

CANADIAN-NIGERIAN HUMAN RIGHTS COOPERATION IN THE AREA OF CHILDREN'S RIGHTS

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Abstract

The purpose of this paper is to explore Canadian-Nigerian cooperation in the area of children's rights. The paper forms part of a larger collaborative research project spanning a period of three years (2012-2015) involving Osgoode Hall Law School, the Nigerian Institute of Advanced Legal Studies and the Nigeria NGO Centre for Social Justice (CENSOJ). It is intended to examine this collaboration as a vehicle for joint knowledge mobilization/dissemination by analyzing and theorizing the nature, attainments, problems and prospects of Canadian-Nigerian cooperation in the protection of the rights of children in Nigeria for the period 1999 to 2011.

The ultimate goal of this paper is to determine through the analysis of data derived from field work the nature and character of Canadian-Nigerian cooperation in the area of children's human rights. It also looks at how this cooperation has been articulated and implemented. We intend also to examine the behavior of the parties involved, that is Canada and Nigeria either acting as governments or through the activities of individuals and groups operating in this field in both countries. Finally, we analyze the implications of this collaboration on policy, practice and theory of children's rights while not forgetting the important aspect of what have been the attainments of this cooperation as well as problems and prospects (implicit and explicit) of this cooperation.

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1. Introduction

This paper examines Canada-Nigeria human rights cooperation in the area of children's rights. The purpose of this enquiry is to document the nature, attainments, problems and prospects of this cooperation within the period 1999 to 2011. The paper is an aspect of a larger study examining Canada-Nigeria cooperation in the protection of human rights within the indicated period (1999 to 2011). The larger study (and as such this paper) engages with a number of sources in its methodology and utilises socio-legal techniques in synthesizing them. These sources include: the literature on children's rights; interview carried out in Canada and Nigeria; and relevant documents of government, international organizations, and civil society in both countries. Informing the enquiry are two important theories: the first, as advanced by Finnemore and Sikkink, applies "strategic social constructivism" to the human rights area in conceptualizing a theory of "norm life cycle" and centrality of the agency of the "norm entrepreneur" in catalyzing human rights change;¹ and the second, is Upendra Baxi's theory of the emergence globally of a "trade-related market friendly human rights" (TREMFM) paradigm/discourse which he claims is steadily supplanting the paradigm of the Universal Declaration of Human Rights (UDHR).²

The overarching objective of this paper is to determine whether any linkages can be found in the literature, the interview data, and the framing theories. Within the context of this objective, answers are sought to the following questions: What has been the nature/character of Canada-Nigeria cooperation in the specific human rights sub-area of children's rights? What

¹ See Martha Finnemore and Kathryn Sikkink, 'International Norm Dynamics and Political Change' (1998) 52(4) *International Organization* at Fifty: Exploration and Contestation in the Study of World Politics 887-917.

² See Upendra Baxi, *The Future of Human Rights* (Delhi: Oxford University Press, 2002) 131-166.

have been the attainments of this cooperation? What have been the problems of the cooperation? And what are the prospects for the cooperation?

The structure of the paper is as follows: Section 2 reviews the literature on children's rights. The aim of this review is to establish the manner in which these rights have evolved, its main focus and what informs this focus; Section 3 examines the theories framing the study, namely Finnemore and Sikkink's norm theory and Upendra Baxi's TREMF paradigm discourse; Section 4 reviews relevant data from the field research work carried out in Canada and Nigeria; Section 5 analyses the linkages among the literature, interview data, and the framing theories; Section 6 examines the attainments, problems and prospects of the cooperation of Canada and Nigeria in children's rights; and Section 7 concludes the discussion with a statement of the key finding(s) made by the paper.

2. Literature Review

Clark Butler writes about a time in Roman law "when children were considered property of the family father, who had a life-and-death power over them."³ By the time of the French Enlightenment however, this was no longer the case. It was Jean-Jacques Rousseau's (1712-1778) seminal work, *Emile*⁴ which brought about the discovery of preschool childhood by the reading public of Europe in the eighteenth century; a discovery described by Butler as "important and lasting".⁵ The importance of this discovery is because before Rousseau, children were often viewed within the upper class as little adults, and were dressed accordingly, but not allowed the freedom to express themselves as adults.⁶ The lasting impact of the discovery is evident by the

³ Clark Butler, 'Children's Rights: An Historical and Conceptual Analysis' in Clark Butler (ed) *Child Rights: The Movement, International Law, and Opposition* (Purdue University Press, 2012) 13.

⁴ Jean-Jacques Rousseau, *Emile: Or Treatise on Education*, (trans.) William Payne (Prometheus Books, 2003).

⁵ Clark Butler (fn 3 above).

⁶ Ibid.

fact that what became the child rights movement (founded by Rousseau) spread to the German speaking world, and eventually to the English speaking world, through writers such as Johann Heinrich Pestalozzi (1776-1827),⁷ Friedrich Froebel (1782-1852),⁸ and Elizabeth Peabody (1804-1894)⁹ – these child rights activists played important roles in the emergence of the kindergarten.¹⁰

Butler argues that the peculiarity of Rousseau’s child rights movement is that “it proclaimed the essential goodness and innocence of preschool children. Quite legitimately, it promoted the right of such children to be children, to play and explore and not merely to be seen and not heard.”¹¹ But that was not its only objective. “It also aspired to perpetuate childhood as a model of virtue for children into school years and even into adulthood”¹² where children were regarded as virtuous, while adults considered corrupt and degenerate unless they have preserved something of the innocence of the child.¹³ Rousseau’s aim, in his initiation of a kind of children’s liberation movement, was not “to liberate children from childhood and to enable them to exercise, even as children, adult human rights, like the right to work, as advocated by some child liberationists.”¹⁴ His aim was “precisely to liberate children from the exercise of such adult human rights,” an aim now reflected in Article 31 of the United Nations Convention on the

⁷ See Kate Silber, *Pestalozzi: The Man and His Work* (Routledge and Kegan Paul, 1960).

