Nnamdi Azikiwe University Journal of Private and Property Law Volume 2(2) Sept., 2025

ENFORCEMENT OF FUNDAMENTAL RIGHTS OF THE NIGERIAN CHILD: CALL FOR JUDICIAL INTERVENTION[1]

***Chinazor Queen Umeobika *Linda Amarachi Oti-Onyema**

Abstract

The child, like adults, is a human being entitled to respect for his/her fundamental human rights, and to seek redress for breaches of these rights. These rights are enshrined in the Constitution and other human rights instruments, but are, unfortunately, obeyed more in breach than in compliance. The child is immature and therefore needs protection for his/her adequate development and growth, and the lack of enforcement of violations of their fundamental human rights undermines these objectives. Effective enforcement of the breach of the fundamental human rights of the child is imperative, and the court, as a pillar of justice, can be very instrumental. The court's role in ensuring effective enforcement of fundamental rights of the child is examined in this work, and its impact on the development of the child is underscored. Doctrinal methodology was adopted, and the work found that breaches of fundamental human rights of the child in Nigeria are rife and their impacts catastrophic. Although the courts have not done much to mitigate these violations, it is believed that they have the capacity to rescue the child from these violations if properly managed. The work recommended inter alia, proactive, speedy and efficient adjudication of fundamental human rights enforcement cases concerning children, as well as the resolution of the conflict between the jurisdiction of the High Court and the Family Court.

Keywords: Child, Court, Enforcement, Fundamental Rights.

1.1 Introduction

The Constitution of the Federal Republic of Nigeria 1999 (as amended) [2] provides for access to the High Court on application for the enforcement of the guaranteed human rights. Thus, any person who alleges that his or her fundamental human right is breached or is likely to be breached may apply to a High Court in the State where the breach occurred for redress[3]. The Fundamental Rights are provided under Chapter Four of the Constitution. These rights include: right to life; right to dignity of human person;

[1] ***Chinazor Queen Umeobika PhD**, LLM, ,BL, LLB , Lecturer, Faculty of Law, Nnamdi Azikiwe University, Awka. cq.umeobika@unizik.edu.ng.
***Linda Amarachi Oti-Onyema,** PHD,LLM, BL,LLB, Lecturer, Faculty of Law, Nnamdi Azikiwe University, Awka, la.oti-onyema@unizik.edu.ng

[2] Constitution of the Federal Republic of Nigeria, 1999 (as amended).

[3] *Ibid*, s.46(1).

right to personal liberty; right to private and family life; right to freedom of thought, conscience and religion; right to freedom of expression and the press; right to peaceful assembly and association; right to freedom of movement; right to freedom from discrimination; right to acquire and own immovable property anywhere in Nigeria etc[4]. The child is a human being and therefore entitled to respect for his or her fundamental human rights as enshrined under the Constitution of the Federal Republic of Nigeria, and every human right provided under other human rights instruments, both domestic and international. However, the scope of this work is the fundamental human rights of the child under the municipal laws of the country, with particular reference to the Constitution, the Child's Rights Act and the Fundamental Rights Enforcement Procedure, Rules. Protection of the rights of the child is key to proper development and well-being of the child, and in the event of infringement of their rights, adequate legal steps should be taken to enforce same, in the best interest of the child. This aligns with the provisions of the Child Rights Act, 2003, the United Nations Convention on the Rights of the Child[5], and the African Charter on the Rights of the Child, which provide that in any matter concerning the child, the best interest of the child should be the paramount interest. This work discusses the court as an indispensable pillar in driving effective enforcement of the child's fundamental human rights and its impact on child well-being and development.

2.0 Fundamental Rights of the Child in Nigeria

The word "right" is derived from the Latin word *rectus*, which means correct, straight or opposed to wrong. It may also mean in accord with law, morality and justice.[6] Black's Law Dictionary defined right to mean justice, ethical correctness or consonance with the rules of law or the principles of morals. In the noun form, it means a power, privilege, or demand, inherent in one person and incident upon another.[7] According to Justice Oputa of blessed memory:

> "a right in its most general sense is either the liberty (protected by law) of acting or abstaining from acting in a certain manner, or the power (enforced by law) compelling a specific person to do or abstain from doing a particular thing. A legal right is thus the capacity residing in one man

[4] *CFRN 1999(As Amended)* s.33 - 43.

