the work is done in a family context.⁴¹

This makes for a statutory contradiction: 'In many cases, lawyers argue on the basis of Section 59 of the Labour Act that domestic housework done by a teenage child aged 12-17 is "light domestic work."⁴² In contrast, Section 28(1)(d) of the Child's Rights Act 2003 prohibits the employment of any person under eighteen years of age as a domestic helper outside his/her family.

³⁸ (2002) 4 NWLR (Pt. 758) 581 (CA).

³⁹ (2018) FWLR (Pt. 921) 112.

⁴⁰ Cap L1, Laws of the Federation of Nigeria, 2004.

⁴¹ See B. Atilola, *Nigerian Labour and Employment Law: Principles and Practice* (Hybrid Consult 2019) 204.

⁴² See E.N.U. Uzodike, "Child Labour or Child Abuse: A Legal Appraisal of the Nigerian Situation" (1990) 3 *Nigerian Juridical Review* 81–99.

Despite the existence of an explicit conflict provision in Section 274 of the CRA 2003 that makes the provisions of the CRA superior to any inconsistent laws regarding the rights of a child, the trial courts continue to deal with conflicting provisions where the state prosecutor institutes charges against the accused under the Penal Codes or Labour Acts rather than Child Rights Laws adopted by the states.

Section 23 (1) of the law clearly makes the mere employment of domestic help below twelve years an offence through the *expressio unius est exclusio alterius* doctrine – that employing a child between 13 and 17 years old as domestic help is legal per se, provided that the prosecution is able to show that the work is "hazardous" or forced Labour. This construction negates the prohibition of absolute nature made in Section 28 of the Child's Rights Act 2003.

4.1.2 Evidentiary and Constitutional Obstacles in Prosecution

The prosecution of cases involving abuse of domestic help performed within private houses faces different issues as compared to other public street crimes. Where prosecution proceeds against child abuse under VAPP or state Penal Codes, the prosecution's case is founded on the testimony of the child victim, but procedural difficulties arise under the Evidence Act 2011 (as amended):

- i. *Competency and Corroboration of Minor Witnesses:* According to Section 209(1) of the Evidence Act 2011 (as amended), when a child below fourteen years is called as a witness, the court shall conduct a *voir dire* inquiry to establish whether the child understands the nature of an oath. In a situation where the child has sufficient intelligence but does not understand the nature of an oath, unsworn evidence can be admitted. Nevertheless, according to Section 209(3), a conviction of the accused based purely on the hearsay evidence of a child without any corroboration of independent material evidence would not suffice.
- ii. *Recanting of the Victim and Financial Inducement:* Due to financial remittances regularly being received by the parents or recruiting agents from the abuser or guardian, parents often compel the child-victims to recant their testimony in court. In the event that a child-victim either recants or fails to testify in court, statements made by the prosecution to either the police officer or the medical practitioners become hearsay evidence as per Section 37 and 38 of the Evidence Act 2011.

4.1.3 Clarification on the age of a Child

The term "child" as used in the Labour Act meant persons below 12 years; in the Children and Young Persons Act, it was 14 years, but the Child's Rights Act 2003 has defined a child as 18 years old in all enactments and stipulates in section 274(1), "that the Child's Rights Act is superior to all enactments concerning children". Unfortunately, however, the

Labour Act's minimum-age framework contradicts this definition, and the minimum age of employment under the Act does not meet the requirements of ILO Convention 138 or even Nigeria's 15-year compulsory education requirement.

4.1.4 *Family Exemption*

The "family exemption" is the key element of the problem of kinship fostering. The Labour Act permits children of any age to perform light tasks in agriculture and domestic work as long as they work with their family members, and the minimum age provision does not cover self-employed children. The same applies elsewhere: light work is permitted at age 12, and domestic work with family members at any age.

This is precisely why kinship foster care remains a grey area under the law. An individual sent to live with an aunt, uncle, or distant cousin "to learn," "to do household chores," or "to attend a better school" fits squarely into the category the Act defines as familial, not employment.

4.1.5 *Domestic Servants in the Labour Act*

Domestic servants in the Labour Act have slim and vague protection. According to Article 91 of the Labour Act, a "domestic servant" means a house, table or garden servant engaged in carrying out domestic services in relation to a private dwelling or driver in a privately owned vehicle. The question remains whether coverage of ordinary labour standards is applicable: Provisions regarding working hours, breaks, and overtime apply to "a worker" – a general term, which implies applicability to domestic servants; likewise with the provision of an annual paid holiday provided in Article 18.

In reality, domestic servants seem to be deprived of the right to receive a minimum wage, and the provisions of maternity leave of Article 54 require reconsideration in order to prevent deprivation of that right.

There is also a specific regime of limited protection: Part III of the Labour Act contains a brief "Domestic service" chapter (Article 65), which refers to the matter in question.

4.2 Prospects

4.2.1 *Eradication of Forced Labour*

The laws are in place – and quite comprehensive, in theory. Nigeria is a signatory to ILO Convention 138 regarding the minimum age of employment; ILO Convention 182 on the worst forms of child labour; and ILO Conventions 29 and 105 on the abolition of forced labour. Also, Section 34 of the 1999 Constitution (amended) prohibits forced and compulsory labour, imposing fines and/or imprisonment on offenders. Together with the Labour Law, Child's Rights Law, TIPPEA 2015, and the international treaties analysed earlier, this creates a web of

legislation that, in theory, should make it clear that forced child domestic labour within kinship care arrangements is illegal.

