

The *Abused* and the *Society*

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B. R. Akinbola

Introduction

Human rights discourse permeates all segments of human endeavours and has found relevance across the boundaries of race, colour, nationality, gender, age, status and all other criteria. Very often however, children are relegated to the background in the consideration of human rights issues. Children are immature and largely ignorant of some or most of their rights. Where they are aware of the existence of such legal rights, they sometimes have to contest with adults who possess the additional advantages of age maturity, more knowledge and exposure and also income-generating abilities in contrast to children, young in age, tender in frame and mostly dependent on adults for sustenance.

It is therefore not difficult to understand why until very recently, the fundamental human rights of children has attracted minimal attention from the executive, legislative and the judicial arms of government nationally and on the global scale. It has taken quite long until year 2003 for Nigeria to have a child's Right Act. This work will therefore, focus on the importance of human rights to children globally and in Nigeria in particular. Recourse will be made to legal instruments both at international and national levels, the writings of learned experts, among others. The methodology adopted is mainly desk review. The article will be subdivided into about six major segments including the introduction, who a child is under the law, a general overview of human rights, especially children's rights, the historical antecedents to children's rights and, the legal instruments that

provide for children's human rights both nationally and globally, areas of abuses of children's human rights in particular and lastly, suggestions of legal ways to protect children from human rights abuses.

Who is a Child under The Law

Children have been described as man's most valuable natural resource, without who the human race will be extinct on the death of the last adult to die. In essence, children signify perpetuity for the human race. Their existence foretells continuity of human life on the planet earth. The *Black's Law Dictionary* defines child to mean "progeny; offspring of parentage. Unborn or recently born human being. At common law, a child is one who had not attained the age of 14 years, though the meaning now varies in different statutes".¹ Child(ren) also means a boy or girl at any age between infancy and adolescence.² The contractual age according to the Infants Relief Act, 1874, an English statute of general application in force in Nigeria, is 21 years.³ Also, section 1 of the Criminal Procedure Act, Cap 80 LFN 1990 defines a child as a person who has not attained the age of 14 years, for the purpose of criminal responsibility. In *Okon & others v. The State*⁴ it was held that a child means any person who has not attained the age of 14 years. It was also held that the definition is not exhaustive. All the above definitions agree that the age of a child ranges from birth to at most 21 years of age and establish the fact that there is no universal consensus on the definition of a child. The Child's Rights Act 2003 defines a child as a person below the age of 18 years.

¹ *Black's Law Dictionary*, Edition 6th (Centennial Edition 1891 – 1991), p. 239.

² *The New Webster's Dictionary of English Language*, p.170.

³ Some States of the Federation, for example Osun and Oyo States, have in their Infants Law, enacted to replace the Infants Relief Act 1893, reduced the age of attaining majority to 18.

⁴ [1988] 1 NWLR (Part 69) 172 at 182.

Under the Nigerian socio-cultural context, the definition of a child varies widely due to lack of uniformity in the cultural systems. In some ethnic groups; a boy remains a child until initiated into an age grade society or until he is old enough to contribute financially to community development. In others, childhood terminates at puberty.⁵

The framework for the protection of human rights is international, regional and national. The United Nations Organisation is the major global body that regulates and protects human rights internationally as demonstrated by its Charter and other international instruments that have been concluded under its auspices.

History of Child's Right

"Children have been regarded as little better than the chattels of their parents....Today, the law no longer regards a child purely as a chattel. A number of legal developments have been responsible for this change, notably the juristic shift from parental rights to responsibility."⁶ The popular assumption in times past was that most adults and parents in particular had the best interest of children at heart, thus there was no need to think in terms of children's rights.⁷ Against this background, little or no attention was paid to the need for legal protection of children's rights.

With very few limitations imposed by the criminal law, a child's welfare went unprotected, for far less was he given the right to determine his own future or even any say in the questions that concerned him. Today, the law no longer regards a child purely as a chattel....⁸

⁵ Ayua and Okagbue, *The Rights of the Child in Nigeria*, NIALS, Lagos, 1995 p.30.

