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ENSURING THE RIGHT OF THE CHILD IN THE BOKO HARAM INSURGENCY: THE PROVINCE OF UNICEF'S COMPLEMENTARY MANDATE UNDER INTERNATIONAL LAW

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Abstract

The need to manage conflict-related humanitarian conditions is the basis of intervention by international humanitarian organizations. Chief amongst these agencies is the United Nations International Children's Emergency Fund (UNICEF), whose work is primarily about protecting children in armed conflicts. This agency has maintained a robust response to the humanitarian crisis in the Boko Haram insurgency, though its effort has not been without controversies. In 2018, it was suspended by the Nigerian Military on the allegation that it was working for the enemy side, an action which attracted widespread condemnation, as it was seen as an attempt by the government to give the agency a bad name. This has again thrown up the question of whether agencies such as UNICEF have the mandate ascribed to them under international law, and whether countries such as Nigeria, having signed up to this mandate, could refuse to live up to their international obligation. This article examines the framework of humanitarian intervention by UNICEF under international law, and what Nigeria's role ought to be in this respect. It makes the argument that UNICEF's intervention in the insurgency is not that of a meddling interloper, but part of an international legal framework for the protection of children's rights in armed conflicts, which Nigeria has signed to, and which it must fulfil. Supporting UNICEF is in the best interest of the country but doing otherwise could be inimical not just to the wellbeing of children in the insurgency, but also the country's commitments under international law.

Keywords : child, rights, Boko Haram, insurgency, UNICEF, and international law.

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I. INTRODUCTION

The need to protect children from the abuse of war, is major in international law conversations. The framework for State cooperation at the global level is mirrored by developments in international law, to the end that States can comply with their commitments therein.¹ Though the protection of the child's right has emerged on the frontline of human rights protection, the increasing rate at which children still bear the brunt of armed conflicts is a matter of

¹ B. Frischmann, "A Dynamic Institutional Theory of International Law," *Buffalo Law Review* 51, no. 3 (2003): 679.

monumental concern. As part of current tactics of war, it is not unusual to hear stories of children been abducted, murdered, sexually molested, recruited as soldiers/suicide bombers, and sometimes subjected to perilous humanitarian crisis in displaced persons camps. Yet effort at protecting the right of the child remains a part of mainstream international law.

The level at which children have suffered unimaginable abuse in the ongoing Boko Haram insurgency, and the needless politicization of efforts of international organizations at providing protection for these children, is the central theme of this article. This article will be examining the mandate of the United Nations (UN) principal agency for Children, UNICEF in the Boko Haram insurgency. In 2018, UNICEF was suspended by the Nigerian Military authorities on the allegation that it was in cahoots with the insurgents.² This apparently misplaced move attracted widespread international condemnation. Suddenly, the Military backtracked, purporting to have lifted the suspension on UNICEF.³ Since then, not much furor has been recorded between both parties. However, this event certainly generated significant issues touching on the mandate of international humanitarian organizations in armed conflict situations and is therefore a matter worthy of further examination. This is important given that such atmosphere of politicization inadvertently shifts the focus of all parties in an armed conflict, from the important issue of children protection, to back and forth discussions on the mandate of institutions. Also, it poses grave dangers to the gains already recorded in child's rights protection, especially in armed conflict situations. Additionally, such behavior needs to be nipped in the bud, as it may just be a perfect disguise to divert attention away from human rights atrocities in armed conflicts already perpetrated by ruthless violators. All of these makes the issues in this article important. Examining them will not only help put the mandate of organizations such as UNICEF in a correct light, but it will also engender continuous progress in their work of protecting children in armed conflicts.

To this end, this article addresses two fundamental questions, does international law guarantee UNICEF's mandate in the Boko Haram insurgency? To what extent does it provide such guarantee? To answer these questions, this article will be divided into five (5) parts - Part one covers the introduction, while part two examines the international protection of children's rights. It also highlights how these rights have been violated in the Boko Haram insurgency. Part three presents a critical analysis of UNICEF' mandate under international

² O. Aluko, "Military Suspends UNICEF Activities in the North-East," *The Punch Newspaper*, 15 December 2018, accessed 22 July 2019, <https://punchng.com/military-suspends-unicef-activities-in-north-east>.

³ K. Sanni, "Nigeria Army Reverses Self on 'suspension' of UNICEF activities in North-East," *Premium Times News Paper*, 13 July 2019, accessed 22 July 2019, <https://www.premiumtimesng.com/news/headlines/301194-nigerian-army-reverses-self-on-suspension-of-unicef-activities-in-north-east.html>.

law. This analysis is done, explaining how the existing international human rights instruments interconnects and interrelates in dealing with the same issues. Part four answers the question of whether UNICEF has been carrying out its mandate in the course of the insurgency, the practical challenges it has been facing, and how humanitarian agencies of this nature must be viewed going forward. Part five deals with the concluding remarks.