⁸ Friedrich Froebel, *Froebel’s Chief Writings on Education*, (trans.) S.S.F. Fletcher and J. Welton (Edward Arnold, 1912).

⁹ M.T.P Mann and E. Palmer Peabody, *Moral Culture of Infancy, and Kindergarten Guide* (J.W. Schemerhorn, 1870).

¹⁰ Clark Butler (fn 3 above).

¹¹ Ibid.

¹² Ibid at 14

¹³ Ibid.

¹⁴ Ibid; see H. Cohen, *Equal Rights for Children* (Adams, 1980); R. E. Farson, *Birthrights* (MacMillan, 1974); Claire Cassidy, ‘Implementing the Convention on the Rights of the Child in the UK: A Problem of Political Will’ in Clark Butler (ed) *Child Rights: The Movement, International Law, and Opposition* (Purdue University Press, 2012) 157-173.

Rights of the Child (CRC) which declares the right of the child to leisure and to learning by play.¹⁵

The process of international codification of children's rights began in 1924 when the League of Nations adopted the "Declaration of Geneva",¹⁶ a historic document that recognised and affirmed for the first time the existence of rights specific of children and the responsibility of adults towards children.¹⁷ The duties formulated in the Declaration of Geneva were originally drawn up as the aims of the Save the Children International Union, which was established in 1920 in reaction to the enormous numbers of children afflicted by the First World War.¹⁸ The provisions of the Declaration were not formulated as rights of children but, rather as duties declared and accepted by "men and women of all nations".¹⁹ Although not meant to be applicable in situations of armed conflict only, the experiences of the First World War were influential of its content in that the material needs of children was particularly emphasised. The 1924 Declaration of Geneva reads as follows:

By the present Declaration of the Rights of the Child, commonly known as the "Declaration of Geneva", men and women of all nations recognizing that mankind owes to the child the best that it has to give, declare and accept it as their duty that, beyond and above all considerations of race, nationality or creed:

¹⁵ See *Convention on the Rights of the Child* United Nations GA Res 44/25 of 20 November 1989 UNTS 1577 (entered into force 29 June 1982).

¹⁶ See Records of the Fifth Assembly, *League of Nations Official Journal*, Special Supplement No. 23, p. 177 (1924).

¹⁷ Geneva Declaration of the Rights of the Child, 1924, online: <www.humanim.org/en/children's-rights-history/references-on-child-rights/geneva-declaration/> retrieved 27 March 2015.

¹⁸ See P. Van Dijk, "De Internationale Bescherming Van De Rechten Van Het Kind", *Familie-en Jeugdrecht* (1979), pp. 165-180; Sharon Detrick, *A Commentary on the United Nations Convention on the Rights of the Child* (Martinus Nijhoff Publishers, 1999) 13.

¹⁹ See Records of the Fifth Assembly, (fn 16 above) 177.

- I The child must be given the means needed for its normal development, both materially and spiritually;
- II The child that is hungry should be fed; the child that is sick should be helped; the erring child should be reclaimed; and the orphan and the homeless child should be sheltered and succoured;
- III The child must be the first to receive relief in times of distress;
- IV The child must be brought up in the consciousness that its best qualities are to be used in the service of its fellow men.²⁰

In the aftermath of the Second World War, which resulted in considerable suffering of children, immediate efforts were made by the General Assembly of the newly established United Nations (UN) to adopt a revised declaration of the rights of the child. It was not until 20 November 1959 that the UN General Assembly finally adopted the Declaration of the Rights of the Child.²¹ It marked the first major international consensus on the fundamental principles of children's rights.²² In the meantime before the Declaration materialized, the UN General Assembly had adopted and proclaimed, on 10 December 1948, the UDHR. In principle, the rights proclaimed in the UDHR apply equally to children and adults. Moreover, Article 25(2) of the UDHR specifically makes provisions for children, providing that: "Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection."²³

²⁰ Ibid.

²¹ See General Assembly Resolution 1386 (XIV) of 20 November 1959. The evolution of the 1959 Declaration of the Rights of the Child is discussed in: E. Chanlet and G.M. Morier, "Declaration of the Rights of the Child", (1968) 22 International Child Welfare Review 4-8; Sharon Detrick, (fn 18 above) 14.

²² Declaration of the Rights of the Child, 1959, online: <www.humanium.org/en/childrens-rights-history/references-on-child-rights/declaration-rights-child/> retrieved 27 March 2015.

²³ Universal Declaration of Human Rights, G.A. Res. 217 A (III), UN GAOR, 3rd Sess., UN DOC. A/810 (1948).

In the Declaration of 1959, the child is “recognised, universally, as a human being who must be able to develop physically, mentally, socially, morally, and spiritually, with freedom and dignity.”²⁴ However, neither the 1924 Geneva Declaration nor the 1959 Declaration of the Rights of the Child define when childhood starts and ends, mainly to avoid taking a stand on abortion.²⁵ The 1959 Declaration lays down ten principles in its conception of the rights of the child, namely:

- I the right to equality, without distinction on account of race, religion or national origin;
- II the right to special protection for the child’s physical, mental and social development;
- III the right to a name and a nationality;
- IV the right to adequate nutrition, housing and medical services;
- V the right to special education and treatment when a child is physically or mentally handicapped;
- VI the right to understanding and love by parents and society;
- VII the right to recreational activities and free education;
- VIII the right to be among the first to receive relief in all circumstances;
- IX the right to protection against all forms of neglect, cruelty and exploitation;
- X and the right to be brought up in a spirit of understanding, tolerance, friendship among peoples, and universal brotherhood.²⁶

²⁴ Declaration of the Rights of the Child, 1959, online: <www.humanium.org/en/childrens-rights-history/references-on-child-rights/declaration-rights-child/> retrieved 27 March 2015.

