

International and Domestic Guarantees of the Rights of the Nigerian Child: An Appraisal

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Abstract: *Issues concerning the rights and welfare of the child have gained currency in the last decade and awakened the debate whether the rights and wellbeing of the child within the global context as well as within the domestic jurisdiction have received adequate attention and protection. This paper has taken a critical assessment of the legal and policy instruments that exist at international, regional and domestic jurisdictions for the protection of the child and the enforcement of their rights. It has observed lapses in the law and procedure and recommended appropriate panacea.*

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I. INTRODUCTION

The law of human rights pays special care to the child because of their tender age, immaturity, and innocence which make them all the more vulnerable to human rights violations and abuse. This special care is manifested in both international and domestic human rights instruments. A number of these instruments have been critically assessed in this paper with a view to strengthening the policy and legal regimes around the welfare of the child in Nigeria.

II. RIGHTS OF THE CHILD IN INTERNATIONAL LAW

The United Nations General Assembly adopted the Convention on the Rights of the Child on November 20, 1989, and it entered into force on September 2, 1990. By ratifying the Convention, States Parties assume the obligation to accord children within their jurisdiction extensive political, economic, social and cultural rights irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinions, national, ethnic or social origin, property, disability, birth or other status.¹ By Article 1, the Convention defines a child as every human being below the age of eighteen unless under the law applicable to the child, majority is attained earlier. The guiding principle of the Convention is stated in Article 3 (1) which provides that:

In all actions concerning children whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.²

Even though many of the rights which the Convention proclaims are contained in one form or another in existing international human rights treaties, this is the first time that children have been singled out as exclusive subjects of international rights protection. The Convention protects children against a wide range of abuses including economic exploitation, illicit use of drugs, all forms of sexual exploitation and abuse, and child trafficking. It also prohibits the recruitment of children under the age of fifteen into the armed forces of the States Parties. The Convention by Article 43 (1) establishes a Committee on the Rights of the Child which is charged with the responsibility of examining the progress made by the States Parties in achieving the realization of the obligations undertaken in the Convention. The Committee which is composed of ten members serving in their personal capacities reviews the reports which the States Parties are required to submit to the Committee on the measures they have taken in implementing the Convention.³ Unfortunately, the Committee has no power to receive individual or inter-state complaints, which sadly closes a number of windows of opportunities through

¹. Article 2 (1)

². See further G. Alston "The Legal Framework of the Convention on the Rights of the Child", Washington D.C., *Bulletin of Human Rights*, No.91/92, U.N, 1992) P.I -2.

³. See Article 44.

which the rights of children could have been better secured.⁴ As a supplement to the Convention on the Rights of the Child, the World Conference on Human Rights in 1993 reiterated the need to achieve universal ratification of the Convention on the Rights of the Child by 1995 and the universal signing of the World Declaration on the Survival, Protection and Development of Children and Plan of Action adopted by the World Summit for Children, as well as their effective implementation. It urged States to withdraw reservations to the Convention on the Rights of the Child contrary to the object and purpose of the Convention or otherwise contrary to international treaty law. It further urged all States, with the support of international cooperation, to address the acute problem of children under especially difficult circumstances such as exploitation and abuse of children which should be actively combated, including by addressing their root causes and to adopt effective measures against female infanticide, harmful child labour, sale of children and orphans, child prostitution, child pornography, as well as other forms of sexual abuse; and to ensure the effective promotion and protection of the girl child.

III. RIGHTS OF THE CHILD UNDER THE AFRICA UNION.

The African Union (AU) Charter on the Rights and Welfare of the Child, 1979, encapsulated the African position on the rights of the child and underlines the significance and importance attached to the well-being of the child in the continent especially given the peculiar vulnerability of the African child to abuses and violations in a continent bedeviled by poverty, hunger, starvation, disease, epidemics, wars, genocide and other forms of violence. The fourth paragraph of the preamble to the Charter shows concern for the situation of most African children which it noted remained critical due to the unique factors of their socio-economic, cultural, traditional, and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger. It further noted that on account of the child's physical and mental immaturity he or she needs special safeguards and care. The Charter defines a child to be any person below the age of 18 years.⁵