II. INTERNATIONAL PROTECTION OF THE RIGHT OF THE CHILD: THE BOKO HARAM INSURGENCY IN PERSPECTIVE

An integral part of human rights development has been the continuous fight for more safeguard and protection for the rights of the Child. The first attempt at codifying the right of the child is traceable to the 1924 Declaration on the Right of the Child which was adopted by the League of Nation, the predecessor organization to the UN.⁴ The global effort mainstreaming the right of the child finally yielded fruits with the enactment of the UN Convention on the Rights of the Child (hereinafter referred to as the ‘CRC’),⁵ which codified Children’s right in one single comprehensive document.⁶ In all the move towards the internationalisation of the right of the child, the CRC has been adjudged as the most far-reaching effort at protecting children and granting them the best conditions of life, anywhere and everywhere in the world.⁷ It is the first document in international law that sets out far-reaching substantive rights not only protecting the interest of the child, but particularly one developed through the lens of the child.⁸ All of CRC’s fifty-four (54) articles are articulated along the three (3) UN guidelines of provision, protection, and participation.⁹

⁴ J. Fortin, *Children’s Rights and the Developing Law* (Cambridge: Cambridge University Press, 2005), 210.

⁵ Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force), art. 3. Specifically, this document was adopted by resolution 44/252 of 20 November 1989 at the 44th Session of the UN General Assembly. It opened for signature 26 January 26, 1990, entered into force 2 September 1990 in line with Art. 49 (1) of the Convention. As of 2004, 177 countries have signed the CRC or become state parties by accession, ratification, or succession. For instance, Art. 4 of the Optional Protocol to the Convention on the Rights of the Child prohibits the involvement of children in armed conflict and imposes obligations on all parties to ensure this is so.

⁶ S. Von Struensee, “Violence, Exploitation and Children: Highlights of the United Nations Children’s Convention and International Response to Children’s Human Rights,” *Suffolk Transnational Law Review* 18, (1995): 589.

⁷ J. Todres, “Emerging Limitations on the Rights of the Child: The UN Convention on the Rights of the Child and It’s Early Case Law,” *Columbia Human Rights Law Review* 30, (1998): 159.

⁸ G. Van Bueren, *The International Law on the Rights of the Child* (London: Martinus Nijhoff Publishers, 1995), 60.

⁹ The provides for Art. 1 - dealing with different aspects of the life of a child. Specifically these provisions include – Art. 2 (Non-discrimination); Art. 3 (Best interests of the child standard); Art. 5 (Right to remain with extended family or familiar community); Art. 6 (Right to nationality); Art. 8 (Right to personal iden-

Protection of children under the CRC imposes a duty on national governments to safeguard them from every form of atrocity at all times, taking all necessary measures to guarantee such protection. For example, Article 38 of the CRC is pointedly relevant, given how it contextualizes the kind of protection that must be afforded children within the context of the Boko Haram insurgency. It states that,

State parties undertake to respect and ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child; State parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities; State parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons, who have attained the age of fifteen, but who have not attained the age of eighteen years, State parties shall endeavor to give priority to those who are oldest; In accordance with their obligation under international humanitarian law to protect the civilian population in armed conflicts, State parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.¹⁰

For the purpose of applying the provisions of Article 38, a child is defined in the CRC as “every human being below the age of eighteen years, unless under the law applicable to child, majority is attained earlier”.¹¹ Article 38 imposes a dual obligation on State parties. While they are barred from directly recruiting underage persons into their Military, there is also an indirect and corresponding obligation on them, to ensure that other parties to the conflict provide for the “protection and care of children who are affected by the conflict”. Nigeria signed the CRC the 26 January 1990 and ratified it on 19 April 1991. Additionally, it signed the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict on 8 September 2000 and further ratified it on 25 September 2012. The implication is that Nigeria as a signatory to these documents is according

tity); Art. 9 (Right to remain with parents barring proof of abuse); Art. 10 (Right to maintain contact with parents geographically separated from him/her); Art. 11 (Right to intervention by the state in cases of child abduction); Art. 12 and 13 (Right to freedom of speech at an appropriate age); Art. 14 (Right to freedom of thought and religion); Art. 15 (Right to freedom of assembly and association); Art. 16 (Right to freedom from arbitrary search and seizure); Art. 17 (Right to information); Art. 18 (Right to shelter and support from both parents); Art. 19 (Right to freedom from abuse and neglect by any party); Art. 21 (Right to adoption, within the laws of the affected state); Art. 22 (Right to asylum in time of war); Art. 23 (For disabled children, right to shelter, education, rehabilitation and protection); Art. 24 (Right to medical treatment); Art. 28 (Right to an education); Art. 32 (Right to protection from forced labours); Art. 34-36 (Right to freedom from sexual abuse and harassment, Right to freedom from other forms of exploitation); Art. 37 (Right to freedom from torture or unauthorized imprisonment); Art. 40 (Right to due process in criminal cases).

¹⁰ Convention on the Rights of the Child, art. 38 (1), (2), (3), and (4).