²⁵ Ibid.

²⁶ Ibid.

At the thirty-fourth session of the UN Commission on Human Rights, in 1978, Poland submitted a draft resolution to be recommended for adoption by the UN Economic and Social Council (ECOSOC). In this draft resolution the ECOSOC recommended that the UN General Assembly adopt an international convention on the rights of the child on the basis of the principles and provisions contained in the 1959 UN Declaration of the Rights of the Child.²⁷ This resolution also contained a draft text of such a convention.²⁸ At the introduction of the draft resolution to the UN Commission on Human Rights, the Polish representative recalled that in 1959 the UN General Assembly had adopted the Declaration of the Rights of the Child. He stated that this declaration had been instrumental in promoting the rights of children throughout the world, as well as in shaping various forms of international co-operation in that field. He noted, however, that, almost twenty years after the proclamation of the principles of the Declaration, it was time to take further and more consistent steps by adopting an internationally binding instrument in the form of a convention; also expressing the view that such a convention should be based on the ten principles of the 1959 UN Declaration of the Rights of the Child.²⁹

Several speakers reacted favourably to this comment by the Polish representative and spoke of the pressing needs to put the rights of the child in the developing world in proper perspective. They also felt that it was important to create an international instrument of a binding nature, because children were suffering through wars, and other forms of aggression, and under colonialism, racism and apartheid.³⁰ A suggestion was put forth that a convention on the rights of the child should be adopted the following year, since the UN General Assembly had proclaimed

²⁷ See UN Doc. E/CN.4/L.1366 (1978).

²⁸ Ibid, 2-5.

²⁹ See Chapter XIX of the Report of the Commission on Human Rights on its thirty-fourth session, *Official Records of the Economic and Social Council* (1978), Supplement No. 4 (E/1978/34), para. 306; Sharon Detrick, (fn 18 above) 14.

³⁰ Ibid., para. 308.

1979 International Year of the Child.³¹ This was considered possible since the draft resolution submitted by Poland, was essentially complete, as it was based on the existing 1959 Declaration of the Rights of the Child. However, this suggestion did not carry through as it was decided *inter alia* that Member States should study the subject carefully before proceeding to adopt a convention; and also consideration be given to the substantive work of non-governmental organizations.³²

On 8 March 1978, the UN Commission on Human Rights adopted resolution 20 (XXXIV) and Poland's draft CRC, with some minor amendments was annexed thereto.³³ In this resolution, Member States of the UN and competent specialized, agencies, regional intergovernmental organizations and non-governmental organizations were invited to submit their views, observations and suggestions relating to the Polish proposal. These views, observations and suggestions were to be taken into consideration at the thirty-fifth session of the Commission, in 1979, with a view to concluding, if possible, a convention at that session for transmission to the UN General Assembly through ECOSOC. The drafting process lasted from 1978 to 1989 – the *travaux preparatoires* of the CRC are extensively discussed elsewhere and need not detain us here.³⁴

The CRC was adopted by the UN General Assembly on 20 November 1989, thirty years after the adoption, on 20 November 1959, of the UN Declaration of the Rights of the Child.³⁵ It was opened for signature for all States, on 26 January 1990. Within that same year, on 2 September 1990, thirty days after the deposit of the twentieth instrument of ratification with the

³¹ See General Assembly resolution 31/169 of 21 December 1976.

³² See Chapter XIX of the Report of the Commission on Human Rights on its thirty-fourth session, *Official Records of the Economic and Social Council (1978)*, Supplement No.4 (E/1978/34), para. 309.

³³ See *Official Records of the Economic and Social Council (1978)*, Supplement No.4 (E/1978/34), Chapter XXVI, section A.

³⁴ See Sharon Detrick, (fn 18 above).

³⁵ See General Assembly resolution 44/25 of 20 November 1989.

Secretary-General of the UN, it entered into force.³⁶ The CRC today has now been fully ratified by all UN Member States.³⁷

Butler writes that Commentators on the CRC commonly divide children's rights into the so-called three P's: protection, provision and participation rights. Infants and young children, due to their vulnerability, need to be protected and provided for. This claim to protection and provision is socially validated by well-nigh universal consensus, establishing specific children's rights from birth onward in customary international law. Participation rights only come to be gradually exercised by children in the course of growing up. Participation rights progressively allow children to engage in dialogue about decisions affecting them. They enable children to offer their opinions, if not always to decide. They give them the right to be informed of alternatives between which to choose and of known indirect consequences of their choices as much as they are able to understand them. A child flees childhood by discontent with his or her childlike state.³⁸

Participatory rights are contained in articles 12 – 17 of the CRC as rights to freedom of thought, expression, communication, and access to information on all questions affecting the child. Such rights distinguish the convention from the 1959 UN Declaration of the Rights of the Child, which is restricted to protection and provision rights. Butler argues that if the CRC is interpreted as setting a moral standard, the right of children to protection and provision should be considered as supports to the basic right of children to participation. Children may thus exercise

³⁶ See Article 49(1) of the CRC; See also Sharon Detrick, (fn 18 above).

³⁷ See United Nations Treaty Collection, *Convention on the Rights of the Child* online: <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en> retrieved 27 March 2015.

³⁸ See G. W. F. Hegel, *Philosophy of Rights*, 396, Addition referred to in Clark Butler (fn 3 above) 16.

the *dialogical* right to participation only by way of exercising rights to freedom from fear and freedom from want.³⁹

Nigeria and Canada are part of the 140 UN Member States that signed the CRC after it was adopted and opened for signature – Nigeria signed the convention on the same day it opened for signature on 26 January 1990, while Canada signed it on 28 May 1990.⁴⁰ Subsequently, on 19 April 1991, Nigeria ratified the CRC while Canada’s ratification took place on 13 December 1991.⁴¹ Nigeria, as a dualist state,⁴² is required by its Constitution to domesticate a treaty it has ratified by an enabling local legislation passed by the National Assembly (Nigeria’s legislative body) before it can have the force of law in the country. This is according to section 12(1) of the 1999 Constitution of Nigeria which provides that no treaty shall have the force of law unless enacted into law by the National Assembly. Having regard to this constitutional provision, the CRC has been domesticated in Nigeria by virtue of the Child Rights Act (CRA) No. 26 of 2003.

