LEGAL SUPPORT FOR THE RIGHTS OF A CHILD IN NIGERIA

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INTRODUCTION:

The purpose of this paper is to highlight the rights of a child and its legal implication in Nigeria[1].

In a typical African society of which Nigeria was one, it is customary to all tribal settings that the rights of a child did not enjoy a universal set of recognition. Each society or village evolved its own rules in that regard[2]. Most children were made to suffer many forms of human degradation. Also it is commonly believed that a parent could allow his child to enjoy certain rights and may decide to withhold others. Even these rights that were enjoyed by children were determined by the usefulness of the child to both or either parents at the farm or roadside market. Utility was the scale of measurement.

Gone are the days when such practices are allowed to persist, a developing society such as ours in order to move ahead with the time must give its children their due rights. These rights can found in our Statutes, Conventions, and the Constitution of the Federal Republic of Nigeria 1979 as amended. Even some native law and customs recognise and believe certain rights are due to children before the age of puberty.

We shall now proceed to describe whom a child is under our law before examining his rights under the various enactment's applicable in the country.

WHO IS A CHILD?

Generally speaking a child is believed to be the product of a lawful marriage who is still subject to the control and direction of the parents. But under the common law and statutes it means more than that.

At common law, "One who has not attained the age of fourteen years is a child". **BLACKS LAW DICTIONARY SIXTH EDITION[3].**

Whilst under the Family Allowances Act **1965**[4] a child is defined in its section 2 as "anyone under the age of nineteen who is an apprentice or attending full time at a school**". STROUD'S JUDICAL DICTIONARY FORTH EDITION**' [5]In Nigeria, a child is defined as a person under the age of fourteen years vide S.2 Children And Young Persons Act. Cap 32 Laws of the Federation of Nigeria 1958 (CYPA). Who is an adult? Since a child is a person under the age of fourteen years both at common law and under the **Children and Young Persons** Act Cap.32, then it follows therefore that an adult is any person above the age of fourteen years. Apart from this blanket definition, the **Blacks Law Dictionary Sixth Edition[7]** defines an adult as one who has attained the legal age of majority which is generally 18 years.

In between the categorisation of a child and an adult the law states that anyone between the ages of 14 and 17 year is a young person[8]. **The United Nations Convention on the** Rights of **the Child[9]** on the other hand, defines a child as a person below the age of 18 years, unless under the law applicable the child attains the age of majority earlier.

This explains why under the CYPA a person who has attained 14 years but under 17 years is a child, while anyone under the age of 14 years is called a child.

We should note that in Nigeria the age accepted under many of our Electoral Laws for a Nigerian to vote at an election is 18 years[10]. This will seem to support the definition of a child under the **United Nations Convention on the Rights of the Child.**

THE GENERAL RIGHTS OF NIGERIANS

The general rights of every Nigerian irrespective of religion, ethnic groupings, sex and age are contained in sections 30-42 of the Constitution of the Federal Republic of Nigeria 1979 as amended [11].

Every person who is a citizen of Nigeria has a right to life and cannot be deprived intentionally of his life except in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria. See S.30 CFRN 1979 as amended.

Every citizen of Nigeria is entitled to respect for the dignity of his person. See S.31 CFRN 1979 as amended.

Every person is entitled to his personal liberty and no person shall be deprived of such liberty except in accordance with the law. See S.32 CFRN 1979. Every citizen of Nigeria shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality. See S.33 CFRN 1979 as amended.

Other rights of Nigerians as set out in the constitution are;

Right to private and family life, right to freedom of thought, conscience and religion, right to freedom of expression and the press, right to peaceful assembly and association, right to freedom of movement, right to freedom from discrimination, and protection from the compulsory acquisition of property. Without payment of compensation[12].

THE PECULIAR RIGHTS OF A CHILD.

The various rights of the child in Nigeria today are derivable from six principal sources of law namely:

The **United Nations Convention on the Right of the Child** which was enacted in 1989. In 1990 Nigeria was one of the signatories to the **Charte**r on the **Rights and Welfare of the African Child**, under the auspicious of the Organization of **African Unity.**

The 979 Constitution in Section 17(3)(f)provides that:

> "Children, young persons.... should be protected against any exploitation whatsoever, and against moral and material neglect".

