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Legal Impediments on the Practical Implementation of the Child Right Act 2003

OLAYINKA SILAS AKINWUMI*

Introduction

The general frameworks within which human rights are protected in Nigeria are enshrined in the 1999 Constitution of the Federal Republic of Nigeria. Chapter IV contains an elaborate Bill of Rights. The right guaranteed include: the rights to life,¹ the rights to personal liberty,² the rights to fair hearing³ and the right to freedom of movement⁴ among others. Section 42 prohibits unjustifiable discrimination on basis of “ethnic group, place of origin, sex, religion or political opinion.” As for penal infractions, Nigeria has two separate codes, one applying to Southern Nigeria (Criminal Code) and one applicable to Northern Nigeria (Penal Code). These provide for offences against persons, including homicides, assaults and different kinds of sexual and gender specific violations such as rape.⁵

In 1996, Nigeria submitted its first report on the implementation of the Child Rights Convention to the United Nation Committee on the Rights of the Child.⁶ One of the major recommendations made by the committee was to finally ensure the domestication of the Child Rights Convention, as this is necessary for its full implementation under Nigeria law⁷. A first bill on children’s rights had already been elaborately in 1993, but could not be passed into law by the military government, because of apposition from religious

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¹ See, Section 33 of 1999 Constitution; See also *Musa v. State* (1993) 2 NWLR (Pt. 277) 500.

² See, Section 35 Ibid; See also *Mohammed v. C.O.P.* (1987) 4 NWLR (Pt. 65) 420.

³ Section 36, *Awolowo v. Federal Minister of Internal Affairs* (1962) LLR 177.

⁴ Section 41; *Williams v. Majekodunmi* (1962), 1 All NLR 413.

⁵ Section 357 Cap. 77 LFN 1990 on Definition of Rape and Section 358 on Punishment of Rape; Section 259 on Attempt to Rape.

⁶ <http://www2.ohchr.org/english/law/pdf/crc.pdf>.

⁷ CRC, Concluding Observation of the Committee on the Rights of the Child, CRC/c/15/Add.61 30/10/96; See also [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)-CRC.c.15Add61En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)-CRC.c.15Add61En?OpenDocument); See also Section 12 1999 Constitution on requirement for domestication of foreign articles and conventions.

groups and traditionalists. A special committee was subsequently set up to “harmonize the children’s bill with Nigerian religious and customary beliefs.”⁸ The Bill, providing for the rights and the responsibilities of children in Nigeria, as well as for a renewed system of juvenile justice administration, was rejected by the parliament in October 2002- again on grounds of its contents being contrary to Islamic values, traditions and culture. The main objections targeted a provision setting 18 years as the minimum age for marriage. This was said to be compatible with religious and cultural traditions in various parts of the country, where girls are given in marriage at a younger age.⁹ Many national and international Non-Governmental Organizations, as well as other sectors of the civil society in Nigeria, criticized this decision and forced the legislators to reconsider its decision to oppose to the Child’s Right Bill.

Finally, the Child’s Right Act was adopted in September 2003.¹⁰ This was a right step in the right direction. Nonetheless, very few states have passed the Child Rights Act into law. This article is therefore poised to examine the various legal impediments in the practical implementation of the Act since it has been legislated. This will include an indepth analysis of its content and other circumstances that could either facilitate or hinder its implementation both nationally and internationally.

Domestication of the Convention on the Rights of the Child

Generally, the convention on the Rights of the Child enjoins that:
Member states shall undertake to disseminate the conventions principles and take all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present convention.¹¹

Against this background, a draft Child Rights Bill aimed at principally enacting into law in Nigeria the principles enshrined in the convention on the rights of the child and all charter on the rights and welfare of the child was prepared in the early 1990s. But, it is only after about ten years with several Heads of Government and geared debates by the parliamentarians that the Bill was eventually passed into law by the National Assembly in July 2003. It was assented to by the president of the Federal Republic of Nigeria, Chief

⁸ <http://www.irinews.org/print.asp?ReportJD=30878>.