There is a further dimension to the domestic application of the CRC in Nigeria through the CRA. This dimension arises from Nigeria’s federal system and its constitutional separation of legislative competence between federal and state legislative bodies. In this regard, the National Assembly has exclusive legislative competence only over matters contained in the “exclusive legislative list” and shares joint legislative responsibility with state legislative bodies for matters contained in the “concurrent legislative list” – in the event of conflict, the federal legislation supersedes. Matters contained in the residual legislative list are within the sole competence of

³⁹ See Clark Butler (fn 3 above) 16.

⁴⁰ See United Nations Treaty Collection, *Convention on the Rights of the Child* online: <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en> retrieved 27 March 2015.

⁴¹ *Ibid*; Canada’s ratification is with reservations to Articles 21, 30 and 37(c) of the CRC.

⁴² In international law, a state is regarded as “monist” if international treaties which that state has ratified have direct effect within its domestic legal system without the need for any local enabling legislation. The flip side of this view applies to states which require treaties that have been ratified by their respective national governments to be equally enacted as a local legislation to have the force of law.

state legislative bodies. The affairs of children are not captured in the exclusive legislative list or concurrent legislative list. What this means is that it is a residual matter for states to legislate on. However section 12(2) of the 1999 Constitution contains an exception empowering the National Assembly to legislate on matters not in the exclusive legislative list where such legislation is for the purpose of *implementing a treaty*. This provision has thus empowered the National Assembly to pass the CRA. But it also means that the CRA only applies at the federal level and not in states that have not passed an equivalent state Child Rights Law. At the moment, only 24 out of the 36 states of Nigeria have passed the Child rights Law.⁴³ For the states that have not done that (which are twelve in number)⁴⁴ neither the CRC nor the CRA can apply.

A survey of the tenor of scholarly discourse is quite telling of the perception on the ground about the situation of children's rights in Nigeria. Eunice Uzodike, for instance, writes about the Socio-Legal Aspects of Child Abuse and Neglect in Nigeria, focusing on the work of the African Network for the Prevention and Protection Against Child Abuse, which she argues is taking spirited measures to curb this wide spread practice.⁴⁵ Although Uzodike's paper pre-dates the ratification of the CRC by Nigeria and the time frame of this project, it is indicative of some of the issues on the ground which the CRC (and its local counterpart the CRA) is meant to address in Nigeria.

In "The Child Rights Act Versus Sharia Law in Nigeria" Iyabode Ogunniran writes about how Nigeria's complex legal system that includes the common law, customary and Islamic systems applying side-by-side; as well as the complicated federal legislative system with its

⁴³ See UNICEF Nigeria Fact Sheet, "Child Rights Legislation in Nigeria" online: <www.unicef.org/nigeria/Child_rights_legislation_in_Nigeria.pdf> retrieved 29 March 2015.

⁴⁴ The states in Nigeria yet to pass a Child Rights Law include: Adamawa, Borno, Enugu, Gombe, Kaduna, Kano, Katsina, Kebbi, Sokoto, Yobe and Zamfara. See Ibid.

⁴⁵ See Eunice Uzodike, 'Child Abuse and Neglect in Nigeria – Socio-Legal Aspects' (1990) 4 International Journal of Law and Family 83-96.

division of legislative competence between the federal and state governments, poses serious challenges for the implementation of the CRC (through its domesticated variant, the CRA) in the country. Ogunniran particularly draws attention to the challenges posed by Sharia Law (which applies in many northern states of Nigeria) to the implementation of the CRA, arguing that the CRA is based on the “best interest” principle which requires every action concerning the child to be in the best interest of the child. Sharia law, on the other hand, which is derived from fixed and immutable sources (such as Quaran, Sunna, and Ijma) diverges in many areas which pose challenges to the adoption of the CRA in the states applying the Sharia law. These areas of divergence include: child marriage which is allowed under Sharia law and disallowed by the CRA; adoption which is allowed under the CRA but prohibited by Islam; custody rights in marriage where different rules apply under both regimes etc.⁴⁶

Finally, a study by Nicola Jones *et al*, commissioned by UNICEF Nigeria and the Nigeria National Planning Commission (with funding provided by UNICEF and UNFPA) details many challenges facing children in Nigeria since the adoption of the CRA and paints a rather bleak image, noting that Nigerian children are highly vulnerable to income poverty and a wide variety of socio-economic shocks in the area of health, environmental degradation, domestic violence, family fragmentation, broader societal violence and conflict, social exclusion, discrimination, harmful traditional practices based on cultural values etc, for instance: child trafficking occurs largely within national boundaries, although there is also significant trafficking to southern Europe; harmful forms of child labour affect an estimated 15 million children most of whom are in the informal or semi-formal sectors; child domestic abuse is widely accepted as a way of instilling discipline and is often regarded as part of the socialization process and children are

⁴⁶ See Iyabode Ogunniran, ‘The Child Rights Act Versus Sharia Law in Nigeria: Issues, Challenges & A Way Forward’ (2010) 30(1) Children’s Legal Rights Journal 62 – 80.

unable to speak out given their subordinate position in the home; girls are increasingly vulnerable to sexual abuse, especially those who are fostered out to more affluent urban relatives or are victims of early marriage which denies girls access to education; with respect to existing policy and programming responses to child protection vulnerabilities, although Nigeria's federal government has passed a comprehensive CRA, not only has it been ignored by a number of state governments, but overall financial and human resourcing has been very limited, hampering the Act's effectiveness; and poor enforcement and insufficient documentation of the extent of and trends in violations of children's protection rights means that the principle of "the child's best interest" is often not embedded in institutions throughout government and society.⁴⁷

What scholarly discourse about the situation of children's rights in Nigeria demonstrates is that the factors necessitating the implementation of the CRA in the country continue to be very pressing even as the impact of the legislation remains negligible in areas where either the CRA or equivalent state legislation apply. However, for those states without any child rights law and where the CRA does not apply, the situation of children is perilous.