¹¹ Convention on the Rights of the Child, art. 1.

bound. Whereas there has been no report that the Nigerian Military engaged persons less than the age of fifteen into the country's Armed Forces for the purpose of deploying them in counterinsurgency against Boko Haram, the same cannot be said of Boko Haram and its frenzied use of children as suicide bombers. The implication therefore is that Nigeria has an obligation under the Convention to ensure the protection of those children that Boko Haram has been manipulating for its own gain. As a matter of fact, not only does the government have an obligation in this regard, where such children have become victims of the ongoing conflict or suffered human rights abuses, the government has a further duty to ensure their rehabilitation and reintegration into normal life. Article 39 of the CRC supports this as follows,

State parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of, any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery or reintegration shall take place in an environment which fosters the health, self-respect, and dignity of the child.¹²

This is evidently in line with the overall goal of the Convention, which is that both domestically and internationally, the best interest of the child shall take priority over any other consideration.¹³ Other ancillary treaties to the Convention include the Optional Protocol to the UN Convention on the Rights of the Child on the involvement of Children in Armed Conflicts, (hereinafter referred to as 'the protocol'),¹⁴ and the African Charter on Rights and the Welfare of the Child (hereinafter referred to as the 'ACRWC').¹⁵ The import of these documents is that the protection of children exists within a tripartite framework of global, regional, and sub-regional mechanisms, and the three (3) documents above have been significant in this respect. Aside these specialized instruments, the protection of children had earlier been covered by key international human rights treaties such as the Universal Declaration of Human Rights (UDHR)¹⁶ which provides under Article 25 that

¹² Convention on the Rights of the Child, art. 39.

¹³ Convention on the Rights of the Child, art. 3.

¹⁴ This document was adopted and opened for signature by the UN General Assembly on 25 May 2000 entered into force on 12 February 2002. It imposes a duty on State parties to ensure that persons who are under the age of eighteen are not recruited into the Military and involved in armed conflicts. See S. Yun, "Breaking Imaginary Barriers: Obligations of Armed Non-State Actors Under General Human Rights Law - The Case of the Optional Protocol to the Convention on the Rights of the Child," *Journal of International Humanitarian Legal Studies* 5, no.1 (2014): 213 – 257.

¹⁵ African Charter on the Rights and Welfare of the Child, adopted at the 26th Ordinary Session of the Assembly of Heads of State and Governments of the Organisation of African Unity (OAU) Addis Ababa, Ethiopia July 1990.

¹⁶ Universal Declaration of Human Rights, UNGA Res. 217A (III), UN Doc A/810 at 71 (1948) of 10 December 1948.

the child is entitled to special care and assistance.¹⁷ Also relevant are Article 14 (1), Article 23 (4), and Article 24 of the International Covenant on Civil and Political Rights (ICCPR) (1966),¹⁸ as well as Article 10 (3) and Article 13 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) (1966).¹⁹ Importantly, the Human Rights Committee in interpreting the ICCPR has stated that, “the rights provided for in Article 24 are not only ones that the Convention recognizes for children and that as individuals, children benefit from all of the civil rights enunciated in the covenant”.

A State can become a party to the CRC by either signing or ratifying the instrument, or by acceding to it. Signing the CRC allows a State party to further consider it for domestication through its treaty-making internal laws, upon which it can now proceed to ratify. Upon ratification, the instrument of ratification signed by the principal authority of the State concerned is then deposited with the UN Secretary-General’s Office. Ratification means that once it is ratified or acceded to, a state party becomes legally bound with a responsibility to comply with its commitment under the document. For the protocol, given that it is an independent document, it must also be ratified or acceded to separately. In line with Article 4 of the CRC which states that, “State parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present convention,”²⁰ Nigeria as a State party is obligated to enforce relevant provisions of the CRC that are compromised in the Boko Haram insurgency.

It is important to state that instruments such as the CRC and the protocol are only able to practically fulfil their objectives and transform the lives of children, when they have been domesticated in line with Article.²¹ It was in the light of this that Nigeria enacted the Child’s Right Act 2003²² to given full effect to its commitment under the CRC, even though some of the federating

¹⁷ Universal Declaration of Human Rights 1948.

¹⁸ International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), art. 24: “Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State”. Of important note is also Article 6(5) of the ICCPR which provides that, “Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age”. The ICCPR is monitored by the UN Human Rights Committee, a group consisting of eighteen members who meet thrice a year to examine reports on compliance of State parties to the treaty. See Alison Cole, “Reconceptualising Female Trafficking: The Inhuman Trade in Women,” *Cardozo Journal of Law and Gender* 12, (2006): 789.

¹⁹ International Covenant on Economic, Social, and Cultural Rights, open for signature 16 December 1966, 999 UNTS 3 (entered into force 3 January 1976), art. 10 (3): “Special measures of protection and assistance should be taken on behalf of all children and young persons.”

²⁰ Convention on the Rights of the Child.

²¹ E. Baimu, “Children, International Protection,” in *Max Planck Encyclopaedia of Public International Law*, Rüdiger Wolfrum, ed., 2013.

²² Nigeria, *Child’s Right Act*, LFN CAP 50, 2004.

units are yet to put in place the necessary domesticating instrument.²³ This is commendable even though its practical application over the years is another matter entirely. However, in addition, given the level of depravity that has been meted out to children in the Boko Haram insurgency, it is important that the Nigerian State take “other measures”, for the implementation of their rights. This may include the strengthening of existing governmental institutions, so that they can directly work with international humanitarian agencies in safeguarding the rights of children in the ongoing insurgency. It is suggested that such institutions have their job profile expanded to include the rehabilitation of children affected by the insurgency. Canvassing a similar position, Olawuyi notes that to ensure the protection of the Nigerian child, there is a need for revamping of institutions tasked with delivering services such as the educational, health, and social welfare needs of children, to make them more effective.²⁴

Under International Law, states also have a responsibility to respect, protect, and fulfil all rights pertaining to the Child. In terms of accountability, several institutions at the international, and regional domestic level have a mandate to monitor and ensure that state parties enforce these rights. The functions of these institutions include promoting human rights, making policy recommendation to states, reviewing states compliance reports, and handling individual complaints against states. In addition to the above, the UN has also created specialized agencies with a mandate to protect human rights, anywhere, and everywhere in the world. It is within this context that the United Nations International Children’s Emergency Fund (UNICEF) comes in as the principal agency for the protection of children’s rights. It is therefore clear that Nigeria has the full complement of what it requires to respond to the carnage against children that has been a major feature of the Boko Haram insurgency. The reality however is that notwithstanding this robust international as well as domestic legal framework, the response to the protection of children and their rights in this conflict, has been abysmal, if not totally absent. Given the parlous state of affairs, the intervention on humanitarian grounds of an agency like UNICEF becomes a life-saving measure.