⁹ Ibid.

¹⁰ http://www.unicef.org/WCRO_Nigeria_Factsheets. at. p.2.

¹¹ http://www.unice.org/wcaro/WCRAO_Nigeria_Factsheets at p.2.

Olusegun Obasanjo, in September 2003, and promulgated as the Childs Rights Act 2003.¹²

It must be noted here that the provisions of the Act supercede all other legislations that have a bearing on the rights of the child.¹³ Having been enacted at the national level, the states are expected to formally adopt and adapt the Act for domestication as state laws. This is because issues of child rights protection are on the residual list of the Nigeria constitution, giving states exclusives responsibilities and jurisdiction to make laws relevant to their specific situations. State laws inimical to the rights of the child are also to be amended to conform to the Act and the Child Rights Convention. Presently, the Child Rights Act has been promulgated into law in fifteen states.¹⁴

Definition of the Child

The Child's Right Act 2003 passed into law in the Federal Capital Territory (Abuja), defines a child as person who has not attained the age of eighteen (18) years. However, according to Section Two of the Children and Young Person Act, enacted in Eastern, Western and Northern regions, a "child" means a person under the age of fourteen years, while "young person" means a person who has attained the age of fourteen years and is under the age of seventeen years.

Furthermore, the Immigration Act stipulates that any person below sixteen years is a minor, whereas the Matrimonial Causes Act 1970 puts the age of maturity at 21 years.¹⁵ The latter Act becomes irrelevant in practice, since the individual states their own age for marriage. As for penal responsibility, Section 50 of the Penal Code (North) states:

No act is an offence which is done by a child under seven years of age; or by a child above seven years of age but under twelve years of age who has not attained sufficient maturity of understanding to judge the nature and consequence of such act.

¹² Ibid.

¹³ See, e.g. "Trafficking in Persons (prohibitions) Law Enforcement and Administration Act, which was passed into law on 14th July 2003.

¹⁴ The states are: Abia, Anambra, Bayelsa, Ebonyi, Ekiti, Imo, Jigawa, Kwara, Lagos, Nassarawa, Ogun, Ondo, Plateau, Rivers, and Taraba.

¹⁵ But it allows persons below this age to be married with the consent of the parents.

These are only some examples of different ages enshrined in a multitude of legal texts and in customary law all over the country. These varieties in the minimum age limit pose a lot of problem in the process of interpretation. This can cause discrimination between children of same age in different parts of the country. It is important for the government to review this aspect with a view to making a particular age workable for the purpose of implementing the Child Rights Act.

Basic Provisions of the Child Rights Act

The Act recognizes the freedom of a girl child from discrimination on the grounds of belonging to a particular community or ethnic group, place of origin, sex, religion the deprivation or political opinion; and it is stated categorically that the dignity of the child shall be respected at all times. This provision is a corroboration of both constitutional provisions and International Conventions.

It also guarantees the right of a Nigerian child to rest, leisure and enjoyment of the best attainable state of physical, mental and spiritual health. The role of government in achieving this objective is imperative. The federal, state and local governments are expected to ensure a reduction in the infant mortality rate, provide medical and health care, adequate nutrition and safe drinking water, hygienic and sanitized environments. The federal government is enjoined by the Act to mobilize local communities in the development of primary healthcare for children.

There is also a provision for the less privileged as well as those mentally or physically challenged under the Act. Street children are also protected in a manner that would enable them to achieve their fullest possible social integration, and moral their development. The law also anticipates the interest of those who would probably be responsible for the care of the set of children that are orphans, abandoned or violated. Thus, expectant and nursing mothers shall be cared for. Every parent or guardian has a legal duty to prevent mental or emotional injury abuse or neglect, maltreatment, torture, inhuman, or degrading punishment, or attacks on his/her child's honor or reputation.