3. The Theoretical Frameworks: Finnemore and Sikkink's "Strategic Social Constructivism" and Upendra Baxi's "TREMIF Paradigm/Discourse"

⁴⁷ See Nicola Jones *et al*, *Promoting Synergies Between Child Protection and Social Protection in Nigeria* (February 2012) (on file with authors). For further reading see: Musa Sallek Yaks, 'A Phenomenology of Children Exposed to the Violent Conflict in Jos, Nigeria' (2014) 19(3) IOSR Journal of Humanities and Social Science 104 – 111; Michael Ejieh, 'Children's Rights and Participation in Schools: Exploring the Awareness Level and Views of Nigerian Primary School Children' (2009) 8(1) Elementary Education Online 176 – 182; Ifeyinwa Annastasia Mbakogu, 'Exploring the Forms of Child Abuse in Nigeria: Efforts at Seeking Appropriate Preventive Strategies' (2004) 8(1) Journal of Social Science 23 – 27; Francis Azalahu Awara *et al*, 'Law and Children's Rights Protection: The Nexus for a Sustainable Development in Nigeria' (2010) 6(2) Canadian Social Science 26 – 33; P. O. Ebigbo, 'Street Children: The Core of Child Abuse and Neglect in Nigeria' (2003) 13(1) Children, Youth and Environments; Uwem Essia, 'The Social Economy of Child Witch Labeling in Nigeria: The Case of Akwa Ibom State' (2012) Social Science Journal of Psychology 1 – 11; Georgy O. Obiechina, 'Violations of Child's Rights in Nigeria: Implications for Child Health' (2014) 5(1) Academic Research International 151 – 159; and Emilie Secker, 'Witchcraft Stigmatization in Nigeria: Challenges and Successes in the Implementation of Child Rights' (2012) 56(1) International Social Work 22 – 36.

In this section, the two main theories framing this research project (namely, Finnemore and Sikkink's norm life cycle theory and strategic social constructivism as well as Baxi's theory of the emergence globally of a TREMF paradigm) are examined.

[A] Finnemore and Sikkink's Theory of Norm Life Cycle and Strategic Social Constructivism

In "International Norm Dynamics and Political Change",⁴⁸ Finnemore and Sikkink offer an explanation of how norms influence behaviour of states and non-state actors in the international realm – not just in terms of how they explain the conformist behaviours of these entities, but more particularly, how they explain changes in behaviour involving the abandoning of previously held norms in favour of new norms. In offering their explanation, they adopt the general definition of a norm as "...standard of appropriate behaviour for actors with a given identity..."⁴⁹ and flowing from that understanding, they advance two key propositions. The first is hinged on their exposition of a theory of the norm life cycle which makes a number of related sub-claims. The first sub-claim states that norm influence can be understood as a three-stage process. The first stage is "norm emergence"; the second stage involves broad norm acceptance which they term "norm cascade"⁵⁰; and the third stage involves "internalization". They argue that "the first two stages are divided by a threshold or 'tipping point' at which a critical mass of relevant state actors adopts the norm."⁵¹

⁴⁸ See Martha Finnemore and Kathryn Sikkink (fn 1 above).

⁴⁹ Ibid at 891.

⁵⁰ They are influenced by Cass Sunstein in their coinage of the term "norm cascade". See Martha Finnemore and Kathryn Sikkink, (fn 1 above) 895.

⁵¹ Ibid.

The second sub-claim is that ‘the characteristic mechanism of the first stage, norm emergence, is persuasion by “norm entrepreneurs”⁵² who attempt to convince a critical mass of states (norm leaders) to embrace new norms. The second stage is characterised more by a dynamic imitation as the new norm leaders attempt to socialize other states to become norm followers.’⁵³ Socialization is the dominant mechanism of a norm cascade – the mechanism through which norm leaders persuade others to adhere.⁵⁴ As to the reason why socialization works or the motives that induce states opposed to the norm to adhere and adhere quickly, Finnemore and Sikkink argue that “...states comply with norms in stage 2 for reasons that relate to their identities as members of an international society”.⁵⁵ After norm entrepreneurs have persuaded a critical mass of states to become norm leaders and adopt new norms, Finnemore and Sikkink argue that the norm reaches a threshold or tipping point.⁵⁶ ‘Up to the tipping point, little normative change occurs without significant domestic movements supporting such change.’⁵⁷ After the tipping point has been reached however a different dynamic plays out. More countries begin to adopt the new norms more rapidly even without domestic pressure for such change.⁵⁸ They argue that “...the primary mechanism for promoting norm cascades is an active process of international socialization intended to induce norm breakers to become norm followers.”⁵⁹ “At

⁵² According to Finnemore and Sikkink, norm entrepreneurs are the agents whose activities are critical to the emergence of a norm and driving it until its tipping point where it cascades and eventually results in mass adoption by other states. At this point the norm becomes institutionalised without any further effort by norm entrepreneurs.

⁵³ See Martha Finnemore and Kathryn Sikkink, (fn 1 above) 895.

⁵⁴ Ibid at 902.

⁵⁵ Ibid.

⁵⁶ Ibid at 901.

⁵⁷ Such domestic movements are signpost by the activities of NGOs and civil society advocating for the observance of the emerging norm.

⁵⁸ See Martha Finnemore and Kathryn Sikkink, (fn 1 above) 902.