[5] 1989

[6] C.A. Oputa, "*Human Rights in the Political and Legal Culture of Nigeria*," (Lagos: Nigeria, Law Publications, 1989) , p. 38.

[7] H.C. Black Black's Law Dictionary, Minnesota: West Publishing Co., 6th ed., 1990

> of controlling, with the assent or assistance of the state, the actions of others"

In *Afolayan v Ogunride*,[8] right was defined as "an interest recognised and protected by law." Also in *Uwaifo v A-G. Bendel State $ ors*[9] the Supreme Court held that "a legal right is any advantage or benefit conferred upon a person by a rule of law ". L. S Jawitsch defined right as :a legally sanctioned measure of a person's possible conduct that guarantees him independence, freedom of choice and the enjoyment of material and spiritual blessings on the basis of the existing relations of production and exchange.

In the context of human rights, Osita Eze defines rights 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 future.[10] This definition is seen in the dichotomy created by the Constitution between fundamental rights under Chapter IV of the Constitution and the fundamental principles and directives of state policy under Chapter II of the Constitution. For Cranston, a right is:

> "Something of which no one may be deprived without a great affront to justice. There are certain deeds which should never be done, certain freedoms which should never be invaded, some things which are suppressively sacred."[11]

The rights of the child are therefore powers, interests or benefits inherent in a person by virtue of being firstly a human being and secondly a child, which are enforceable by law. The corollary of right is duty. As rightly observed by Oputa, every right involves a person invested with the right and persons on whom that right imposes a correlative duty or obligation. For Raz, a right exists when an aspect of a person's well-being is sufficient reason for holding some other person or persons to be under a duty.[12]

A child in Nigeria is entitled to the rights listed under Chapter IV of the Constitution which include, right to life; right to dignity of human person; right to personal liberty; right to private and family life; right to freedom of thought, conscience and religion; right to freedom of expression and the press; right to peaceful assembly and association; right to freedom of

[8] (1990) 1NWLR(PT.127)369 at 391

[9] (1982) 7 S. C.124 at 273

[10] O. Eze, *Human Rights in Africa: Some Selected Problems* (Macmillan Publishers, 1982), p.5

[11] M. Cranston, Human Rights Real and Supposed, in Raphael (Ed.), Political Theory and the Rights of Man, (Bloomington: Indiana University Press, 1976), p. 52

[12] J. Raz, *the Morality of Freedom*, (Oxford, 1986), p. 116

movement; right to freedom from discrimination; right to acquire and own immovable property anywhere in Nigeria etc.

These rights are also provided for in the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act and the Child Rights Act. The Child Rights Act provides - "the provisions in Chapter four of the Constitution of the Federal Republic of Nigeria 1999, or any successive constitutional provisions relating to fundamental rights, shall apply as if those provisions are expressly stated in the Act."[13] The Act further provided for rights in addition to the guaranteed rights under the Constitution, some of which are contained in Chapter Four. These rights include rights to survival and development; name; health; parental care, protection and maintenance; free, compulsory and universal primary education etc.[14] The African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act provides for the Rights to freedom from discrimination; equality; life; liberty; fair trial; religion, conscience and profession; expression, etc. It also made provisions for economic, social and cultural rights, such as the right to work; the right to health; the right to education, etc.[15]

With the plethora of rights made available to the child, the question of whether a child is a right-bearer has been put to rest. Where there are no clear rights provided, the Child's Rights Act has provided a principle that guarantees the child's protection at all material times, the best interest principle. Wayne, in trying to give meaning to the principle of the best interests of the child, described it as a prediction of what, among available alternatives, holds the most promise for meeting the child's holistic needs.[16] The principle is further considered to be a method of making decisions that requires the decision-maker to think what the best course of action is for the child.[17]The CRA 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.

In case of *Esabunor and Anor v Faweya and Ors,*[18]the Court gave a primary place to the best interest of the child in transfusing blood to him to keep him alive over and above the religious belief that is opposed to blood transfusion.

[13] Child Rights Act, 2003, s. 3(1).

[14] *Ibid*, ss 3(2) , 13- 15.