⁶ Carol Crowdy Nutshell, *Family Law* ed 2nd. (Sweet & Maxwell) 1992 p. 89.

⁷ Hon. Justice A.Augie in a paper, "The Role of the Judiciary in the Legal Protection of Women and Children in Nigeria", Contained in UNICEF Seminar Report, Legal Aid and Judicial Protection for Women and Children. Dec.14-15, 1998 p.32.

⁸ *Op.cit.* p. 89.

A child in many Western legal systems had his/her legal personality subsumed in that of the parent, the father in particular. In most African societies, paternity also subsumed the legal personality of a child. This is no longer the position in many jurisdictions including Nigeria. Two important changes which affected the legal status of the child were the introduction of child labour laws and compulsory education. By legitimizing state intervention in the family, these laws made children a subject of public responsibility. An example of such laws is the English Factories Act 1833. The efforts to regulate human rights gained momentum internationally, after the World War II in 1945 due to the atrocities, which were committed against human beings during that war. Children and women were the major victims of human rights abuses in the war.

It is notable that human rights can be derogated from in some special situations like when a person is convicted for a capital offence. However, the death penalty is not imposed on children even when convicted of capital offences. With the enactment of the Child's Rights Act 2003, children are now ordinarily subject to the child justice system as opposed to the criminal justice system in Nigeria.

Human Rights as It Relates to Children: International Recognition and Protection of the Child's Right

In 1919, the International Child Labour Convention (Minimum Age Industry) Convention No.5 was adopted to regulate children's participation in the workplace. Other international landmark instruments followed in quick succession in the protection of the rights of children. They include the 1923 Geneva Declaration of the Rights of the Child adopted in 1924 by the League of Nations, the 1959 United Nations Declaration of the Rights of the Child, the United Nation's Convention on the Rights of the Child adopted in November 1989, the African Charter on Human and Peoples' Rights adopted in October 1986 and the African Charter on the Rights and Welfare of the child

of 1990.⁴² All of these instruments lend credence to the fact that globally and regionally the rights of children are not only recognized but sought to be protected the world over. It is no longer acceptable to value children as mere chattels whose fate is to be determined by the magnanimity of their parents, guardians or even local communities. Such custodians of children are held accountable to the entire human community and they are expected to be guided by the standards set down by these conventions and declarations.

Nigerian Recognition And Protection Of The Child's Rights

In Nigeria, the foremost legal recognition of the rights of a child, is that provided for in chapter IV of the 1999 Constitution of the Federal Republic of Nigeria (CFRN). It protects the Fundamental Human Rights of all Nigerians. Also, the Child's Rights Act 2003 specifically provides in section 3 part II that all fundamental rights provided in the CFRN 1999 shall apply to the child, in addition to the specific provisions of the said Act. The Child's Rights Act 2003 is the most recent and most comprehensive legislative attempt at the protection of child's rights in Nigeria. It seeks to protect the Nigerian child against every kind of child abuse ranging from child labour, child trafficking to abuses that may not have been specified in the Act.

Piecemeal provisions exist in other laws for the protection of the Nigerian child. Examples of this can be found in some sections of the criminal code and the penal code. Human rights therefore provide the needed bridge between the poor and the rich, the weak and the strong. These rights create the needed standards for the protection of the human being. While they are only standards in the international instruments, they have become the bedrock and guiding yardsticks for the domestication of human rights within the municipal laws of most civilized nations of the world. The constitutions of many

countries have domesticated these rights in their laws with different descriptions from one jurisdiction to another in almost a replica form of what is contained in international instruments. In Nigeria for example, they are referred to as "Fundamental Human Rights" and are contained in chapter IV numbering sections 33 to 46 of the 1999 CFRN.