⁵⁹ Ibid.

the far end of the norm cascade,” they argue, “norm internalization occurs; norms acquire a taken-for-granted quality and are no longer a matter of broad public debate.”⁶⁰

The third sub-claim says ‘norm entrepreneurs are critical for norm emergence because they call attention to issues or even “create” issues by using language that names, interprets, and dramatizes them.’⁶¹ In doing so, norm entrepreneurs must displace previously existing norms firmly embedded in the system because “new norms never enter a normative vacuum but instead emerge in a highly contested normative space where they must compete with other norms and perceptions of interest.”⁶²

The fourth sub-claim says “all norm promoters at the international level need some kind of organizational platform from and through which they promote their norms”⁶³ and “whatever their platform, norm entrepreneurs and the organizations they inhabit usually need to secure the support of state actors to endorse their norms and make norm socialization a part of their agenda, and different organizational platforms provide different tools for norm entrepreneurs to do this.”⁶⁴

The second proposition advanced by Finnemore and Sikkink is what they call “strategic social construction”. On this proposition, they argue that “transnational norm entrepreneurs... are making detailed means-ends calculations to maximize their utilities, but the utilities they want to maximize involve changing the other players’ utility function in ways that reflect the normative commitments of the norm entrepreneurs.”⁶⁵

[B] Upendra Baxi’s TREMF Paradigm/Discourse

⁶⁰ Ibid at 895.

⁶¹ Ibid at 897.

⁶² Ibid.

⁶³ Ibid at 899.

⁶⁴ Ibid at 900.

⁶⁵ Ibid at 910.

In *The Future of Human Rights*, Baxi writes about the emergence globally of a TREMF paradigm/discourse. In expositing his TREMF thesis, Baxi develops a number of ‘distinguishable but intimately related sub-claims’.⁶⁶ The first sub-claim is that the TREMF paradigm (unlike the UDH paradigm) insists on promoting and protecting the collective human rights of various formations of global capital mostly at direct expense of human beings and communities.⁶⁷ The distinction here, according to Okafor, “is Baxi’s notion of the assignment of *human* (as opposed to ordinary legal) rights to various formations of global capital”.⁶⁸

The second sub-claim is that, much more than in the past, the progressive state – or at least the progressive ‘Third World’ state – is now conceived as one that is a good host state to global capital; as one that protects global capital against political instability and market failure, usually at a significant cost to the most vulnerable among its own citizens; and one that is in reality more accountable to the International Monetary Fund (IMF) and the World Bank than to its own citizens. According to this TREMF mindset, progressive states are those states that are more soft than hard towards global capital.⁶⁹

The third Baxian sub-claim is that the new global order also requires the reproduction of a core of internal hardness within these same generally soft states. To paraphrase Baxi, a progressive state is also conceived under the TREMF paradigm as a state that is market efficient in suppressing and de-legitimising the human rights-based practices of resistance of its own citizens and that is also capable of unleashing (and, when necessary, does in fact unleash) a reign

⁶⁶ The description is borrowed from Okafor. See Obiora Okafor, ‘Assessing Baxi’s Thesis on an Emergent Trade-Related Market-Friendly Human Rights Paradigm: Recent Evidence from Nigeria Labour-led Struggles’ 2007 (1) *Law, Social Justice & Global Development Journal* 1-15, 3.

⁶⁷ See Upendra Baxi, *The Future of Human Rights* (fn 2 above).

⁶⁸ See Obiora Okafor, (fn 66) at 4.

⁶⁹ *Ibid.*, referring to Upendra Baxi, *The Future of Human Rights* (fn 2 above) 141.

of terror on some of its citizens, especially those of them that actively oppose its excessive softness towards global capital.⁷⁰

The fourth sub-claim says that unlike the UDH paradigm, the TREMF paradigm denies a significant redistributive role to the state.⁷¹ Baxi argues in this regard that the UDH paradigm which “assigned human rights responsibilities to states...to construct, progressively and within the community of states, a just social order, national and global, that will at least meet the basic needs of human beings,” is being sidestepped by a TREMF paradigm that ‘denies any significant redistributive role to the state; calls upon the state [and world order] to free as many spaces for capital as possible, initially by pursuing the three-Ds of contemporary globalization: deregulation, denationalization, and disinvestment.’⁷²

The above theoretical perspectives (by Finnemore and Sikkink and Baxi, respectively) will inform the analysis in section 5. In section 4 however, a review of the interview data and other evidence from the field research work undertaken in Canada and Nigeria will be carried out.

4. A Review of the Interview Data and Other Evidence from the Field Research Work Undertaken in Canada and Nigeria

A joint field research work was undertaken in Canada and Nigeria, for a period of 24 months, covering broadly the following areas: democratization; women’s rights; children’s rights, economic/social rights; and human rights institution-building. In this section, the aim is to review the interview data derived from informants and other evidence sources (such as documents,

⁷⁰ Ibid

⁷¹ See Upendra Baxi, *The Future of Human Rights* (fn 2 above) 139.

⁷² See Obiora Okafor, (fn 66 above) at 4 referring to Upendra Baxi, *The Future of Human Rights* (fn 2 above) 139.

publications, official government web sites etc) which relate to the cooperation between Canada and Nigeria from 1999 to 2011 in the area of children's rights.

The interview transcripts from the field work reveal very little about the cooperation between Canada and Nigeria in the area of children's rights from 1999 to 2011. However, a number of documents derived in the course of that exercise offer key insights into the cooperation that has taken place in this area. In this regard, five documents will be examined here.