²³ D. Ogunniyi, “The Challenges of Domesticating Child’s Rights Treaties in Nigeria and Alternative Legal Avenues for Protecting Children,” *Journal of African Law* 62, no. 3 (2018): 447.

²⁴ D.S. Olawuyi, “Terrorism, Armed Conflict, and the Nigerian Child: Legal Framework for Child’s Rights Enforcement in Nigeria,” *The Nigerian Juridical Review*, 13 (2015): 21.

III. UNICEF'S MANDATE OF HUMANITARIAN INTERVENTION UNDER INTERNATIONAL LAW

The last section has established the fact that Nigeria as a member of the committee of nations has an obligation under international law to promote, respect, and fulfill the right of the children in the Boko Haram insurgency. Aside this, it is important for this article to also determine whether there is a corollary obligation on other bodies, beyond the domestic scene, to cooperate with Nigeria in ensuring that these rights are indeed secure. Since the catastrophic devastations of the Second World War, humanitarian intervention has become a part of international legal response to the management of armed conflicts and break out of hostilities. Not only does humanitarian intervention come in handy to help the sick, wounded, and impoverished imperiled by war, it additionally helps to prevent episodes of massacre that would have been unavoidable where an international body is not present on ground. The United Nations International Children's Emergency Fund (UNICEF) is the primary UN organization charged with the responsibility of protecting the rights of children everywhere in the world.²⁵ Specifically, it is the only organization mandated under the CRC to carry out this task. Formed on 11 December 1946, it has spent the last 74 years catering for the most disadvantaged of children the world over.

As the principal UN Organization concerned with promoting the interest of the child, UNICEF works in some of the most dangerous parts of the globe, providing support to national governments in about 190 countries, as well as promoting access to justice for the most disadvantaged of the world's children, particularly those caught in the throes of armed conflict and war situations. A key focus of UNICEF's activities is to make the point that just because children are trapped in armed conflicts, they do not in any moral and legal sense lose the protection they would ordinarily enjoy in peacetime. Its work is directed at the total wellbeing of children, particularly the mandate of securing their good regions where law and order has broken down, and where there is a total collapse of human rights protection.

In the context of the Boko Haram insurgency, the core of UNICEF's work is in the north-east region of the country. Its work at the moment is therefore of an emergency nature, to save what is possible in a situation growing helpless by the day. The question however is, where does UNICEF derive its mandate and authority from? Does UNICEF possess any authority under International Human Rights Law (IHRL) to have a legal standing, or is it just to be viewed as

²⁵ "UNICEF Role in Promoting and Supporting the Convention on the Right of the Child," UNICEF, accessed 22 July 2019, <https://www.unicef.org/child-rights-convention/unicef-role>.

any other humanitarian organization holding the position of a good Samaritan? Answering these questions require a recourse to certain provisions of relevant treaties of IHRL and an examination of their intent.

Most of the provisions of IHRL on the rights of the child are within the domain of the child's social, economic, and cultural rights. This framework is designed on the basis of the child's life's need and entitlement. Given that a child is a being yet to attain majority, so as to be able to fully appropriate expected civil and political rights, the rights that are critical to a child's transition from infancy to adulthood are essentially the socio-economic rights. The child's socio-economic rights are today codified in several documents, but it is safe to say that all come under one single umbrella, which is the goal of IHRL to guarantee an adequate standard of living, commensurate with international best practices for the child. Article 27 (1) of the CRC reflects this position where it provides that "States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development".²⁶ In determining the legal standing of UNICEF as regards the attainment of this required 'standard of living', it is instructive to note the provisions of Article 22 of the UDHR which states that,

"Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social, and cultural rights indispensable for his dignity and the free development of his personality." (underlined by the author)²⁷

The same position was reaffirmed in Article 11 (1) of the ICESCR providing that, "the States Parties will take appropriate steps to ensure the realization of this right (being the right to adequate standard of living), recognizing to this effect the essential importance of international cooperation based on free consent".²⁸ The same document highlights the place of international cooperation in securing the right to freedom from hunger and stipulates steps that should be taken in this regard.²⁹ The CRC alludes to the same, by recognizing "the importance of international cooperation for improving the living conditions of children in every country, in particular in the developing countries".³⁰ As it can be observed, the phrase 'international cooperation' operates as a golden thread through all of the above important provisions and

²⁶ Convention on the Rights of the Child 1989, Art. 27 (1).

²⁷ Universal Declaration of Human Rights 1948, Art. 22.

²⁸ International Covenant on Economic, Social and Cultural Rights 1966, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976), art. 11 (1).