Human Right Abuses Against Children

The word "abuse" imports the idea of misuse, malhandling, wrong contact or communication with an entity. Violence against children had existed since early times. Children were killed, abandoned, beaten, sexually abused, thrown into rivers, flung into gutters and heaps and exposed on hills and roadsides. Even as late as 1890s, dead infants were still a common sight in London streets.⁹

Child abuse is the psychological or physical abuse of a child under one's care.¹⁰ It has also been defined as any form of cruelty to a child's physical, moral or mental well-being.¹¹ From the *Oxford Advanced Learner's Dictionary* definition of child abuse, at least three dimensions of child abuse are possible i.e. physical, sexual and emotional. A critical examination of the provisions of the Nigerian Child's Rights Act 2003 shows that unless the state (i.e the government) establishes and empowers strong enforcement mechanisms, the rights and protection provided therein, may continue to elude the Nigerian child. The Act puts a great deal of responsibility on the state, to provide the necessary enabling environment for the enjoyment of the said rights.

⁹ Lloyd de Mause (ed) "The Evolution of childhood in History of childhood" New York (1974) p.29.

¹⁰ *The New Webster's Dictionary of the English Language*, op. cit., 170.

¹¹ *Black's Law Dictionary*, 6th Edition, (Centennial Edition 1891 – 1991) p. 239.

According to H. K. Bevan,¹² physical child abuse can take the forms of causing death like: murder and manslaughter in which the life of the child is terminated; abortion of an unborn child¹³ (although there are controversies on whether an unborn child strictly speaking, is a child and that is outside the scope of this work). Child destruction, which is closely related to, and overlapping with abortion, as created by the Infant Life (Preservation) Act 1929 because of the restrictive rule that murder is only possible if the child is born alive. Physical child abuse can also be in forms that do not cause death, but nevertheless, harm the child. These include: cruelty to children under the age of 16 in form of: unnecessary suffering or injury to health, neglect, assault ill-treatment e.g. constant nagging, repeated threats of violence or confinement, mild violence, abandonment or exposure, supplying intoxicating liquor and tobacco to children and cognate offences like giving tobacco or liquor to under-aged children, drugs and noxious substances. Giving custody of and handling of dangerous weapons and explosive by children e.g. possession of fire arms, cross bows and explosives, Tattooing of children, female genital mutilation otherwise known as girl's circumcision rape, sexual intercourse with a child by intimidation or fraud; incest, indecent assault and battery.

Another category of child abuse, which borders on emotional abuse can be in the form of harmful publicity, subjecting children to the rigours of court divorce proceedings, exposure to harmful publications and indecent, immoral and horror media broadcast in form of nude films, violent movies, and any other unwholesome exposures. Persons who may be liable for any of these offences of child abuse are parents, persons who are legally liable for the care of the child and any other member of society whether acting individually or in a group.

¹² *Ibid.* pp 381 – 434.

In the Nigerian context, child abuses commonly occur in the form of assault and battery, rape, abandonment, child labour and child trafficking (mostly against the house girl or boy, popularly called "Omo-odo").¹⁴ The practice of adoptive servitude, in which urban families employ young rural girls and use them as domestic servants in their homes, is not peculiar to Nigeria alone. According to the Country Report on Human Rights Practices on Morocco,¹⁵ this is also obtainable in Morocco. Comparatively, Morocco has been described in words that appropriately describe Nigeria (except in terms of numerical figures) thus:¹⁶

"Families employed in agriculture 81% of the 600,000 underage (7 to 14 years old) workers. Despite legislation, young girls were exploited as domestic servants on a large scale...NGO activists estimated that the numbers of teenage prostitutes in urban centres were in the thousands. The clientele consisted of both foreign tourists and citizens. The practice of adoptive servitude, in which urban families employ young rural girls and use them as domestic servants in their homes, was widespread. Credible reports of physical and psychological abuse in such circumstances were widespread. Some orphanages have been charged as complicit in the practice. More often parents of rural girls contracted their daughters to wealthy families and collected the salaries for their work as maids."

¹⁴ "Omo-odo" is the Yoruba phrase that describes children who are used as maids or domestic servants in the modern context, for a fee payable to their parents or guardians.