The first document is a newspaper report by *The Globe and Mail* (Canada) of 29 December 2000 with the title: "Canada Assails Nigeria on Flogging" (*Document 1*). The gist of the newspaper report is about a diplomatic rebuke issued by Canada to Nigeria for allowing a 17-year-old girl, who had premarital sex, to be sentenced to 180 lashes with a cane, calling the punishment a violation of international human rights conventions. According to the report, Bariya Ibrahim Magazu, who was impregnated after having sexual intercourse with a middle aged man, gave birth to a child and was handed down the punishment by an Islamic court in the northern state of Zamfara. Canada, according to the newspaper report, is the first country to have spoken out about Ms Magazu's sentence.⁷³

The second document is titled "Schools of Health Technology and Primary Health Care" (*Document 2*) a project of the Canadian International Development Agency (CIDA) in Bauchi and Cross Rivers State of Nigeria. According to the information in *Document 2*, the aim of the project is to improve primary health care provision in the two states by strengthening the capacity of Schools of Health Technology to provide appropriate, quality education to primary health care workers. The project commenced on 29 September 2003 and ended on 29 November

⁷³ See Mark MacKinnon, 'Canada Assails Nigeria on Flogging' *The Globe and Mail* (Canada) Friday 29 December 2000 (on file with authors).

2013. The significance of the project is the benefits it provided to children’s health care in the states covered given its focus on primary health care.⁷⁴

The third document is titled “Accelerating the Reduction of Maternal and Newborn Mortality” (*Document 3*). This is another project of CIDA which aims at accelerating the reduction of maternal, newborn and child mortality in 15 states and the federal capital territory of Nigeria. It is designed to strengthen the delivery of maternal, newborn and child health services through evidence-based, gender-responsive interventions, using existing health and community structures in the focus states. The project commenced on 21 March 2011 and will end on 31 July 2015.⁷⁵

The fourth document is titled “Enhancing the Prevention of Mother-To-Child Transmission of HIV” (*Document 4*). This is a project of CIDA which aims to directly contribute to the global elimination of mother-to-child transmission of HIV by providing sustained support in countries with a high prevalence of HIV/AIDS through: increasing the uptake and effective implementation of interventions to prevent mother-to-child transmission of HIV; promoting a more integrated and comprehensive approach to the prevention of mother-to-child transmission of HIV; linking district-level program effectiveness studies to the strengthening of national programs; and reducing the number of infants becoming infected with HIV and improving the health of HIV-infected mothers. Three countries in Africa are covered by this project, namely: Zimbabwe (33.4%); Malawi (33.3%) and Nigeria (33.3%). The project commenced on 28 March 2011 and will end on 31 December 2015.⁷⁶

The fifth document is titled “Polio Eradication Program” (*Document 5*). This is a project of CIDA which aims to establish a more effective system for providing vaccinations in Nigeria

⁷⁴ See “Project Profile: Schools of Health Technology and Primary Health Care” (on file with authors).

⁷⁵ See “Project Profile: Accelerating the Reduction of Maternal and Newborn Mortality” (on file with authors).

⁷⁶ See “Project Profile: Enhancing the Prevention of Mother-To-Child Transmission of HIV” (on file with authors).

to increase the number of children under five who receive the polio vaccine. Nigeria is one of three countries in the world where children can still contract polio. Children under the age of five are the most at risk for polio infections and the risk is highest in northern Nigeria. The project commenced on 24 December 2012 and ended 31 March 2015.⁷⁷

5. Analyzes of the linkage(s) among the literature, interview data, and the framing theories

When one considers the literature on children's rights, the documents derived from the field research work (*Documents 1-5*) and the theories framing this paper, there is sufficient basis to claim that linkages exist among these three aspects of the paper. The nature of these linkages requires explication and would be the focus of this section of the paper.

The literature provides an important understanding about the nature of children's rights, in terms of: how they have evolved, what they focus on and the reason for this focus. Going further, the literature also traces how early children's liberation movements heralded international consensus towards the codification of rights of children. While early attempts at codification of children's rights focused on *protection* and *provision* rights of children, subsequent codification efforts under the CRC introduced *participation* rights to the equation. The literature goes on to suggest that participation rights can only be enabled when protection and provision rights are secured.

Another aspect to the literature examines Canada and Nigeria's response to the international framework on children's right. Both countries are shown to have ratified the CRC and Nigeria has gone a step further to domesticate the convention by an enabling local legislation in accordance with the requirement of its Constitution. However, the literature also shows that

⁷⁷ See "Project Profile: Polio Eradication Program" (on file with authors).

the fact of acceptance of the CRC by Nigeria is not necessarily an indication of a robust level of children's rights enforcement in the country. A number of scholarly discussions (which were examined) indicate that the rights of children in Nigeria are in great peril due to a number of factors that were highlighted in the discourse.

With respect to the evidence from the field research work, *Documents 1 to 5* clearly show that Canada and Nigeria have had a long history of cooperation in the area of children's rights. Much of this cooperation appears to have been focused on "provision and protection" rights. To illustrate this point: *Document 1*, which is about the diplomatic rebuke Canada issued to Nigeria in 2000 for allowing a 17-year-old girl to be sentenced to 180 lashes by an Islamic Court in the country, is evidence of Canada rising to protect what it perceives as a flagrant violation of the rights of children to be protected by the due process of law. Canada used its "influence" over Nigeria to express its displeasure at the outcome of the Islamic Court's decision which it felt was a violation of international human rights conventions.

Documents 2 to 5 on the other hand, illustrate cooperation between Canada and Nigeria in the area of provision rights. This is because these documents detail substantial financial investments Canada put into different aspects of the health system of Nigeria, with the aim of either directly or indirectly improving the health of children. In this way, Canada is helping Nigeria fulfilling its socio-economic responsibilities under the CRC/CRA to provide for the necessary conditions for the survival and wellbeing of children in the country.

From the documents examined however, there is no evidence of cooperation between Canada and Nigeria in the area of participation rights. It has been possible for this categorization (into types of rights) for the purpose of deepening understanding about the nature of the

cooperation between Canada and Nigeria because of the earlier discussion offered by the literature on children's rights.