In essence, the Act took cognizance of every person and individual concerned in the care and concern of children. Its basic provision could be said to follow fundamental human rights contained in Caption IV of the 1999 Constitution with specific focus on the children. It is important to note that there are other areas and issues covered by the Act, such as the responsibility

of a child, parental responsibility, child justice and other important issues. The Act could therefore be described as an innovative and commendable one.

Notwithstanding the above sumptuous provisions, the Act has so many faults inherent in it. Many scholars and international organizations have decried its implementation since it was been passed. Thus, barely six (6) years after it has been passed into law, the Act seems inefficient and ineffective in the face of recent child abuse reports in Nigeria. The second part of this article is an extensive analysis of the critiques of the Act.

It is worthy to mention here that the government has in addition to the Child Rights Act, ratified other treaties which have a significant bearing on the Act. International treaties and protocols protecting Women and Children ratified by the government as at December 2001 include:

- International Labour Convention 182 on Minimum Age;
- International Labour Convention 138 on Elimination of the Worse Forms of Child Labour;
- Optional Protocol to the Convention on Elimination of All Discrimination Against Women;
- Optional Protocol on the Involvement of Children in Armed Conflicts;
- Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography;
- Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment;
- Convention Against Trans-national Organized Crime; and
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

However, these and other international documents have not been able to solve the problem of child abuse in Nigeria. In the words of **A.A. Idowu**: The African charter which consists of 48 Articles has clearly expressed the commitment of African nations towards positive steps at combating all forms of child trafficking in the continent. Notwithstanding these laudable aspirations of regional and international bodies towards the rights of the child, children in many African nations, particularly in

Nigeria are still being trafficked on daily basis for different forms of exploitative labour.¹⁶

It is my humble submission that the Act beg for quick amendment so as to make it useful for the purpose it was created.

The Child's Right Act is an embodiment of comprehensive legislation with Twenty Four parts containing about 278 sections. Each part of the Act contains different topical issues on children's interest, welfare, juvenile justice and administration. Specifically:

Part I deals with the primacy of the best interests of the child

Part III concerns protection of the rights of a child

Part IV covers additional protection of children

Part V protects children in Need of Care

Part VI has rules for the Care and Supervision of Children

Part VII contains Tests for Determining the Paternity or Maternity of a child

Part VIII deals with possession and custody of children

Part IX-XII is on guardianship, wardship, fostering and adoption

Part XIII provides for a family court

Part XIV deals with child-minding and day care of young children.

Part XV-XIX provides for government support, community and voluntary homes

Part XX is on child justice administration, approval institution

part XXIV deals with miscellaneous matters.

A Critique of the Child's Right Act

Nigeria is a signatory to the convention on the Rights of the Child (C.R.C.) since 1991, and also that of the African Charter on the Rights and Welfare of the Child since 2001. Even so, the rights of the child in Nigeria are far from being respected. The explanation of this is both simple and complex.¹⁷ The Child Rights Act was first drafted in 1993, thirteen years ago, but was only adopted as law ten years later, in 2003. Yet, five years later it has only been enacted into law in fifteen out of the thirty-six states of the

¹⁶ A. A. Idowu, "Child Trafficking In Africa: The Nigeria Experience In Legal Thoughts", ONDO STATE L. J., Vol.1 No.1 2004. Published by the Ondo State Ministry of Justice, Akure.

¹⁷ <http://sites.unu.edu/ic/alums/wp-content/uploads/2006/10/esther.pdf>.

federation.¹⁸ This explains the wide gap between the promises of the Act, and the actual practice.

