

# CHILD'S RIGHT ACT (2003): CHALLENGES FOR HUMAN RIGHT ENFORCEMENT AND CONSTITUTIONAL AMENDMENT IN NIGERIA

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## **Abstract**

*This paper examines the human rights provisions of the Nigerian Child's Rights Act (2003) and the Nigerian Constitution (1999) and comparatively analyses the child's rights-related provisions in both documents with a view of harmonizing them for the enhancement of the rights of the Nigerian child. The paper also identifies some inadequacies in the Nigerian Constitution in relation to child's rights such as the restriction of its provision to civil-political rights in utter neglect of the wider scope of coverage of the Child's Rights Acts, including socio-economic, socio-cultural and even environmental rights. The paper also identifies some self-contradictions in the Act by subjecting the interpretation, and justifiability of its more inclusive child's rights provisions to the narrow and exclusive civil-political human rights provisions in the Nigeria Constitution (1999). The paper further highlights the imperatives of rectifying the discrepancies in both documents in a manner that is consistent with Nigeria's position as a member of the United Nations, and signatory to the Convention on the Rights of the Child (CRC) which the Child's Rights Act (2003) is supposed to be domesticated and legislative instrument of. The paper accordingly recommends amendments to the Child's Rights Act and Nigerian Constitution.*

## **Introduction**

Human rights are privileges recognized by law and accorded human persons as members of a given politically organized community of humans (State or Country) or the all inclusive family of humans. According to the United Nations Universal Declaration of Human Rights (UDHR) (1948) human rights are natural to humans, inalienable to humans, universal to humans, indivisible to humans and inevitable for human existence and good living (United Nations, 1995; Akande, 2000, and Akinbode & Olubamise, 2000, and Okunloye, 2006a).

There are different types and elements of human rights. Human rights have been severally classified on the basis of area of coverage of human activities or processes (Eze, 1982; Mensah, 2001; and Okunloye, 2006) and target beneficiaries of specific rights (Stone, 2008). Hence the categories of human rights specified in human rights international treaties or documents, constitutions, advocacy documents and studies include civil-political rights, socio-economic rights, socio-cultural rights, environmental rights, individual rights, group rights, community rights, women's rights, child's rights and rights of people with special needs.

Although, all humans, as recognized by the Universal Declaration of Human Rights (UDHR) (1948) are entitled to human rights as members of the indivisible human family on earth, women, children and people with special needs are considered to be the most vulnerable to non-justiciable and illegitimate human rights violations than all other humans in

the world over. This explains why the United Nations and its specialized agencies have devoted greater attention to the subject matter of advocacy, convention of international conferences, drafting of treaties, drafting of other international documents, signing of treaties, and domestication of human rights instruments relating to women and children since 1948 UDHR was declared. These efforts have also brought to the fore the protection of rights of women and children in all constitutional democracies, especially in Africa, where democracy is relatively young. Many African States have accordingly signed and ratified the most remarkable UN inspired child's right document in the world – the Convention on the Rights of the Child (CRC).

Nigeria is one of the signatories to, and ratifiers of the CRC. She has gone a step further by domesticating the CRC by enacting the Child's Rights Act (2003) on 31<sup>st</sup> July, 2003. In the same vein 12 out of the 36 States of the Federation have enacted state-specific Child's Right Acts. In spite of these seemingly remarkable milestone in promoting and protecting the rights of the Nigerian child, over a million street children still roam the streets in Nigeria according to the Amnesty International (2011). Many more of schooling age are either not enrolled in school or dropped out of basic schools. Therefore, a critical analysis of the legal framework for child's rights enforcement in Nigeria has become imperative. This paper comparatively analysed the child's rights-related provisions of the Nigerian Constitution (1999) and Child's Rights Act (2003). This is with a view of identifying and rectifying the inherent weaknesses and contradictions in both document to give legal teeth or force to the documents for the enhancement of the rights of the Nigerian child.

### **The Nigerian Constitution (1999)**

The Constitutions of constitutional democracies, remain the fundamental law of the respective democratic polities. The constitution is also a source and frame of reference for interpreting other laws of the state (Okunloye, 1990). Accordingly, the Nigerian Constitution (1999) as the fundamental law of governance of Nigeria remains the fundamental source and reference point for legal, legitimate and justiciable human rights and more specifically child's rights in Nigeria.