The question "why has Canada has chosen to cooperate with Nigeria in the manner it has done" can only be answered when one considers the theories framing the research. For instance, Finnemore and Sikkink's norm theory help us see that Canada acted as kind of norm entrepreneur when it rebuked Nigeria for the decision of the Islamic Court. It also helps explain why Canada has invested significant amounts of money into child health issues in the Nigeria: these investments solidify Canada's position of influence over Nigeria through which it can speak to Nigeria about acceptable and unacceptable practices against children; it is also a means through which Canada can directly bring about the changes it wants to see taking place in Nigeria with respect to the situation of children. To this extent, Finnemore and Sikkink's theory provide a powerful lens through which Canada's behaviour towards Nigeria can be understood; finally, Finnemore and Sikkink's theory is also indicative of why Nigeria is likely to listen to Canada's moral authority when it issues rebuke in the manner it did in *Document 1*.

Baxi's TREMF thesis does not find much foothold in any of the materials examined in this paper on Canada-Nigeria cooperation in the realm of children's rights. This is so because Baxi's thesis suggests that the UDHR paradigm is being replaced with a TREMF paradigm which is all about the devaluation of the regime of the UDHR in favour of a regime that assigns more priority to the needs of global capital than human rights. Within the context of what has been discussed in this paper, the emphasis has been on measures to strengthen the rights of children as established under the CRC, which shares strong links with the UDHR regime Baxi claims is being assailed. As such, there is not much to form the conclusion of a linkage between

Baxi's TREMF thesis and the cooperation between Canada and Nigeria in the realm of children's rights.

6. The Attainments, Problems and Prospects of Canadian-Nigerian Cooperation in the Area of Democratization

This section of the paper examines the attainments, problems and prospects of the cooperation between Canada and Nigeria in the area of children's rights.

[A] The Attainments

Documents 1 to 5 provide a good indicator of the accomplishments of the cooperation between Canada and Nigeria in the area of children's rights. As was indicated in the previous section, much of this cooperation has gone in the areas of protection and provision rights of children: *Document 1* illustrates the attainments in the area of protection right whiles *Documents 2 to 4* illustrate the attainments in the area of provision rights.

[B] The Problems

Canada and Nigeria's cooperation in children's rights has only focused on protection and provision rights of children and ignored participation rights. This is one area where Nigerian children are significantly denied the opportunities that they should have to freedom of thought, expression, communication, and access to information on all questions affecting their wellbeing. In scholarly discourse, the right to participation is equated to an adult's right to freedom of expression (regarded as one of the most important human rights).⁷⁸

Secondly, with respect to protection rights which Canada is noted to be cooperating with Nigeria in respect of, there is insufficient evidence indicating that anything more has been done

⁷⁸ Clark Butler (fn 3 above) 16.

by Canada towards advancing the situation of this right in Nigeria, apart from that isolated incident in 2000 where Canada rebuked the Nigerian government for allowing international human rights conventions to be violated by an Islamic Court in respect of a decision affecting a child. This is against the backdrop of the worsening conditions of Nigerian children in terms of security in conflict situations,⁷⁹ the protection of their right to education,⁸⁰ their economic wellbeing and survival etc.⁸¹

Thirdly, the documents examined inexorably lead to the conclusion that the cooperation between Canada and Nigeria has been a “one-way street” with Canada providing out the benefits and/or rebuke and Nigeria being at the receiving end of such benefits and/or rebuke. If the documents are conclusive proof of the nature of the relationship between the two countries, then the inevitable conclusion to be drawn is that it is a lopsided relationship.

[C] **Prospects**

There is a lot that can be done to strengthen the existing cooperation between Canada and Nigeria in the area of children rights. First, Canada can aim to expand its work in Nigeria to emphasis protection rights which is one area where children are greatly imperiled in the country. Canada can do this through increasing emphasizes on the situation of vulnerable children beyond their state of health. The issue of securing children in conflict zones is one area where Canada can cooperate with Nigeria towards putting in place appropriate policies that safeguard children in conflict zones.

⁷⁹ A significant number of children have been killed in the northern part of Nigeria since the commencement of insurgency by the *Boko Haram* terrorists group.

⁸⁰ Since 2014, over 200 school girls were kidnapped by *Boko Haram* from their boarding school in Chibok, Borno State. *Boko Haram*, which literally translates “Western education is forbidden” has been in the news since 2009 for its nefarious activities which has led to the loss of several lives and destruction of properties in mostly northern parts of Nigeria.

⁸¹ The problem of street children is quite worrisome in Nigeria. There is also growing cases of children made orphans by violent conflicts in different parts of the country.

There are important improvements that are now taking place in those parts of Nigeria where Canada has invested in the health system of Nigeria to protect the interest of children. This is a very promising development which both countries can deepen further to strengthen their cooperation.

The current lopsided nature of the cooperation between Canada and Nigeria needs to be addressed; and it is for Nigeria to begin to play the role of a valuable partner to Canada in the current cooperation between the two countries. Although Canada clearly remains at an advantage by reason of its stronger economic situation, Nigeria still has a few useful things which Canada can learn from it given Nigeria's very positive history of traditional practices that protect children. This is in the light of cases of child molestation, bullying, exploitation and other harmful occurrences against children that are widely reported in Canada.⁸²

7. Conclusion

A key finding of this paper is that the cooperation between Canada and Nigeria in the area of children's rights provides an ideal context for a meaningful understanding of Finnemore and Sikkink's norm theory. However, Baxi's TREMF thesis has not been established in the discussion, largely because the evidence and literature appears to go the other way when placed side-by-side with Baxi's TREMF thesis.

In the discussion of the attainments, problems and prospects of the cooperation between Canada and Nigeria, a number of important points were made on measures that can be taken to strengthen this cooperation. For instance, the current cooperation between Canada and Nigeria has been established to be a one-sided affair with Canada providing the resources or moral voice to the situation of children in Nigeria. However, the paper has observed that Nigeria can position

⁸² This is not to suggest that Nigeria is not equally experiencing these negative situations affecting children.

itself as a worthy member of this partnership by exploring meaningful ways it can contribute to the situation of children's rights in Canada.