Nigeria operates a federal system of government in which each of the thirty-six states of the federation is autonomous and equal to the others. Each state has its legislative system as stated by the constitution. Until the Child's Right Act is enacted into law in each of these legislative systems, it is not binding on the states. Hence, no court can prosecute violations of the Child Right Act in states that have not enacted it. There had been write-ups and various debates on the issue to no avail.¹⁹

In 2005, the minister of Women's Affairs, Hajia Inna Ciroma, went in a tour of the northern states, trying to educate local leaders on the importance of the Child's Right Convention(C.R.C.)²⁰. As of May 27, 2008, Children's Day, Nigeria's First Lady, Alhaja Turai Musa Yar'Adua, was still appealing to the states to ratify the Child Right Act just as the former President Chief Olusegun Obasanjo had done.²¹

The rights of Nigerian children are still at the mercy of legislators. Several arguments have been employed by various states that have refused to sign the Child's Right Act. All of them seem to allude to the diversity of cultures and of religion as an excuse for failing to pass the appropriate legislation. Experience has shown, however, that the practice of giving out children in marriage at early states of life and without formal education or a trade is more prevalent among the grassroots people, especially the poor and illiterate. Such practices may be less prevalent among the more affluent and better educated citizens.

Additionally, there have been various debates on whether the Islamic religion opposes setting eighteen years old as the marriageable age. Both the arguments for and against have been severally justified with different interpretations of the Koran.²² This is only a typical example, but it refers to

¹⁸ See the list of the fifteen states, *supra*, at note 15.

¹⁹ See, Comments on Child's Rights Act 2003", in J. OF EBONYI STATE UNIV., Faculty of Law, Vol.1 No.1 October 2005 at pp. 159-169.

²⁰ Chikwunwike Okumephuna, 2005, "A Case For Children" in THE GUARDIAN Newspapers, Nigeria, Wednesday, 7 September, 2003 at p. 15.

²¹ AllAfrica.com, 2006, Nigeria: "President Obasanjo Seeks Nationwide Adoption of Child Rights Act", 30 May 2006; See also [http://allafrica.com-stpries/200605300495.html](http://allafrica.com/stpries/200605300495.html).

²² Eze Anaba, 2003, "Why The Child Rights Bill Must Be Passed Into Law", in VANGUARD NEWSPAPERS, Nigeria, Friday 16 May 2003, p. 26.

the fact that there is always a difference between when such a problem is really due to issues of cultural relativity, or just political manipulation. Even when we may have reason to think that these cultural and religious beliefs are rooted in the history of the people, we cannot neglect the fact that culture and religion, as well as history, are dynamic and change with evolving phenomena.

For instance, some time ago, it was believed to be a cultural practice in the western part of Nigeria for a child to be given tribal marks as a sign of identification with a particular clan or settlement. With the development of birth registration, however, that belief was modified. Increasingly, some practices such as Female Genital Mutilation (F.G.M.) that used to be culturally justified are giving way in light of scientific knowledge that exposes the high risks involved.²³

As a matter of fact, it is impossible to have rights protected without a special force, which can justify the claims to such rights as Donnelly identified.²⁴ The legislative problems with the Child Rights Act in Nigeria simply signify that the rights of the child cannot be claimed in states that have not incorporated such acts. However, Nigeria cannot be exempted from her legal obligation to protect child rights, having signed and ratified the Child's Right Convention. Nigeria has not only failed to ratify the Child Rights Convention, but has also failed in making a serious commitment to the letter or the spirit of the Convention.

The failure of Nigeria to legislate the Child's Right Convention effectively and to curb the violation of child rights can be traced to a failure to educate her citizens on human rights generally and child rights specifically. Nigeria's signature of the United Nations Declaration of Human Rights puts an obligation on her to disseminate, display, and incorporate human rights in institutions of learning, yet this has not been accomplished.

The Nigerian obligation to educate its children on human rights as expressed in articles 4,7,19 and 29 has also been shunned with impunity. The rights of the child can no longer be negotiated away in the name of culture or political interest if the condition of the Nigerian child is to change. The protection and promotion of the rights of the child secure a future for such a child as well as the nation at large, and the way the rights of a child are

²³ Ibid.