The Nigerian Constitution (1999) contains provisions on human rights as stated in chapter four of the 1999 constitution. The rights include: The right to life; Dignity of human persons; Personal liberty; Fair hearing; Private and family life; Freedom of thought, conscience and religion; Peaceful assembly and associations; Freedom of movement; Freedom from discrimination; the right to acquire and own immovable property anywhere in Nigeria and right to compulsory acquisition of property anywhere in Nigeria. The Constitution also stipulates restrictions on and derogation from human rights as well as special jurisdiction of high courts and legal aids in line with the relative nature of human rights (Hoffman and Graham, 2006). Although, the Constitutional provisions on human rights are not child's rights specific, they are nonetheless what is available for the Nigerian child and the frame of reference for the Child's Rights Act (2003). The rights contained in the constitutional provisions represent what the Nigerian child can claim or legally demand in court of competent jurisdiction in Nigeria by virtue of their constitutional entrenchment. However, there are other child's rights-related provisions in Chapter II under Fundamental Objectives and Directive Principles of State Policy. These include: protection of children and young persons from any form of exploitation and against moral and material neglect; free, Compulsory and universal primary education; free secondary education, free university education and evolution and promotion of family life, among others. These provisions, bordering on human rights of Nigerian citizen or Nigerian child are not constitutionally entrenched.

As a result, they are not claimable as such by the Nigerian citizens or child. Indeed, the language with which the 'rights' are expressed in the Constitution are recommendatory, futuristic and idealistic about what Nigerians or the Nigerian child should hope for, rather than lay claim on. For instance, Article 18 (1-3a-c) states that 'Government shall **direct its policy towards ensuring** that there are equal and adequate educational opportunities at all levels. Government shall promote science and technology. Government shall **strive** to eradicate illiteracy; and to this end Government shall **as and when practicable** (italics author's) provide (a) free and compulsory primary education; (b) free secondary education; (c) free university education ...' (1999 Constitution of the Federal Republic of Nigeria). It is obvious from the italicized phrases that these provisions are non committal, lack legal force and no Nigerian citizen or child can sue any Government in Nigeria to demand implementation of free education at all levels. Indeed, if anyone manages to sue the government, the government will eventually be discharged and acquitted on ground of '**as and when practicable**'. Therefore the provisions are more or less operational guidelines of the Constitution and ideal aspirations of the Nigerian State to be adhered to by the operators (elected officials of Government) in the process of governance.

### **The Child's Rights Act (2003)**

The constitutional provisions on human or child's rights are rooted in the nature of the Nigerian State as a democracy, her membership of the United Nations and her commitment to the pursuit of secular common welfare of her citizens (including children) and the obligation she voluntarily entered into as a signatory to several internationally recognized landmark human rights conventions, covenants, documents or treaties. These include:

- International Covenant on Civil and Political Rights (ICCPR);
- International Covenant on Economic, Social and Cultural Rights (ICESCR);
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);
- Optional Protocol on CEDAW;
- Conventional on the Rights of the Child (CRC);
- Optional Protocol on the Rights of the Child on the involvement of Children in armed conflict;
- International Convention on the Elimination of All Forms of Racial Discrimination;
- Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment (CAT) (Amnesty International, 2011);
- African Charter on Human and People's Rights (Heyn and Killander (nd); and
- African Charter on the Rights and Welfare of the Child (Akinbode and Olubamise, 2000).

These international human rights treaties or document impose enforcement and observation obligations on Nigeria as a signatory to the documents.

Article 19 (1) of the CRC is unequivocal on the recognition of the rights of the child and the inevitable obligation of all state signatories to the document (including Nigeria) to take all appropriate legislative, administrative, social and educational measures to protect the rights of the child. Much more, the weight of Nigeria's obligation to recognize, enact, domesticate and observe child's rights is heavier against the backdrop of the fact that she signed and ratified all the human rights treaties or documents listed above with the exception of the optional protocol on the CRC on the involvement of the children in armed conflicts which she only signed (Amnesty International, 2011). The enactment of the Child's Right

Act (2003) by the Federal Republic of Nigeria on 31<sup>st</sup> July 2003 is therefore the logical climax of several international commitments to human rights treaties or documents since independence.