[15] African Charter on Human and People's Rights (Ratification and Enforcement) Act, 1983, ss 2,3,4, 6, 7,89,15,16,17.

[16] R Wayne, 'The Best Interests of the Child: A Silent Standard – Will You Know It When You Hear It' (2008) 2 Journal of Public Child Welfare, p. 33

[17] T Joyce, 'Best Interests Guidance on Determining the Best Interests of Adults Who Lack the Capacity to Make a Decision (or Decisions) for Themselves' (2005) British Psychological Society , p.7

[18](2019) LPELR 46961 (SC)

3.0 Enforcement of Fundamental Human Rights in Nigeria

3.1 Constitution of the Federal Republic of Nigeria, 1999 (as amended)

The Constitution provides that 'any person who alleges that any of his fundamental rights [19] has been, is being, or is likely to be contravened in any State in relation to him may apply to a High Court in that State for redress.[20]This provision is discretionary and places the decision to seek redress or not on the person whose fundamental rights have been infringed. The decision is usually determined by various factors. Glaring examples are socio-economic factors such as poverty, illiteracy and ignorance.

On the issue of jurisdiction, the Constitution provides as follows: "Subject to the provisions of this Constitution, a High Court shall have original jurisdiction to hear and determine any application made pursuant to the provisions of this section and make such orders, such writs and give such directions as it may consider appropriate for purpose of enforcing or securing the enforcement within that State of any to which the person who makes the application may be entitled under the Chapter."[21]To this end, the Chief Judge of the Federation is empowered to make rules with respect to the practice and procedure of a High Court for the enforcement of fundamental rights. Pursuant to this provision, the Chief Justice of Nigeria made the Fundamental Rights (Enforcement Procedure) Rules.[22]

In the same vein, the Constitution further provides that the National Assembly may confer upon a High Court such powers in addition to the one conferred by the section as may appear to the National Assembly necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred upon. The Constitution further provided for the rendering of financial assistance to any indigent citizen of Nigeria in the enforcement of breaches of fundamental rights.[23] Implicit in this provision is that whoever alleges that any of his fundamental rights has been contravened or infringed upon by any person or authority has a burden to take every necessary and lawful step to seek enforcement and remedy for the infringement. In *A.G Adamawa State v A.G Fed*[24] the Supreme Court affirmed the above position as follows: Where a party considered that his fundamental rights have been breached, that party can quite properly seek the invocation of the court's powers to protect the invasion of

---

[19] *Ibid,* Chapter Four which embodies the Fundamental Human Rights.

[20] *Ibid,* s 46(1).

[21] *Ibid,* s 46(2).

[22] *Ibid,* s 46(3).

[23] *Ibid.*

[24] (2005) 18 NWLR Pt 958, p. 581 at 609.

such rights. If the Constitution is to be upheld, breach or likelihood of breach must be one capable not only of being vindicated but also of being prevented.

It is pertinent to point out that, in enforcement of fundamental rights under the Constitution, only the rights entrenched in Chapter Four of the Constitution are enforceable. Rights provided under Chapter Two, designated as 'Fundamental Objectives and Directive Principles of State Policy', are non-justiciable and therefore, unenforceable in court. Nonetheless, the Supreme Court in *AG Ondo State v A G Federation*[25] established that the provisions of Chapter Two of the Constitution can be enforced once the National Assembly enacts any specific law to meet its provisions. Typical examples of such legislations are: the Child Rights Act, 2003, and the Universal Basic Education Act[26]. Besides this, the need to promote socio-economic justice in Nigeria cannot be overemphasized. Thus, the Court can become proactive by drawing insights from other jurisdictions in interpreting fundamental human rights provisions to include the rights provided in Chapter Two. In India, for instance the Constitution does not make express provision for a right to shelter, but the court in *Shanti Star Builders v Narayan K Totame*[27]held the right to life to include right to food and a reasonable accommodation. This intriguing step taken in India is a good way to address the plight of poor and vulnerable members of the society, such as the child. Nigerian courts are also keying in, the Supreme Court in the Environmental Protection case of *Center for Oil Pollution Watch v NNPC*[28], held the right to a healthy environment to be within the right to life.