²⁴ Jack Donnelly: 1989, UNIVERSAL HUMAN RIGHTS IN THEORY AND IN PRACTICE, Ithaca and London; Cornell University Press, p.9.

handled in the country, shows what the future holds for Nigeria's children, and for the nation as a whole.

The increase in the number of poor beggars' children in Nigerian cities, the number of children without basic education, and the number of children in one form of servitude or the other indicates the nation's poor level of development. The best solution is to enlighten citizens about human rights. Children need to know their rights so that they could be aware of their rights and demand them when those rights are neglected or violated. Parents need to know the rights of their child in order to respect those rights. Law enforcement officers or agencies need to understand child rights in order to stop confusing violations of those rights with domestic affairs. Government agencies need to fully comprehend these rights to enable those agencies to differentiate child rights from child privileges and charity. Legislators also need to know these rights in order to give the rights of Nigerian children appropriate respect and priority. Generally, broad, comprehensive human rights education will enable Nigeria to build a culture of universality of human rights, and it will also provide the legal atmosphere that Nigeria needs to promote, protect and enforce child rights.

It is obvious that Nigeria can no longer wait for its government to create awareness about the rights of Nigerian children. The burden of creating awareness now lies on individuals in various capacities: academics, the press, or organizations such as non-governmental organizations, as well as the United Nations agencies in Nigeria.

Conclusion

In conclusion, the Child Rights Act 2003 was not just a "formal" document passed with a view to add to existing ones. The domestication of the Act in some states also emphasize its importance even at the local level. Thus, there is urgent need for quick and effective implementation, and awareness. According to Monrad Paulsen, "No law can be better than its implementation, and can be no better than resources permit."²⁵

Thus, government, non-governmental organizations, parents and individuals should be ready to support the full realization embodied in the

²⁵ See, "The Law and Abused Children" in *THE BATTERED CHILD*, R Helfer and C. Kempe eds. (University of Chicago Press, (1974), quoted in the *IDEOLOGIES OF CHILDREN'S RIGHTS*, M. Freeman and P. Vierman eds. (Martins Nig. Roff Publishers, 1992 at p.41.

provisions of the Act in its entirety. While the Nigerian government needs to provide adequate resources and opportunity, non-governmental organizations should show support with their own campaigns, while parents and individuals should cooperate with the government by fulfilling their own responsibilities as outlined in the Act.

There is an urgent need to revive some traditional values and standards in Nigerian societies. The family institution need to be strategically helped to take the lead role in the socialization process of its members.²⁶ These are necessary steps toward ensuring effective implementation of the Child's Right Act.

As we can see, the Child's Right Act 2003 is very ambitious legislation which seeks to cover practically all issues of civil and criminal law relating to children.²⁷ No doubt, this is an attempt to embrace a world view of the subject matter. The Act's provisions having been borrowed from the United Nations Conventions on the rights of the child 1989 and the Organization of African Unity Charter on the rights and Welfare of the Child 1990. However, the Act is not without its defects. For instance, as pointed out, its failure to deal with the issue of female genital mutilation is a major defect. Genital mutilation is a harmful practice committed against girls. It is hoped that in the days ahead, the members of National Assembly will reconsider the Act and enshrine provisions prohibiting female genital mutilation.

The Way Forward

A lot of recommendations have been given for the practical realization of the convention on the rights of children in Nigeria even before the passage of the Child Rights Act in 2003.²⁸ Thereafter, the Act became a force of law in Nigeria as well as in states that have domesticated it. But there are still steps to take if the provisions of the Act is not to be a mirage in the context of a pluralized Nigeria Legal System. Hence, the following ideas are needed at the earliest opportunity to restructure the Act for better effectiveness.

²⁶ INTERNATIONAL JOURNAL, "Law and Contemporary Studies," Development Universal Consortia, Vol.1 No.1 &2 2006, pp. 199-217.