The Child's Rights Act (2003) identified the Nigerian child to be any person below 18 years of age. The Act provides for the rights of the Nigerian Child to include: Right to survival and development; Right to name; Freedom of association and peaceful assembly; Freedom of thought, conscience and religion; Right of private and family life; Right to freedom to movement; Right to freedom from discrimination; Right to dignity of the child; Right to leisure, recreation and cultural activities; Right to health and health services; Right to parental care, protection and maintenance; Right to free, compulsory and universal primary education; Right to a child in need of special protection measure and Right of unborn child to protection against harm, etc. (Olanmi & Co. 2008).

### **Comparative Analysis**

The rights entrenched in the Constitution and the Act are partly similar and yet different. They are similar in terms of nature of rights provided for in two respects. First, they are predominantly civil-political in nature on the one hand (Okunloye, 2007a, 2007b). For instance both laws provided for freedoms of association, peaceful assembly, movement, thought, conscience and religion. In the same vein, the Act recognizes the supremacy of the Nigerian Constitution (1999). The Act specifically provides for the application of chapter four of the constitution stating that "(1) the provisions in the chapter four of the constitution of the Federal Republic of Nigeria 1999, or any successive constitutional provisions relating to fundamental rights, *"Shall apply as if those provisions are expressly stated in this Act"* (Italics author's) (Olanmi & Co, 2008 p.13).

On the other hand, the Act specifies other rights that are non-civil-political in nature. For instance, the rights to leisure, recreation and cultural activities, free, compulsory and universal primary education, and health and health services. These rights are socio-economic, socio-cultural and environmental in nature (Okunloye, 2006a, 2008).

In addition to these broad similarities and differences between the Constitution and Act, a critical analysis of the Act reveals some lacuna or exception clauses, internal contradictions and enforcement vacuum (Okunloye, 2006a). Although the Act recognized under eighteen person as the Nigerian Child, it nonetheless limits the target beneficiary of free compulsory and universal primary education to basic school level. By this limitation, the Nigerian Children who are in senior secondary and tertiary educational institutions are excluded from the specified right (free and compulsory education). Indeed, the Act in prima facie terms transferred the burden of free education of the Nigerian child at other level to "every parent, guardian or person who has the care and custody of a child who has completed his basic education ..." (Olanmi & Co, 2008 p.17).

In the same vein the Act is silent or noncommittal about the person(s) agency or institution(s) to bear the burden or cost of the right to health and health services for the Nigerian child. The Act expressly stipulates that 'Every Government, Parent, Guardian, Institution, Service, Agency, Organisation or body ...' shall be responsible for health and health service, rights delivery (Olanmi & Co, 2008, p.16).

The Act is not just evasive about who bears the cost but avoids the use of the word 'Free' to qualify the health services in a manner that would have been consistent with the International Covenant on Social Economic and Cultural Rights (ICESCR) which Nigeria has acceded to (Akinbode & Olubamise, 2000; Okunloye, 2008).

A greater abnormality in the Act is in relation to the principle of justiciability of rights and enforcement is the language of entrenchment of the rights in the Act. The language is rather recommendatory or advisory rather than one having the force of law. The Act

stipulates that those parties earlier identified as responsible for the care of the child "Shall endeavour to provide the child the best attainable health" (Olukanmi & Co, 2008, p. 16). However, quite unexpectedly, the Act identifies the parent, guardian or person having the care and custody of the child as the liable person(s) to be convicted to pay a fine of five thousand Naira (N5,000.00) and/or one month imprisonment for failure to give a child of under two years of age full immunization. The Act by this singular provision has neutralized the responsibility that it seemingly imposed on government as a provider of free or subsidized health and health services for the Nigerian child. It means that the President of the Federal Republic of Nigeria, Governors of 36 States, Ministers of Health, Commissioner for Health and Supervisory Counsellors for Health, among others may not be liable for negligence in health care right delivery to the Nigerian child.

A more fundamental clause which seems to have negated, if not nullified all the rights of the child in the Act is however the provision on the application of chapter four of the 1999 Constitution, or any successive constitutional provisions relating to Fundamental Human Rights. Specifically, the Act states that the human rights provisions of the Nigerian Constitution which excluded provision on free, compulsory and universal primary education, right to health and health services, and right to leisure, recreation and cultural activities shall apply as if they are "expressly stated in this Act" (Olukanmi & Co, 2008, p. 13). The implication of this is that the Act is inferior to and nullified by relevant provisions in the Nigerian Constitution (1999). This takes Nigeria and Nigerian child to the status quo as if no peculiar child's rights law has been enacted. This position is not consistent with Nigeria's standing as a UN member state and a signatory to the several International Conventions, Covenants or agreements on human rights in general or child's rights specific agreements as earlier identified.