Article III provides for non-discrimination against the child in the enjoyment of all rights and freedoms. In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration.⁶ Article V provides for the survival and development of the child while Article VI secures his name and nationality. Article XI guarantees for the child the rights to education which shall be directed, among other things, to the promotion and development of the child's personality, talents and mental and physical abilities to their fullest potentials. Article XIV secures the child's right to health and health services which among other things is directed at reducing infant and child mortality rate, and providing adequate nutrition and safe drinking water for the child. Child labour is prohibited and the child is protected against various forms of child abuse and torture.⁷

Significantly, Article XVII provides that every child accused or found guilty of having infringed penal law shall have the right to special treatment in a manner consistent with the child's sense of dignity and worth, and the essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her reformation, re-integration into his or her family and social rehabilitation. The child is assured of family and parental care and protection. Parents have various and specific responsibilities towards the child under Article XX. He or she is protected from harmful social, cultural, or traditional practices; as well as in situations of armed conflict, from sexual exploitation, drug abuse, sales, trafficking and abduction.⁸ However, Article XXXI imposes reciprocal responsibilities on the child towards his or her family, parents, elders, community, nation, and generally to contribute to the best of his abilities to the promotion and achievement of African unity. Article XXXII establishes an African Committee of Experts on the Rights and welfare of the Child to promote and protect the rights and welfare of the child. Earlier, Article 1 (1) mandated member States of the African Union to take the necessary steps through constitutional processes and adoption of legislative or other measures to give effect to the provisions of the Charter.

⁴. See Report of the Committee on the Rights of the Child (1994) UN DOC A/49/41, see also generally S. Lopatka "The Importance of the Convention on the Rights of the Child" (Washington D.C: *Bulletin of Human Rights*, No. 91/2, 1992) P. Cohen & Miljeteig -Olssen "Status Report: United Nations Convention on the Rights of the Child" (*New York Law School Journal of Human Rights*, Vol. VII, 1991) p..367- 390.

⁵. Article 11.

⁶. Article IV.

⁷. Articles XV and XVI.

⁸. Articles XXI through XXIX.

IV. PROTECTION OF CHILDREN'S RIGHTS IN NIGERIA

Nigeria is not lacking in legislation protecting the rights and welfare of the child. Such legislations include the Child's Rights Act, Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, adoption laws and children and young person's laws of various States of the Federation.⁹ The Child's Rights Act is an Act of the National Assembly of Nigeria which came into effect on July 31, 2003. Section 1 of the Act declares that:

In every action concerning a child, whether undertaken by an individual, public or private body, institutions or Service, court of law, or administrative or legislative authority, the best interest of the child shall be primary consideration.

Section 3 adopts the provisions of chapter IV of the 1999 Constitution on fundamental rights as expressly applicable to the child under the Act. Sections 4 to 18 enumerates additional rights of the child including right to survival and development; right to a name and to registration upon birth; freedom of association and peaceful assembly; freedom of thought, conscience and religion; right to private and family life; right to freedom of movement; right to freedom from discrimination; right to dignity of the child; 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 special protection where needed; right of an unborn child to protection against harm; and right to protection in certain contracts. Sections 21 to 35 prohibit a number of abuses against the child including child marriage and betrothal; making of tattoos or marks on the child; exposing the child to use, production, and trafficking of narcotic drugs; use of children in criminal activities; abduction, removal and transfer of children from lawful custody; use of children for exploitative labour; buying, selling, hiring or otherwise dealing in children for the purpose of hawking or begging for alms or prostitution; unlawful intercourse with a child; recruitment of children into the armed forces; and exposure of children to harmful publications.