²⁷ JOURNAL OF EBONYI STATE UNIVERSITY, Faculty of Law, Vol.1 No.1 October 2005, "Comments on Child's Rights Act 2003" at pp.159-169.

²⁸ I.A. Ayola, et. al. Eds. (1990). THE RIGHTS OF THE CHILD IN NIGERIA. Nigeria Institute of Advanced Legal Studies, pp.292-304.

There needs to be improvement of counseling for parents and children. This means increased parent-teacher involvement, free compulsory education, better incentives to teachers and a free health care system. More attention also needs to be paid to the education needs of children between ages two to five years old. Increased funding of the educational sector is particularly imperative. Priority areas are improvements to educational infrastructure and an increased allocation for recurrent expenditures.

The budgetary allocation to the health sector should be increased. The Nigerian government should also intensify its efforts to provide a comprehensive water scheme for local communities and villagers alike to reduce water borne diseases in children. In addition to providing quality health care equipment and facilities, more qualified staff should be employed and medicine should be subsidized at affordable rates, especially for villagers and dwellers in Nigeria's many rural communities.

It is important for Government to commit funds to improving the health, educational and social welfare of children through a stabilized national economy. Government should be discouraged from privatizing or commercializing health, educational and social welfare institutions necessary in promoting the welfare of the children. Parents alike are supposed to be equally guided, not only by the provisions of the Act on children welfare, but also by cultural values.

The provisions of the Child Rights Act 2003 against child labor and the punishments should be publicized widely for the purpose of deterrence. Parents, guardians and the masses should be discouraged from carrying out activities that involve child labor. Government, in collaborating with this position, needs to increase the standard of living of each family while reducing the cost of living. Children that are capable of being engaged in labor should not be engaged in labor in an excessive manner or exploited beyond the normal working hours. Such children must be adequately compensated like any other age group. Governments need to maintain a strict implementation of the Child Rights Act and adherence, especially as it regards child labor.

A consistent study and observation on the abuse of children in Nigeria should be carried out periodically. This will further expose social and personal variables responsible to the perpetration of the exploitative or illegal acts. As such, the Child Rights Act can be amended to provide for it. A national agency on Child's Rights protection should be established. It must be responsible for reporting all forms of inhuman practices against the rights

of children, counseling and educating people on child abuse and the laws against it. Such an agency would also be responsible for implementing the various laws and conventions on child's rights.

Specialized training and professional education should be organized for persons involved in the administration of juvenile justice. This is to achieve a desirable level of efficacy and competence. Government should rehabilitate juvenile institutions as well as establish new ones to provide discipline or oversight of children accused of crime or other such serious problems.

It has been recommended²⁹ that all the governmental organs involved in the adoption of a child should take the welfare of a child seriously, and make sure the best interest of the child has precedence over every other consideration.³⁰ One hopes that the remaining states that have not yet passed the Child Rights Act would do so as a matter of immediate necessity.

On a final note, there is no doubt that the Child Rights Act 2003 remains a reviewable and amendable document. Like the England Child Protection Act,³¹ the Act needs to be reviewed to encompass reviewable decisions and aggrieved person. It should also incorporate a section on interpretations that will help explain the meaning of terms used in the Act. More importantly, the absence of any provision on F.G.M. makes the Act ripe for amendment. Thus, there will be improvements to child rights in Nigeria if these recommendations are carefully considered with a view to amending the Child's Right Act 2003 to accommodate and incorporate the suggestions made above.

²⁹ UNIZIK LAW JOURNAL Vol.5 No.1 published by Faculty of Law, Nnamidi Azikwe University Awka, Anambra State, Nigeria "An Appraisal of Adoption Provisions Under Child's Rights Act 2003", 2005 at pp.482-491.

³⁰ See section 1 of C.R.A. 2003

³¹ England Child Protection Act 1999; <http://www.childsafety.gld.gov.au-/legislation/child-protection/child-protection-act1999.html>.