²⁹ International Covenant on Economic, Social and Cultural Rights 1966, art. 11 (2) (a) & (b).

³⁰ Preamble to the Convention on the Rights of the Child 1989.

that is not accidental. It is a deliberate effort of the draftsmen to legally provide for and sanction a framework of collaboration amongst national governments and key international stakeholders, especially organs and agencies of the UN, in realizing the rights provided for in IHRL treaties. UNICEF is the principal agency of the UN saddled with this responsibility of securing the welfare of children the world over. Put in another frame, this means that this agency carries the mandate of the UN in delivering the goals of IHRL. Article 24 of the ICESCR reiterates this point, providing that,

“Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.”³¹

In line with this understanding, it means UNICEF in pursuance of its mandate is empowered to work towards the provision of a proper standard of living for children caught in the Boko Haram insurgency.³² UNICEF has the powers of the UN to provide the international cooperation mentioned in the above paragraphs and is under the direction of the international community to exercise this power. Nigeria being a signatory to the ICESCR, has by implication empowered UNICEF to cooperate with it in realizing these rights, where the State party may or may not have abdicated its obligations. In cooperating with Nigeria, it can mobilize nations, organizations, and other stakeholders in the international community to ensure the availability of men, materials, and resources to provide food, clothing, shelter, medical care, necessary social services suitable to the condition in life of the children.³³ This extends to recognizing the child’s right to social security and protecting it.³⁴ The next question to ask is this – Has UNICEF been exercising its mandate above, particularly as regards rescuing the children caught in the Boko Haram insurgency, or has the agency strayed from its responsibilities, by taking sides with parties in the conflict? An examination of certain obligations demanded of UNICEF under international law, and how much this has been discharged, would shed more light in this regard.

The international community through salient provision of international law is quite emphatic about its desire for children everywhere in the world. To put this in perspective, one needs to start by taking a look at the Article 28 of

³¹ International Covenant on Economic, Social and Cultural Rights 1966, art. 24.

³² Universal Declaration of Human Rights 1948, art. 25 (1). See also International Covenant on Economic, Social and Cultural Rights 1966, art. 11.

³³ Universal Declaration of Human Rights 1948, art. 25 (1).

³⁴ International Covenant on Economic, Social and Cultural Rights 1966, art. 9.

the UDHR which states that, “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized”.³⁵ Though this provision generally applies to all members of the human community, its significance for the child is seen where the above goal of an inclusive and justiciable ‘social and international order’ as it applies to the Child, is echoed in Article 25 (2) of the UDHR which states “childhood is entitled to special care and assistance”.³⁶ Toeing the same line of thought, Article 24 (1) of the ICCPR states that every child shall have “the right to such measures of protection as are required by his status as a minor”,³⁷ while Article 10 (3) of the ICSECR advocates that, “special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions”.³⁸ The CRC completes this by stating that, “the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity”.³⁹

The above provisions further empower UNICEF to ensure the realization of children’s rights as proclaimed in international treaties, no matter what part of the world they may be, or situations within which they may be trapped. It puts UNICEF and its global missions in a class of its own. Not only does UNICEF have this obligation in peacetime, but it also has a duty to discharge the same in wartimes, such as for example the ongoing the Boko haram insurgency. The CRC captures this point where it upheld the fact that “in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration”.⁴⁰ Notwithstanding the near absence of governance in Nigeria’s northeast, UNICEF has an obligation to work towards the realization of every internationally sanctioned right of the Nigerian child caught in this conflict.

Firstly, it ensures that children are not discriminated under any banner. International law frowns seriously at any act of discrimination both active or systematic. This includes protection from discrimination on the basis of

³⁵ Universal Declaration of Human Rights 1948, art. 25 (2).

³⁶ *Ibid.* See also the Preamble to the Convention on the Rights of the Child 1989.

³⁷ International Covenant on Civil and Political Rights 1966, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), art. 24 (1).

³⁸ International Covenant on Economic, Social and Cultural Rights 1966, art. 10 (3).

³⁹ Preamble to the Convention on the Rights of the Child 1989.

⁴⁰ *Ibid.*

race or ethnic coloration,⁴¹ as well as gender, or circumstances of birth.⁴² For instance, Article 25 (2) of the UDHR states that, “all children, whether born in or out of wedlock, shall enjoy the same social protection.”⁴³ A cursory look at the CRC will reveal how it further expands this in vivid terms. It states in Article 2 (1) & (2), that,

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status; States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.⁴⁴

This provision is very apposite in the light of the phenomenon of ‘Bad Blood’ that has become a sore point in the insurgency. These are majorly children born by young girls that were either raped by Boko Haram insurgents or came about as product of forced marriages between these girls and Boko Haram commanders. Given that these children are the result of an ‘abominable’ reproductive process, they are heavily stigmatized upon their return to the community. However, it is clear that the rules of IHRL pursuant to the above provision forbids such stigmatization and UNICEF has been at the fore front of the effort to stem this atmosphere of discrimination through rigorous public advocacy, education, and enlightenment. The success that UNICEF has recorded in this area is tremendous. Nigeria as a State Party to the UDHR has the responsibility of continually providing the needed environment for UNICEF to do its work and not otherwise.