However, section 19 imposes a number of responsibilities on the child including duty to work towards the cohesion of his family and community; to respect his parents, superiors, and elders at all times and assist them in case of need; serve the Federal Republic of Nigeria by placing his physical and intellectual abilities at its service; contribute to the moral well-being of the society; preserve and strengthen social and national solidarity; preserve and strengthen the independence and integrity of the Federal Republic of Nigeria; respect the ideals of democracy, freedom, equality, humaneness, honesty and justice for all persons; relate with other members of the society, with different cultural values, in the spirit of tolerance, dialogue and consultation; contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of Nigerian, African and world unity; and contribute to the best of his abilities, at all times and at all levels, to the solidarity of the African people and the human race. Section 20 imposes a duty on parents and persons having authority over a child to provide guidance and generally equip the child with respect to the performance of his responsibilities under the Act.

The Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003, was enacted by the National Assembly of Nigeria with commencement date of July 14, 2003. By Section 13(1) of the Act, any person who, having the custody, charge or care of any person under the age of eighteen years, causes or encourages the seduction, unlawful carnal knowledge or prostitution of, or the commission of an indecent assault upon any such person, commits an offence and is liable on conviction to imprisonment for ten years. Under section 13 (2), a person is deemed to have caused or encouraged the seduction, unlawful carnal knowledge, or prostitution of or the commission of indecent assault upon any person who has been seduced, unlawfully carnally known, or indecently assaulted or who has become a prostitute, if he knowingly allows such person to consort with, or to enter or continue in the employment of any prostitute or person of known immoral character.

Furthermore, any person who procures a person under the age of eighteen years to have unlawful carnal knowledge with any other person or persons, either in Nigeria or any place outside Nigeria, commits an offence and shall be liable on conviction to imprisonment for ten years.¹⁰ In the same vein, any person who procures any person under the age of eighteen years to become a prostitute, either in Nigeria, or any place outside Nigeria; leave Nigeria with intent that such person may become a prostitute in any place outside Nigeria; leave such person's usual place of abode in Nigeria, with intent that such person engage in prostitution either in Nigeria or

⁹ Nigeria has 36 States and a federal capital territory at Abuja. Each state has, under the constitution, has its legislature, executive and judiciary. These State organs of government operate under the overarching powers of the Federal Government as dictated by the 1999 Constitution of the country.

¹⁰ S. 14 (1).

any place outside Nigeria, commits an offence and is liable on conviction to imprisonment for ten years.¹¹ By Section 19 (1) (a), any person who takes or entices any person under eighteen years of age or any person of unsound mind out of the custody of the lawful guardian of such person without the consent of the guardian or conveys any person beyond the limits of Nigeria without the consent of someone legally authorized to give consent to such removal, commits an offence and is liable on conviction to imprisonment for ten years without an option of fine.¹² Furthermore, any person who with intent to deprive any parent, guardian, or other person who has the lawful care or charge of a person under the age of eighteen years, of the possession of such person forcibly or fraudulently takes or entices away, or detains the person, or receives or harbours the child, knowing the child to have been so taken or enticed away or detained, commits an offence, and is liable on conviction to imprisonment for fourteen years without an option of fine.¹³

A number of State Houses of Assembly in Nigeria have also enacted laws aimed at protecting the best interests of the child.¹⁴ Note that, section 2 of the Children and Young Persons Law of Lagos State¹⁵ defines a child as a person under the age of fourteen years and a young person as one who has attained the age of fourteen years and is under the age of eighteen years. The Lagos State law concerns itself primarily with children who find themselves in conflict with the criminal law. Under the Law, no child shall be ordered to be imprisoned.¹⁶ And no young person shall be ordered to be imprisoned if he can be suitably dealt with in any other way whether by probation, fine, corporal punishment, committal to a place of detention or to an approved institution, or otherwise.¹⁷ Again, sentence of death shall not be pronounced or recorded against any offender who had not attained the age of seventeen years at the time the offence was committed. In the place of a sentence of death, the Court shall order such offender to be detained during the Governor's pleasure. The law forbids the giving or acquisition of custody, possession, control or guardianship of a child whether or not for pecuniary or other benefit in such circumstances that it may reasonably be inferred that such child has been sold or bartered or that by reason of such giving or acquisition such child may reasonably be inferred to be placed in moral danger.¹⁸