3.2 Fundamental Rights (Enforcement Procedure) Rules, 2009

The Rules were made pursuant to *section 46(3)* of the Constitution. Under Order 11, Rule 1, any person who alleges that any of the fundamental rights provided for in the Constitution or African Charter on Human and People's Rights (Ratification and Enforcement) Act and to which he is entitled, has been, is being, or is likely to be infringed, may apply to the High court in the state the infringement occurred or is likely to occur for redress.[29] The Rules further provides that the Court shall respect the African Charter on Human and Peoples' Rights and other instruments, including protocols in the African regional human rights system, the Universal Declaration of

[25] (2002) 9NWLR (Pt. 772) 222.

[26] 2004

[27] (1990) 1 SCC 520.

[28] **(**2019) 5NWLR (PART 1666) 518

[29] Fundamental Rights (Enforcement Procedure) Rules, 2009, Order 11, rule 1..

Human Rights and other instruments (including protocols in the United Nations human rights system for the purposes of advancing the applicants' rights and freedoms. [30]

3.3 Child's Right Act, 2003

The Child's Rights Act provides dual categories of rights for the child in Nigeria, one is general, and the other is specific. The general one refers to the fundamental rights provided under the Constitution, which the Act adopted and declared as part of the child's rights. The specific rights are those provided in the Act other than the constitutionally recognized rights, although some of the rights mentioned in Chapter IV of the Constitution. were also mentioned as independent rights under the Act. For instance, the rights to freedom of association and peaceful assembly, freedom of thought, conscience and religion, right to private and family life, right to freedom of movement, right to freedom from discrimination, right to dignity of the child were duplicated under the CRA.[31] There is no literal explanation for this duplicity. However, it is an indication of the importance of the rights to the child. *Section 3* of the Act provides thus:

(1) The provisions in Chapter IV of the Constitution of the Federal Republic of Nigeria 1999, or any successive constitutional provisions relating to Fundamental Rights, shall apply as if those provisions are expressly stated in this Act.

(2) In addition to the rights guaranteed under Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999, or under any successive constitutional provisions, every child has the rights set out in this Part of the Act.

The CRA, in fulfilment of the principle of law *ubi jus ubi remedium*, did not stop at providing the array of rights but ensured that a process of enforcement is guaranteed. S*ection 149* provides for the establishment of the Family Court for each State of the Federation and the Federal Capital Territory, Abuja for the purposes of hearing and determining matters relating to children. As earlier pointed out, the feeble, vulnerable and gullible nature of the child exposes them to risk of violation of their fundamental rights, thereby imposing a duty on the law to give them special attention. This brought about the creation of the Family Court as a specialised court to deal with all matters relating to the child. The Court has two levels- - (a) the Court as a Division of the High Court at the High Court level: and (b) The Court as a Magistrate Court, at the Magistrate level.[32] With respect to the fundamental rights of the child, it is the High Court level of the Family Court that is imbued with the jurisdiction to adjudicate on the infringement of the child's rights. By the provisions of *Section 152(4)*(a) of Act, the Family Court at the High Court level shall have power to- "(a) deal with all matters

[30] Fundamental Rights (Enforcement Procedure) Rules, 2009, preamble 3.

[31] See sections 7-11

[32] Section 150 of the Act

relating to the enforcement of the rights of the child as set out in this Act on the application for redress by a child who alleges that a right has been, is being, or is likely to be infringed in respect of him".

While the development of a special court to handle matters relating to the child is commendable, it is worrisome that the lawmakers did not take into consideration the existing constitutional framework for the enforcement of fundamental rights already in existence before giving the family Court exclusive jurisdiction over the enforcement of the rights of the child under the Act which includes the Chapter IV rights. According to *section 162* of the CRA. Exclusive jurisdiction (1) No other Court, except the Family Court, shall exercise jurisdiction in any matter relating to children as are specified in this Act.