¹⁵ Country Report on Human Rights Practices-2003, Released by the Bureau of Democracy Human Rights, and Labour February 25, 2004, Downloaded on 13 April 2005 from file:\\A\Morocco.htm

¹⁶ Ibid, pp.11-12.

Adoptive servitude was accepted socially, was unregulated by the Government, and has only in recent years begun to attract public criticism....although the problem remained prevalent."

These descriptions are apt for the state of the Nigerian child. They are so appropriate in describing the condition of the child in Nigeria that a casual reader may conclude that he/she is reading about Nigeria before such a person knows it is about Morocco.

Child Protection Under The Nigerian Child Right Act 2003

In Nigeria, the recent development of law on child's rights is the Child's Rights Act 2003 which spans over 278 sections and has 11 schedules, providing for and protecting the rights of the Nigerian child and other related matters. Sections 3–10 of the Act provide for fundamental rights as stated in Chapter IV of the Constitution of the Federal Republic of Nigeria (CFRN) 1999 or any subsequent Constitution to apply to the child. Sections 11–18 endow specific rights on children, which include:

- Right to dignity of the child
- Right to leisure, recreation and cultural activities.
- Right to health and health service
- Right to parental care, protection and maintenance
- Right of a child to free, compulsory and universal primary education, etc.
- Right of a child in need of special protection measure
- Right of the unborn child to protection against harm etc

Contractual rights of a child

Sections 21–36 of the Act prohibit several acts, violations of which may be translated to child abuses. The prohibitions are against child marriage, child betrothal, child marriage and betrothal, tattoos and skin marks, This is still very rampant among indigenous Yoruba communities. It is suggested that public enlightenment and education are indispensable in protecting children from this abuse, exposure to use, production and trafficking of narcotic drugs, etc, use of children in other criminal activities, abduction, removal and transfer from lawful custody, prohibition of exploitative labour, application of Labour Act, Cap 198 Laws of the Federation of Nigeria (LFN) 1990. Prohibition of a buying, selling, hiring or otherwise dealing in children "for the purpose of hawking or begging for alms or prostitution, domestic or sexual labour are prohibited and the penalty for offenders is 10 years imprisonment" section 30 of the Child's Rights Act.

Children hawking is a common sight in the streets of major cities like Lagos, Ibadan, Kano, Enugu, and Port Harcourt in Nigeria to date. Strict enforcement and economic empowerment of parents is necessary for this menace to be eradicated. Unlawful sexual intercourse with a child, all forms of sexual abuse and exploitation, prohibition of recruitment of children into the armed forces, prohibition of importation of harmful publication etc need to be curbed.

The provisions in the Act have been designed to address all forms of child abuses that are known. To cater for the unforeseen, many of the provisions are open-ended. For example, Section 32 (1) states:

Any person who sexually abuses or sexually exploits a child in any manner not already mentioned under this part of this Act commits an offence.¹⁷

¹⁷ Child's Rights Act 2003, emphasis mine.

The implication of this is that sexual offences which may not have been specifically mentioned in the Act, if committed, are punishable under the provisions of S. 32 (2) of the Act. With similar provisions in other parts of the Act, whether or not an offence has been specified in the Act, will not deter the law from being enforced against a child abuser where the act in question is proved to be a form of child abuse.

The Nigerian Child's Rights Act 2003 provides for certain specific rights for children, in Part II, Sections 3 to 18. All the rights and freedoms are to accrue to a child as of right, by the law as they are not privileges. It is however notable that many of these rights are violated everyday in Nigeria and most of the violators escape without due sanctions. The irony of it all is that even the Nigerian government cannot be exonerated from guilt of violation of some of the rights listed in the Child's Rights Act. Of particular note, is the child's right to free, compulsory and universal education. Studies show that there are many Nigerian children to date, who cannot get basic education because their parents cannot afford it. The government can be said to be a child's rights violator in this respect. In many instances also, where free education is purportedly available, it is of very poor quality in comparison to what is obtainable from private schools where exorbitant school fees are paid for qualitative education. Unfortunately, the right to education has been placed in the second chapter of the Nigerian Constitution, which is generally tagged as non justiciable. This means that no court action can be successfully instituted to enforce such a right as its provision is dependent upon availability of resources to the government.