There have been robust legal and institutional foundations established in Nigeria to combat forced labour and child labour, and the shift in focus towards 2025-2030 proves that the commitment is sincere and not just lip service. However, each subsequent promise so far has focused on child labour within the visible and formal sector; the family-fostered domestic child worker – which is protected by family exemption laws and invisible to labour inspections and thus underreported in national statistics – is the group least likely to be reached by existing programs to eradicate such practices unless the next wave of policies specifically focuses on this informal and household practice.

4.2.2 Eradication of Child Trafficking

Relevant bodies are developing international partnerships with a proactive, productive track record in prosecution and rescue, and Nigeria is expanding its efforts into the longer-range Child Protection Compact initiative through 2032. However, its own internal evaluators pinpoint exactly the kind of misapprehension involved: child domestic servitude organised via family or kinship routes is consistently mistaken as culture, not crime; public awareness campaigns do not reach the rural regions where these placements begin; and funding is a mere fraction of what is needed considering the scope of the issue – millions in modern slavery across the country. In this case, eradication involves less a legal loophole than an implementation problem and misperception, and the new initiative for 2027 to 2032 is the clearest sign yet that Nigerian organisations recognise this and seek to address it.

4.3 Recommendations

To eradicate the practice of commercial exploitation of child domestic servants and address evidentiary problems involved in prosecution of child domestic abuse cases, Nigeria needs to adopt an integrated strategy comprising statutory harmonisation, regulatory measures, procedural changes and community monitoring.

4.3.1 Statutory Harmonisation and Abolition of Obsolete Provisions

The National Assembly should address the statutory inconsistencies that defence counsel has exploited in child Labour court proceedings by amending Section 59 of the Labour Act to repeal the twelve-year age limit for employment. It is necessary to include in the Labour Act a cross-reference to Section 28 of the Children's Rights Act 2003 stating an absolute prohibition on the employment of any child under eighteen years old as a domestic servant outside of the immediate family.

Uniformity of Section 23 of TIPPEA 2015: Section 23(1) of TIPPEA 2015 needs to be revised by deleting the phrase "under the age of twelve years". The offence of hiring out,

employing or keeping a child in domestic labour shall apply to all children below eighteen years old.

4.3.2 *Mandatory Regulation and Licensing of Domestic Placement Agencies*

Informal recruitment agents operate as the business chain of child domestic Labour. The Federal Ministry of Labour and Employment, in partnership with NAPTIP, needs to create a mandatory regulation for domestic recruitment agencies:

Mandatory Biometric Registration: Placement agencies should be legally required to register with the Ministry of Labour and maintain biometric data, National Identification Number (NIN), and proof of address for adult domestic workers.

Liability for Unauthorised Placement: It would become a strict liability offence to run an informal placement agency or facilitate domestic employment of minors under the Child's Rights Laws of individual states, making the brokers equally liable as co-conspirators in trafficking under TIPPEA 2015.

4.3.3 *Procedural Reform under the Evidence Act and Fast-Track Courts*

To mitigate evidentiary weakness (such as witness tampering, victim retraction and objections to hearsay testimony in court), the following procedural reforms are suggested:

Establishment of Domestic and Sexual Violence Specialised Courts: State judiciaries need specialised courts with the capacity to conduct trials via video conferencing, victim screening, and closed court. This allows child witnesses to testify without being seen by their abusers.

4.3.4 *Rebuttable Statutory Presumption of Coercion Under the Evidence Act*

The Evidence Act 2011 should be amended to create a statutory rebuttable presumption of law: when evidence exists showing that a parent or guardian has received financial payment or remittance for the placement of the minor child within another person's household other than his/her own family members, then there is a rebuttable presumption that such an act is an example of forced Labour and human trafficking as defined in Section 23 of TIPPEA 2015. This puts the burden of proof on the defendant to prove that the child is not forced into exploitation.

4.3.5 *Ward-level Child Protection Committees*

Given that child domestic abuse is perpetrated in closed residential homes, law enforcement authorities cannot just depend on post-abuse reports for investigations. State Ministries of Social Development should establish ward-level child protection committees in all local government areas. Such ward committees, comprised of school officials, health care personnel, traditional rulers, and civil society, can function as early warning systems for reporting children who are out of school and suspected cases of domestic child servitude to

either NAPTIP or the Nigeria Police Force without violating the provisions of Section 37 of the 1999 Constitution.

4.4 Conclusion

The problem of commercialisation of traditional practices of kinship fosterage into domestic child servitude is an issue of systemic concern for the protection and welfare of children in Nigeria. In spite of the presence of some statutory measures, including the Child's Rights Act of 2003, TIPPEA 2015 and the VAPP Act 2015, the continuing statutory conflict within these statutes, on the one hand, and the older statutes like the Labour Act, on the other, hinders effective prosecution of the cases.

The eradication of child domestic Labour will depend on the resolution of the legislative conflicts, regulation of informal placement agents, and protection of child witnesses under the Evidence Act.

The manuscript's organisation follows a clear flow across its five main parts. The manuscript begins with the Abstract and Section 1 (Introduction), which sets out the social/legal background of fosterage as kinship becoming commercialised labour in cities. Section 2 establishes the theoretical background by defining what the ILO and UNCRC consider appropriate family tasks, as opposed to dangerous domestic labour. Sections 3 and 4 make up the doctrinal part, considering the legal conflicts among the Labour Act, CRA 2003, and TIPPEA 2015, along with constitutional challenges to Section 37 of the 1999 Constitution and Section 209 of the Evidence Act.