4.0 Role of Courts in Enforcement of Fundamental Rights of The Child

The Court can promote effective fundamental rights enforcement for the infringement of the rights of the child by-

4.1 **Efficient and Speedy Enforcement**- Knowing fully well that the child's adequate development and well-being can be hampered by infringements of these rights, the responsibility of the enforcement of his rights is placed mainly on the court.[33] Entertaining cases involving alleged violations of the child's fundamental rights efficiently and timeously is one of the ways the court can promote the well being and protection of the child, for justice delayed is justice denied. The Fundamental Rights (Enforcement Procedure) Rules 2009, under the overriding objectives of the rules provides that the court shall in a manner calculated to advance Nigerian democracy, good governance, human rights and culture, pursue the speedy and efficient enforcement and realisation of human rights. It further provides that human rights suits shall be given priority in deserving cases, and where there is any question as to the liberty of the applicant or any person, the case shall be treated as an emergency. [34]

4.2 **Expansive and Purposeful interpretation of the law**- The Court has the responsibility to advance the Child Applicants rights and freedoms by expansive and purposeful interpretation and application of the Constitution and the African Charter; respecting relevant international instruments, and by making consequential orders as may be just and expedient. The Fundamental Rights (Enforcement Procedure) Rules 2009, under the overriding objectives of the rules provides as follows-

[33] A B Ahmed, The Law and Child Rights in Nigeria (Lagos: Malthouse Press Limited, 2015) p 99.

[34] The Fundamental Rights (Enforcement Procedure) Rules 2009, Preamble 3(e & f)

i) that the court shall expansively and purposely interpret and apply the Constitution, especially Chapter IV, as well as the African Charter, with a view to advancing and realising the rights and freedoms contained in them and affording the protections intended by them[35].

ii) that the court shall respect the African Charter on Human and People's Rights and other instruments including protocols in the African regional human rights system, the Universal Declaration of Human Rights and other instruments (including protocols in the United Nations human rights system for the purposes of advancing applicants' rights and freedoms and not restricting[36]

iii) the court may make consequential orders as may be just and expedient. [37]

Effective protection of the child can be achieved through the court's role stated above during enforcement of the infringements of the child's fundamental rights, especially with regard to making consequential orders as may be just and expedient for the child's protection in view of his or her mental and physical immaturity and dependence on adults.

In furtherance to the above view, the court should be liberal in the interpretation of fundamental rights provisions especially when it involves children. Amazingly, the Court of Appeal in the case of *Minister for Internal Affairs v Alhaji Shugaba*[38] per Hon Justice Karibi Whyte JCA held that 'provisions protecting fundamental rights should be given a construction as would expand rather than restrict the enforcement of rights'. This means that the court should be proactive and give wide interpretations to the fundamental rights. The court must also not allow rules to defeat the aim of justice in the enforcement of fundamental rights. This is supported by the court in *Fidelity Bank Plc v Andrew Monye & Ors*[39], per Bode Rhodes –Vivour JSC, where the court held that matters that affect or concern children and inalienable rights of man must at all times be treated with dispatch, and rules must never be a stumbling block in achieving that purpose. Rules must never be interpreted to defeat the course of justice. It is convenient to say the court can through enforcement of the fundamental rights of the child promote such rights. Furthermore, the court can also make pronouncements that will promote the rights of the child through liberal interpretations of the fundamental rights.

[35] Fundamental Rights (Enforcement Procedure) Rules, 2009, preamble 3.(a)

[36] Fundamental Rights (Enforcement Procedure) Rules, 2009, preamble 3(b)

[37] Ibid, 3(c)

[38] (1981)2 NCLR p 459.

[39] (2012) MRSCJ vol 1, p 48.

4.3 **Enhanced Access to Justice to Vulnerable, Poor and Incarcerated Children**- The Court has a duty to proactively pursue enhanced access to justice to the vulnerable classes of litigants, such as the child in the enforcement of his or her infringed rights. The Fundamental Rights (Enforcement Procedure) Rules 2009, provides that the court shall proactively pursue enhanced access to justice for all classes of litigants, especially the poor, the illiterate, the uninformed, the vulnerable, the incarcerated and the unrepresented.[40] Children are the most vulnerable when it comes to infringement of fundamental rights, due to their immature nature, and it is even worse when they will have to sue through another, and most times lose the opportunity of enforcing the infringement of their rights. The court can in carrying out this role, come to their rescue.