Secondly, its mandate extends to ensuring that children’s right to education is secured.⁴⁵ Its work is to ensure that not only is education not denied to

⁴¹ In its effort to arrest racial discrimination, the UN General Assembly pursuant to Resolution 2106 A (XX) of 21 December 1965, adopted the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and it entered into force 4 January 1969. Art. 1 defines racial discrimination to mean, “any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

⁴² Universal Declaration of Human Rights 1948, art. 25 (2).

⁴³ Universal Declaration of Human Rights 1948, art. 25 (2).

⁴⁴ Convention on the Rights of the Child 1989, art. 2 (1) and (2).

⁴⁵ Universal Declaration of Human Rights 1948, art. 26 (1). See also International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969), art. 5 (e) (v).

the child under any guise, in such education, it must enhance the overall development of the child's person and inculcate the necessary values to further the goals of humanity.⁴⁶ For instance, the ICSECR in advancing this mandate advises in Article 13 (1) that the education in question, "...shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace."⁴⁷ It also states in Article 13 (2) (a) that, "primary education shall be compulsory and available free to all,"⁴⁸ adding that, "fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education."⁴⁹ The CRC also points to how UNICEF's role is required in advancing this right. It states in Article 28 (3) that,

*"States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries."*⁵⁰

One must not forget that in the course of the Boko Haram insurgency, a major target has been educational infrastructures. The group has tried to truncate the international law goal of ensuring that, 'primary education shall be compulsory and available free to all'. It has deployed the most barbaric of methods in wiping out school, teachers, and pupils. Interestingly, a large core of UNICEF activities has been towards reversing the debilitating impact of the group's destructive acts.

Thirdly, it has the duty of securing the right to health of the child.⁵¹ The CRC in Article 24 (1) provides that, "States Parties recognize the right of

⁴⁶ Universal Declaration of Human Rights 1948, art. 26 (2).

⁴⁷ International Covenant on Economic, Social and Cultural Rights 1966, art. 13 (1).

⁴⁸ International Covenant on Economic, Social and Cultural Rights 1966, art. 13 (2).

⁴⁹ Art. 13 (2) (d), International Covenant on Economic, Social and Cultural Rights. See also Art. 14 which provides that, "each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all".

⁵⁰ Convention on the Rights of the Child 1989, art. 28 (3). The CRC further adds that, "States Parties agree that the education of the child shall be directed to: (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential; (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations." See Convention on the Rights of the Child 1989, art. 29.

⁵¹ International Covenant on Economic, Social and Cultural Rights 1966, art. 12 (1).

the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health-care services.”⁵² It then calls for a full implementation of this right by enjoining all to work towards the reduction of infant mortality;⁵³ the development of primary healthcare;⁵⁴ promotion of environmental safety and hygiene;⁵⁵ the prevention and control of malnutrition and all diseases and epidemics;⁵⁶ as well as the provision of adequate medical services where the need arises.⁵⁷ Of importance significance in this regard is Article 24 (4) which states that, “States Parties undertake to promote and encourage international cooperation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries”.⁵⁸ It is glaring from the above that UNICEF has been discharging its obligations with forthrightness, impartiality, and within the ambit of the law, duly executing its mandate under international law.

IV. THE BOKO HARAM INSURGENCY: HAS UNICEF BEEN CARRYING OUT ITS MANDATE?

The last section has sufficiently explained the fact that UNICEF’s mandate in armed conflict situations is not that of a meddling interloper, but rather as a strategic organization of the UN established to protect children. Since the turn of the 20th Century, the brutalization and gross abuse of child have formed a part of modern warfare. Several African conflicts have seen children become pawns on the chessboard of the warring parties. The Boko haram insurgency appear to stand in a class of its own. In the recurrent serial violation of human right in the conflict, children have been the worst hit. Olawuyi notes that children are especially vulnerable to the consequences of terrorist activities.⁵⁹ This of course, is not farfetched given their tender years

⁵² Convention on the Rights of the Child 1989, art. 24 (1).

⁵³ International Covenant on Economic, Social and Cultural Rights 1966, art. 24 (2) (a). See also International Covenant on Economic, Social and Cultural Rights 1966, art. 12 (2) (a).

⁵⁴ Convention on the Rights of the Child 1989, art. 24 (2) (b).

⁵⁵ Convention on the Rights of the Child 1989, art. 24 (2) (e). See also International Covenant on Economic, Social and Cultural Rights 1966, art. 12 (2) (b).

⁵⁶ Convention on the Rights of the Child 1989, art. 24 (2) (c). See also International Covenant on Economic, Social and Cultural Rights 1966, art. 12 (2) (c).

⁵⁷ International Covenant on Economic, Social and Cultural Rights, art. 12 (2) (d). See also International Convention on the Elimination of All Forms of Racial Discrimination 1965, art. 5 (e) (iv), “the right to public health, medical care, social security and social services.”

⁵⁸ Convention on the Rights of the Child 1989, art. 24 (4).