The Children and Young Persons (Harmful Publications) Law of Lagos State,¹⁹ also protects children from harmful or morally endangering publications such as pornography. Section 2 makes it a crime to make such publications as are capable of corrupting a child or young person into whose hands they might fall. Section 4 punishes the printing, publishing, selling, hiring or otherwise distribution of such corrupting publications. The Adoption Law of Lagos State²⁰ forbids marriage between a person who has adopted a juvenile or his natural child and the adopted juvenile.²¹ This is to forestall possible abuses of the child's freedom of choice, conscience and other rights before and after marriage. Anyone who runs foul of this prohibition of marriage is liable to imprisonment for a term of five years.²² The law requires probation officers as directed by the State Director of Youth and Social Welfare Services to pay periodic visits to families who have adopted children to ascertain the welfare of the adopted juveniles.²³

V. RIGHTS OF DISABLED CHILDREN

A disabled person is stated under the English Disability Discrimination Act of 1995 to be a person who has a physical or men impairment that has a substantial and long term effect on his abilities to carry out day to day activities. In *X V. The Commonwealth of Australia*,²⁴ the duo of Gummow and Hayne J.J., defined disability as meaning, among other things, "the presence in the body of organisms causing disease or capable of causing disease or illness and included a disability that may exist in the future". Disability therefore includes circumstances existing in the present which can forceably render a person unable to perform future specific task.

Disabled persons are human beings and as such are entitled to all the fundamental rights guaranteed by both domestic and international human rights instruments particularly the right to freedom from discrimination,

¹¹ . S. 14 (2)

¹² . S. 19 (1) (d)

¹³ . S. 19 (1) (e)

¹⁴ . Example, Lagos and Ebonyi States

¹⁵ . Chapter C 10 Laws of Lagos State, 2004.

¹⁶ . S. 12 (1)

¹⁷ . S. 12 (2)

¹⁸ . S. 33 (1)

¹⁹ . Chapter C 11, Lagos State, 2004.

²⁰ . Chapter A5, Laws of Lagos State, 2004.

²¹ . S. 22 (1)

²² . S. 22 (2)

²³ . S. 23.

²⁴ . (1959) A.L.R 273.

right to dignity of person, equality, and right to employment. The Americans with Disabilities Act was passed and signed into Law in 1990, as a pioneering effort in this area of law to cater for the human rights and social welfare needs of the disabled. It is expected that the United Nations and other Countries would find the need to toe this path of humanity for the better well-being of the disabled child.

Voicing its concern in 1993, the World Conference on Human Rights stated its position that all human rights and fundamental freedoms are universal and thus unreservedly include persons with disabilities. For that matter, every person is born equal and has the same rights to life and welfare, education and work, living independently and active participation in all aspects of society; and any direct discrimination or other discriminatory treatment of a disabled person is therefore a violation of his or her rights. It called on governments, where necessary, to adopt or adjust legislation to assure access to these and other rights for disabled persons, including any disabled Nigerian child.

VI. RECOMMENDATION

In order to better protect the rights of the child, a number of remedial steps need to be taken in both the law and procedure guaranteeing these rights. Firstly, the Committee on the Rights of the Child established under the Convention on the Rights of the Child needs to be further empowered to receive individual and inter-state complaints, for this when done would extend the frontiers for a better protection of the rights of the child. Secondly, Article XXXI of the African Charter on Human and Peoples Rights which imposes reciprocal duty on the child to their family, parents, elders, community and nation should be specifically amended so as not to make the performance of these duties a condition precedent to the observance of the child's rights contained in the Charter. Thirdly, section 19 of the Nigerian Child's Rights Act imposing similar duties on the child should be reformed to categorically spell out that the observance of the rights of the child should not be based on the performance of that child of his duties under the Act. These amendments are significant so as not to create loopholes and excuses for avoidance of the duties imposed by these legal instruments in favour of the child.

VII. CONCLUSION

This paper has examined the international, regional and domestic legal instruments that protect the rights and welfare of the child particularly the Nigerian child. It has evaluated its strengths and weaknesses and made recommendation for amendments in the law and procedure in order to better secure the rights of the child.

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