4.4 **Encouragement of Public Interest Litigations For the Child**- This is very important for the child whose fundamental rights has been infringed, as it will go a long way to ensure that the child has access to justice and not caught up by locus standi(legal capacity to sue).The court in *Agboola v Agbodemu & Ors* [41]held that *locus standi* denotes the legal capacity based upon sufficient interest in a subject matter to institute proceedings in a court of law to pursue a specified cause. It is a constitutional requirement to enable a person to maintain an action and it is limited to the prosecution of matters relating to the civil rights and obligations of the plaintiff. *Locus standi* entails the legal capacity for instituting, initiating or commencing an action in a competent court of law or tribunal without any inhibition, obstruction or hindrance from any person or body whatsoever, including the provision of any existing law. In the same vein, the court in *Pam &Anor v Mohammed& Anor*[42] describes *locus standi* as follows: The term of law. It is used interchangeably with the terms standing or title to sue. It is the right of a party to appear and be heard on a question before any court or tribunal. The court further held that: It is the law that to have *locus standi* to sue, the plaintiff must show sufficient interest in the suit or matter. One criterion of sufficient interest is whether the party could have been joined as a party in the suit. Another criterion is whether the party seeking the redress or remedy will suffer some injury or hardship arising from the litigation if the judge is satisfied that he will so suffer, then he must be heard as he is entitled to be heard.[43]

[40] Ibid, 3(c)

[41] (2008) LPELR- 8461(CA).

[42] (2008) LPELR- 2895(SC).

[43] Same was held in the cases of *Adefulu& v Oyesile & ors*(1989) LPELR- 91(CA), *A G Kaduna State v Hassan*(1985) LPELR- 617(SC), and *Ojukwu v Ojukwu & Anor* (2008) LPELR – 2401(SC).

Remarkably, in enforcement of fundamental rights, the strict legal position on the issue of *locus standi* has been whittled done. The present liberal position in the context of human rights litigation is that the court shall encourage and welcome public interest litigations in the human rights field and no human rights case may be dismissed or struck out for want of *locus standi*.[44] In Particular, human rights activists, advocates or groups, as well as any non-governmental organisations, may institute a human rights application on behalf of any potential applicant. In human rights litigation, the applicant may include any of the following: anyone acting in his own interest; anyone acting on behalf of another person; anyone acting as a member of, or in the interest of a group or class of persons; anyone acting in the public interest, and association acting in the interest of its members or other individuals or groups. The court shall in a manner calculated to advance Nigerian democracy, good governance, human rights and culture, pursue the speedy and efficient enforcement and realisation of human rights.[45] This liberalisation exhibited in this provision is commendable, in view of the benefit public interest litigation will be to the child who usually sues through another.

Enforcements of the breach of the rights of children can be done through some organisations such as National Human Rights Commission, the Legal Aid Council of Nigeria, and the Civil Liberties Organisation. The National Human Rights Commission[46] can through its mandates deal with all matters relating to the protection of human rights as guaranteed by the Constitution of the Federal Republic of Nigeria, the African Charter, the United Nations Charter and the Universal Declaration of Human Rights and other international treaties on human rights to which Nigeria is signatory. The Legal Aid Council of Nigeria,[47] in the same vein, provides free legal services for the deserving people. The Council provides free legal services in all fields of the law whether criminal litigation or civil litigation for any indigent person that presents a case to them. The Council can help in the enforcement of the infringed rights of a poor and indigent child.

The mandate of the Commission and Council are very good, a step in the right direction in ensuring that violations of human rights are enforced. However, the Nigerian factor of setting up institutions without effective monitoring and supervisions, poor funding, inadequate staff and provision of other logistics for the facilitation of their mandate is the problem. Ojukwu and others, noted that although the Constitution of the Federal

[44] Fundamental Rights (Enforcement Procedure) Rules, 2009, Preamble 3(e).

[45] *Ibid.*

[46] This was established by the National Human Rights Act, 1995.

[47] Established by the Legal Aid Decree No. 56 of 1976(now Legal Aid Act).

Republic of Nigeria and other laws make provisions for free legal services or financial assistance for the poor,[48]there is a consensus that the existing legal aid system in the country is grossly underfunded and consequently unable to cope with the demand for legal services in the country.[49] Ojukwu further stated that great majority of the poor and disadvantaged people have no means of accessing the formal justice systems or of enjoying human rights provisions in the Constitution and International instruments which are meant to protect them.

5. The Challenge of Conflict in the Jurisdiction of the High Court and Family Court over the Enforcement of the Child's Fundamental Rights.