⁵⁹ D.S. Olawuyi, “Terrorism, Armed Conflict, and the Nigerian Child: Legal Framework for Child’s Rights

and state of dependence. Olawuyi particularly states that this vulnerability can be consequential in three different ways.⁶⁰ The first is that such children can become orphans when their parents are lost to terrorist attacks.⁶¹ Second is their exploitation either the terrorist groups who simply indoctrinate them to act as suicide bombers, or by child soldier recruiters who given the child sparse understanding, and the recruiter's superiority, can force them to do whatever they want.⁶² Third is the fact that government's efforts at counter-terrorism or counter-insurgency may also impact heavily on the life of the child.⁶³ According to him, the direct and indirect effects of terrorism carry far-reaching consequences on the protection, enforcement and fulfilment of the fundamental human rights of the Nigerian child.⁶⁴

Hence the unrelenting works of UNICEF. As the principal UN Agency responsible for the protection of children, UNICEF has been carrying out humanitarian work in the Boko haram insurgency since it began. However, the organization came under the spotlight when it was accused by the Nigerian government of working to further the political agenda of Boko Haram, which led to its purported suspension by the same government.⁶⁵ This act generated crisis in the international community, as many stakeholders criticized the government for trying to shield its gross violation of human rights, from the prying eyes of duly recognized international agencies. UNICEF stoutly denied the allegations, saying that it had never gone beyond its mandate as provided under international law. Interestingly, the government later lifted the suspension, based on which UNICEF was able to return to its humanitarian work in the region.⁶⁶

It needs emphasizing that it is not uncommon to find sovereign states antagonizing the work of international humanitarian agencies. Given the complex nature and multiplicity of interest that usually follow most armed conflicts, an air of suspicion remains rife. Amongst the complex web of interest, is that of the state which is always in a defensive mode. Thus, the relationship between national governments and international humanitarian agencies have always been one of 'cat and mouse'. To this end, the way and

Enforcement in Nigeria," *The Nigerian Juridical Review*, 13 (2015): 4.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ O. Aluko, "Military Suspends UNICEF Activities in the North-East," *The Punch Newspaper*, 15 December 2018, accessed 22 July 2019, <https://punchng.com/military-suspends-unicef-activities-in-north-east>,

⁶⁶ K. Sanni, "Nigeria Army Reverses Self on 'suspension' of UNICEF activities in North-East," *Premium Times News Paper*, 13 July 2019, accessed 22 July 2019, <https://www.premiumtimesng.com/news/headlines/301194-nigerian-army-reverses-self-on-suspension-of-unicef-activities-in-north-east.html>.

manner states pursues their interests can be a major impediment to effective humanitarian assistance.⁶⁷

Notwithstanding this uneasy relationship, humanitarian organizations are associated largely with humanitarian work and protection of the rights of those who are vulnerable. Humanitarian interventions led by duly recognized international organizations is key for several reasons, however topmost, is the fact that it makes it difficult for warring parties to misbehave as they would have wanted. In armed conflicts, each side particularly non-state actors are known to deny the civilian population access to humanitarian relief materials by intercepting humanitarian convoys, invading hospitals and other medical facilities as well as attacking humanitarian workers.⁶⁸ To forestall such attack, humanitarian agencies sometimes are a mix of civilian and military personnel to ensure security.⁶⁹ Even though there have been accusation levelled against humanitarian agencies as regards the politics behind their activities, generally humanitarian intervention in armed conflict is expected to be neutral and blind to the war objectives of the warring parties.

Whenever the UN through any of its agencies directs efforts at humanitarian intervention, it is often geared towards arresting pervading human rights devastations and nothing more.⁷⁰ Such intervention is not primarily about having the authority to intervene, but rather a responsibility to protect which is towards the needs of affected civilian population.⁷¹ While the intervening body recognizes the national government as having the principal responsibility to protect in this wise, it still goes ahead to carry out its mandate under international law, as complementary to the efforts of the central government.⁷² Notwithstanding this recognition given to the national government, the reality is that often times when such humanitarian intervention takes place, it would have become evident that the national government is either unable or where able, unwilling to act in that particular instance.⁷³

It is irrefutable that UNICEF has been the biggest international humanitarian agency tackling the devastations of the Boko haram insurgency. Describing

⁶⁷ K. A. Annan, "Peacekeeping, Military Intervention, and National Sovereignty in Internal Armed Conflict," in *Hard Choices: Moral Dilemmas in Humanitarian Intervention*, J. Moore, ed. (New York: Rowman & Littlefield Publishers, 1998), 56.

⁶⁸ O. Ramsbotham and T. Woodhouse, *Humanitarian Intervention in Contemporary Conflict: A Reconceptualization* (Cambridge: Polity Press, 1996): 167.

⁶⁹ L. Minear and T.G. Weiss, *Humanitarian Action in Times of War: A Handbook for Practitioners* (London: Lynne Rienner, 1993), 36.

⁷⁰ R. Lillich, "Forcible Self-help under International Law," *Naval War College Review* 62, (1980): 135.

⁷¹ G. Evans et al., "The Responsibility to Protect," *Report of the international Commission on Intervention and State Sovereignty* (2001), 5.