Recommendations

All stakeholders must complement one another in the observance and enforcement of the fundamental human rights of children. A multifaceted and interdisciplinary approach is

highly recommended in the fight against child's rights abuse. Government needs to do more in regulating the consumer safety of children products. Foods, drugs and cosmetics that are specifically consumed by children must be subjected to strict and very high quality control screening before they are made accessible to the consuming public. An agency like the National Food and Drug Administration and Control Agency (NAFDAC) is a praiseworthy effort of government but there needs to be an agency that concerns itself specifically and solely with children and their consumable products.

Protecting children from unwholesome entertainments and programmes on television, radio and other media avenues, is also a need that the government must meet. Government by its position is the best organ to ban outrightly or regulate the broadcast of programmes which are unwholesome from the media. Home videos, T.V. operas, some radio broadcast which are either full of display of violence, nudity, horror films and like activities, should be censored, prohibited or banned appropriately, and where this is not done, they should not be aired on our radio and television stations until 11.00 p.m. at night, when it is assumed that most children have slept. This is necessary because by their nature (earlier stated) children are vulnerable and easily influenced and have little or no ability to decipher between good and evil. If they are exposed to evil sights on the media, it constitutes an abuse of their rights to wholesome development. In this regard, children must also be protected against bad influences from the internet. This is a recent development in Nigeria and the law-makers must make laws to match the challenges posed to children by internet browsing. I suggest that one of the provisions of such a law should be that children of primary and secondary school ages should not be allowed to browse at commercial cyber cafes and when they do browse, it must be done under the supervision of a responsible and knowledgeable adult.

Unrestricted access to internet viewing is definitely not a

desirable thing in the interest of Nigerian children. Prosecution of offenders under the Child's Rights Act 2003 or any child abuser, for that matter, should be given priority attention by the judiciary. Indeed any such cases must be concluded within six months at the most. In this regard, states need to create and designate adequate number of courts to expedite the hearing and disposal of child abuse cases in Nigeria as stipulated by the Child's Rights Act. Happily, the Child's Rights Act in Sections 260-268, provides for a child's rights implementation committee at national state and local government levels. I submit that the success of the Act will depend greatly, on efficiency of such committees at the 3 levels of government.

The penalties prescribed by the law for child abuses, must be stiffer than what is presently obtainable in Nigeria. For example, in Section 32 (2) the Child's Rights Act 2003 prescribes 14 year term of imprisonment for conviction for sexually abusing a child. I am of the opinion that this is not adequate in view of the rise in frequency of sexual abuses against children. A term of at least 21 years or more will not only be a punishment for the offender, but also a deterrent to others. I therefore recommend that the terms of imprisonment for any act of child abuse, should be reviewed upwards constantly and kept stiff at all times.

Adoption procedures should be lessened and minimal protocols should be required, to facilitate provision of good family conditions for children in need. Some citizens who are capable and interested in adopting children, are deterred by the elaborate legal procedures required and thus, the prospective adopted children are denied homes. This is a form of child abuse howbeit officially done.

Conclusion

Today's children are the adults of the future from among whom national leaders and needed manpower for our socio-economic

development are expected to emanate. No amount of investment of legal, financial, moral or other attention is too much to give to ensure the healthy development and protection of children. Children epitomize the future of mankind. Therefore, all stakeholders including the government, parents, schools and religious organisations must complement one another to ensure the eradication of child abuses from the society. It is often said that the young shall grow. Child abuse is not only evil, it has the potential to kill the leadership quality in the victim and thus prevent the much-anticipated growth of our young ones. Child abuse must be stopped forthwith.

Law is one of the foremost and most viable tools for eradicating child abuse. Every state depends on its population to achieve its objectives. This makes government, a foremost stakeholder that must protect children against child abuse, by the instrument of law through adequate promulgation, reform and enforcement of appropriate laws, to assert children's rights and protect them against human rights abuses.