Finally, another element of inherent inconsistency in both the Child's Right Act (2003) and the Nigerian Constitution (2003) is derived from the concurrent legislative list in the Nigerian Constitution and passage of legislative instruments of child's rights at state level in Nigeria. As at 2010, only 12, out of 36 States of the Republic have passed state specific Child's Right Acts in their respective states (Amnesty International, 2011). This is grossly inadequate because a minority of the Constituent units (one-third of the land, people and government of Nigeria) have shown formal commitment to implement child's right to the Nigerian children.

Again, most of the issues or elements addressed by Child's Rights Acts such as provision of subsidized or free health care, free education, provision of good shelter and recreational facilities of the Nigerian child are under concurrent legislative list (Part II of Second Schedule of the Nigerian Constitution). Both state and Federal government have jurisdiction to legislate and implement legislations on such matters. The import of this is that matters of this nature are not within the exclusive powers of the Federal government as specified under the exclusive legislative lists (Part I of Second Schedule of the Nigerian Constitution). It will therefore require every state of Nigeria to pass Child's Rights Act for the Nigerian child to benefit maximally from the Child's Right Act (2003) even with all its inherent weaknesses.

The legal implication of the issue of jurisdiction relating to the child's rights as far as concurrent legislative list is concern is that only the Nigerian children who are resident in the Federal Capital territory are positioned to benefit, claim or demand justice from the Federal Government of the Republic of Nigeria on matters bordering on Child's Rights (2003). Also, children in the 12 States with state specific Child's Right Act may also access child's rights. Whereas, children from 24 States without State Child's Rights Act cannot have access to child's rights. Therefore, to all intent and purpose, the Nigerian State that is adjudged a legal personality cannot be said to have any Child's Right Act from the viewpoint of law in as

much as only a fraction of that holistic legal personality has observable regime of child's right laws.

### **Conclusion and Recommendations**

Based on the analysed deficiencies and inherent contradictions in the Nigerian Constitution (1999) and the Child's Rights Act 2003, there is an urgent need to harmonise both documents to make them complement each other in advancing the cause of the Nigerian child to guarantee access to every child's rights related provisions in the Constitution and the Act. Accordingly, the following remedial measures are suggested.

First and foremost, the constitutionally entrenched human rights in Chapter four of the Constitution should be amended to include the previously excluded socio-economic, socio-cultural and environmental rights for the Nigerian child in addition to the existing civil-political rights. These include right to good health and free health services for the child and nursing mothers, right to recreational facilities and healthy environment, among others. In the same vein the free education components of the chapter two of the Constitution under fundamental objectives and directive principles of state policy should be included under the entrenched provisions on human rights. It is only by so doing that the free education will become justiciable for the Nigerian child.

Secondly, the internal contradictions in the Act relating to its failure to name free health services and free education providers should be amended to specify the free or subsidized health care and free education providers. Specifically, given the placement of free health and education matters under the concurrent legislative list, the Federal, State and Local Governments should be specified in the Act and even the Constitution as the provider of health care and education in accordance with appropriate constitutional recognized level(s) of operation. For instance primary school and health care are joint responsibilities of Local and State Governments, whereas tertiary education and health care delivery belong to the State and Federal Governments.

Thirdly, the language of the Act should be reframed to become committal and convey the force of law instead of the somewhat advisory or recommendatory language of the existing Act. This will make the elected officials of government in legislative and executive organs to rightly perceive law making and law-implementation relating to free health services and education as constitutionally charged responsibilities that cannot be subject to their whims and caprices.

Fourthly, considering the deficit of child's Rights Acts in 24 out of 36 States in Nigeria, it is imperative that these states be brought at par with the existing 12 in Child's Rights legislation by passing their respective Child's Rights Acts. It is only by doing that Nigeria could be said to be holistically and legally child's right legislation compliant as far as domestication and enforcement of the CRC she signed is concerned.

Fifthly, human rights groups and institutions should be vested with investigative powers over parents/guardian, government and political office holder regarding the level of adherence to Child's Rights Acts (Act 2003 and 36 State Acts).

Finally, human right education on the rights of the child should be intensified in school curricula and co-curricula activities at all levels. This is to promote human rights consciousness in the Nigeria child to enable them claim what is rightly theirs. It is hoped that these measures will go a long way in making child rights that are already domesticated in Nigeria justiciable and observable.

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