⁷² *Ibid.*

⁷³ *Ibid.*

the state of affairs, UNICEF Chief of Nutrition in Nigeria said, “we haven’t found the right words to describe the magnitude of the problem”.⁷⁴ According to the agency, between 2013 and 2017 more than 3,500 children between of ages of 13 to 17 has been deployed as child soldiers by non-state actors in the northeast of Nigeria.⁷⁵ Recently, the organization declared that 432 children were maimed and killed in the north-east region from the activities of Boko Haram.⁷⁶ Even though UNICEF notes that education can help to reduce the practice of child marriage, it reports that about 4, 700, 000 children in Nigeria, mostly in the north-east region where Boko Haram keeps unleashing violence, are out of school.⁷⁷

In its remembrance of the 5th anniversary of the Chibok girl’s abduction, the UNICEF Representative in Nigeria, Malick Fall stated that, “Children should feel safe at home, in school, and on their playgrounds at all times”.⁷⁸ He then added that,

*“We are calling on the parties to the conflict to fulfil their obligations under international law to end violations against children and to stop targeting civilian infrastructure, including schools. This is the only way we can begin to make lasting improvements in the lives of children in this devastated part of Nigeria.”*⁷⁹

In its humanitarian action for children in 2019, UNICEF recently appealed for about \$3.9 Billion to cater for millions of children caught in armed conflict situations around the world.⁸⁰ In its 2019 action plan, the body is looking at catering for about 41million children who lack access to education and health in 59 countries.⁸¹ The body also notes that about 34 million children living through conflict and disaster, lack access to child protection services, including 6.6 million children in Yemen, 5.5 million children in Syria, and 4 million children in the Democratic Republic of Congo (DRC).⁸² In this

⁷⁴ “Children in Conflict: Boko Haram Crisis,” UNICEF, accessed 22 July 2019, <https://www.unicefusa.org/mission/emergencies/conflict/boko-haram-crisis>.

⁷⁵ N. Odebode, “3,500 Children Recruited by Armed Groups in North East,” *The Punch Newspaper*, 13 April 2019, accessed 30 July 2019, <https://punchng.com/3500-children-recruited-by-armed-groups-in-neast-unicef>.

⁷⁶ L. Jannamike, “Boko Haram: 432 Children Killed in North-east 2018,” *The Vanguard Newspaper*, 12 April 2019, accessed 22 July 2019, <https://www.vanguardngr.com/2019/04/boko-haram-432-children-killed-in-northeast-in-2018-unicef>.

⁷⁷ L.L. Taylor, “Boko Haram Terrorism: Reaching Across International Boundaries to Aid Nigeria in the Humanitarian Crisis,” *ILSA Journal of International and Comparative Law* 21, (2014): 5. 1 – 24.

⁷⁸ N. Odebode, “3,500 Children Recruited by Armed Groups in North East.”

⁷⁹ *Ibid.*

⁸⁰ “UNICEF Humanitarian Action for Children 2019: Overview,” *ReliefWeb*, 29 January 2019, accessed 22 July 2019, <https://reliefweb.int/report/world/unicef-humanitarian-action-children-2019-overview-enar>.

⁸¹ *Ibid.*

⁸² *Ibid.*

regard, child protection services refer to activities aimed at responding to abuse, exploitation, and violence against children.⁸³ In making this appeal, the agency's Executive Director Henrietta Fore said;

Today millions of children living through conflict or disaster are suffering horrific levels of violence, distress and trauma. The impact of our children protection work cannot be overstated. When children do not have safe places to play, when they cannot be reunited with their families, when they do not have psychosocial support, they will not heal from the unseen scars of war.⁸⁴

The active presence of UNICEF has greatly helped prevent the rising crime of genocide in armed conflicts. In the Boko Haram insurgency where thousands of children have been kidnapped, the agency has helped put issues surrounding genocide in the international spotlight. Its role is paramount in this regard, given that it has remained a debate whether the CRC as an international human rights instrument adequately addresses this crime.⁸⁵ Even before the upsurge of the Boko Haram insurgency, the UN has been involved in one form of humanitarian work or the other in the northeast. Given the huge developmental and infrastructural deficit in this region, UN agencies had been partnering with key ministries and departments of government in mounting developmental projects in areas of agriculture, health, and infrastructure.⁸⁶ However, given the massive size of the region, extreme poverty and the fact that these programs were meant to be long term in nature, overtime, there grew a lack of sufficient attention from development partners in the region.⁸⁷ Thus, when the Boko haram insurgency broke out, the humanitarian response was abysmally slow.⁸⁸ Against this background, the intervention of UNICEF came as a major milestone.

V. CONCLUSION

This article has examined the issues of whether UNICEF's intervention on behalf of the children caught in the Boko Haram insurgency is backed by international law. It has also examined to what extent does it have this mandate. In the course of the article, these two issues have been appropriately distilled, with the right answers rendered. Not only has the article established the legality of UNICEF's activities in Nigeria's north-east, but it has also additionally shown that its mandate is part of an international commitment to protect children everywhere in the world. So far, no report, whether domestic

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

or international, has uncovered any political motive in the agency's activities, neither has it been shown that it has sympathies for either side to the conflict. Going forward, therefore, the act of politicizing the activities of such an important humanitarian body need to be discouraged, given the possibility of seriously impeding the realization of an important aspect of international human rights i.e., the right of the child.

The international community has always recognized the need to priorities the rights of the child, armed conflict situations inclusive. Given their innocence and vulnerability, children have become the butt of nearly all human conflicts, particularly armed insurgencies such as the Boko Haram insurgency, where they have been largely reduced to mere commodities and bargaining chips in the hands of warring parties. Hence, the multi-layered level of protection and the recognition of the need for cooperation by all stakeholders. For whatever it is worth, governments around the world must key into this understanding. There cannot be too much cooperation, or a surplus of assistance, when it comes to protecting children.

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