Prior to the enactment of the Child's Right Act in 2003, issues relation to violation of Fundamental Rights were strictly within the adjudicatory powers of the Federal and State High Courts as provided by *Section 46* of the Constitution and defined by the Fundamental Rights Enforcement Procedure, 2009. The language of the Constitution is mandatory and excludes any other court except for the violations occurring within the labour environment which has been ceded to the National Industrial Court by virtue of *254C* of the Constitution hereunder reproduced as follows:

> 254*C*—(1) Notwithstanding the provisions of sections 251, 257, 272 and anything contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters—
> (*d*) relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of this Constitution as it relates to any employment, labour, industrial relations, trade unionism, employer's association or any other matter which the Court has jurisdiction to hear and determine.

Constitutionally, it is these three courts that can entertain matters relating to the violation of the fundamental rights of any person in Nigeria. Regardless of this constitutional delimitation of powers over fundamental rights, the CRA has given exclusive jurisdiction to the Family Court over rights which, by the incorporation of Chapter IV provisions of the Constitution, extend to the fundamental rights. By the exclusive jurisdiction granted to the Family Court by the CRA means that the CRA has ousted the jurisdiction of the High Court to hear such matters. Unfortunately, the CRA lacks the power to do so. By the hierarchy of laws in Nigeria, the Constitution is

[48] CFRN 1999(as amended), s 36(6)b and the Legal Aid Act 2011.

[49] E Ojukwu *et al,Handbook on Prison Pre-Trial Detainee Law Clinic* (Abuja, Network of University Legal Aid Institutions, 2018) p129.

the apex law from which every other law derives its validity. Where, therefore, there is a conflict or inconsistency between the Constitution and any other law, that law to the extent of its inconsistency, shall be void. In *National Assembly v. Accord*[50], the Court affirmed this position when it held that:

> "This is obvious from the provisions of Section 1(3) of the Constitution of the Federal Republic of Nigeria, 1999 which states that if any other law is inconsistent with the provisions of the Constitution, the Constitution shall prevail and that other law shall, to the extent of the inconsistency, be void."

The idea behind the exclusive jurisdiction is to have a particular court that will handle all matters involving the child. This is a welcome development; however, the conflict with the Constitution may most likely lose the beautiful intendment of the law and constitute a clog in the wheel of enforcement of the child's rights. To arrest this situation, there is a need for the Family Court to be upgraded to a superior Court of record under the Constitution and its jurisdiction provided therein just like the National Industrial Court. it must be noted that the High court level of the Family Court does not translate it from Family Court to a High Court. there is no connection between the two courts except for the nomenclature. The establishment, constitution and procedure of both courts are different.

7.1 Conclusion and Recommendations

Infringements of fundamental human rights of the child in Nigeria is rife, and the impact on the children is catastrophic. The Constitution of the FRN, and the Fundamental Rights (Enforcement Procedure) Rules, 2009 and the Child's Rights Act made elaborate provisions on the enforcement of violations of these rights. The work discussed these legal instruments alongside the various ways the court can through proactive measures, make liberal interpretations of fundamental rights; speedy and efficient enforcements of fundamental rights; advancement of child applicant's rights and freedoms; enhanced access to justice to vulnerable, poor, uninformed and incarcerated children; and encouragement of public interest litigations; drive effective enforcement of breaches of the child's fundamental rights. This will, in turn, enhance the protection of the rights of the child and ensure proper development and well-being of the Nigerian Child. The work also concluded that there is a conflict between the jurisdiction of the High Courts and the Family Court in relation to the enforcement of the child's rights. The work therefore, recommends as follows:

[50] (2021) 18 NWLR. (Pt. 1808) 193

1. A constitutional amendment to resolve the conflict in the jurisdiction of the court by providing the exclusive jurisdiction of the Family Court in the Constitution and making section 46 of the Constitution subject to it.
2. A proactive, speedy, and efficient adjudication of fundamental human rights breaches against children and award of adequate damages and compensation for violations of their rights by the courts.
3. Child advocates participation, such as educating the public; reporting of breaches of children's human rights; instituting public interest litigation for breaches of children's fundamental human rights, efficient and well funded institutions for legal aid, are recommended.