Section 18 of the same Constitution enjoins the government to direct its policy towards ensuring of equal and adequate educational opportunities at level.[13]

It should be noted that statutorily, the welfare of children was first recognised in 1943 when the **Children and Young Persons Ordinance** was passed. This later became chapter 31 of the Laws of Nigeria as revered in 1948 and was retained as Chapter 32 of the Laws of the Federation of Nigeria and Lagos as revised in 1958. The Ordinance which later became an Act was made applicable to Lagos in 1946and was extended to Eastern and Western Regions of Nigeria by Order-in-Council No 22 of 1946, while it was enacted for Northern Nigeria in 1958.

The importance of the CYPA makes it imperative to set out in broad outline its provisions.

The CYPA makes provisions for the welfare and treatment of young offenders and the establishment of juvenile courts. The Act also makes provisions for juveniles in need of care or protection. The law is divided into nine broad parts: Part one deals with preliminary issues such as definitions. Part two deals with juvenile offenders especially issues such as bail of children arrested, custody when they are not granted bail, association with detained adults while in custody, remand and committal to custody, conditions under which a parent or guardian may attend court and so on. Other matters dealt with in part two include the constitution of the juvenile court, rules of court, power of the court to punish juveniles, methods whereby children and young persons charged with offences may be dealt with, and the power to establish places of detention for juveniles.

Part three deals with probation officers. Part four deals with approved institutions, while Part five deals with juveniles in need of care and attention and contains provisions on situations where the parent or guardian is unable to exercise control. Part six makes provisions for the contribution of parents or guardians towards the maintenance of juveniles, while part seven, eight and nine consider miscellaneous issues, trading in children and power to make regulations respectively.

The religion of Islam has its own set of rules on the rights of a child which are comprehensive and comparable with all the rights enunciated in other systems of law earlier alluded to Lastly the various native law and customs indigenous to Nigeria have rules on the subject.

The importance of the right of the child stems from the fact that about 47 percent of Nigeria's population of 100 Million are children as earlier defined.

Generally speaking, the peculiar rights of a child after survival include right to life, right against cruelty, right to education, right to health, right to shelter, food and clothing and any other rights find due to the child.

RIGHT TO LIFE:

Life is sacred and important. Just like S. 30 (1) of the 1979 Constitution of the Federal Republic of Nigeria speaks about the right to life of every citizen of Nigeria. It is pertinent to state here that the word "every person" used in that section includes children.

It is barbaric to offer a child as sacrifice to a God or a Goddess to gain a favour.

It is even worse if a child is sexually exploited under any circumstances. This is the reason why several attempts have been made by the government to put an end to hawkings by children, because it is a very fertile area where children hawkers are sexually and physically abused by some depraved men and women in our society. Same goes for child beggars.

RIGHT AGAINST CRUELTY:

This subhead has so many facets. In some cases a child could be refused his meal if he refuses to work on the farm with the parents. In the same vein rights are denied a child for refusal to run

errands or carry out menial Jobs. A child could be beaten and lacerated if he visited his divorced mother without the fater's consent.

A child hawking till late in the night is been deprived of so many things which his mates are enjoying at home. It is also cruelty against a child who is sent away from his parents to learn trading in another village or town or sent to stay with a barren relation. The examples can be multiplied.

The killing of a female in showing preference for a male is barbaric and cruel.

Dumping of new born babies in the refuse dump is cruelty. There is provision for unwanted babies at the children welfare homes in all the states of the Federation.

Where, a child develops the habit of pick-pocketing (may be due to poor-feeding)or too troublesome for the parents to handle, S.34 of the Children and Young Persons Act provides that the parent or guardian of such a child could go to Juvenile Court for necessary orders.

Children are said to be leaders of tomorrow, any society that wants good leaders that would lead the country in the next millennium must take good care of the children in the society.

RIGHT TO EDUCATION:

Every child has a right to be educated and such responsibility is on the parents and the society. A child must not be made an idle or vagabond as a result of the parents poverty. A child should be allowed to be educated as far as he could go. A child who is educated would be less burden- some on the parents and the society when he becomes an adult.

Instead he would strive hard to pay back if not all, at least part of what the parents and society spent on him when he was a child.

Usually a child pays more than what was spent on him. An educated child brings pride and glory to the family. Moreover it is easier to lead an educated society than one infested with illiteracy. The Nigerian nation is an example of the latter.

This issue would have been frontally addressed if the provisions of Section 18 of the 1979 Constitution are justiciable[14]. The Section provides as follows:

> (1) Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels.
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> (2) Government shall promote science and technology.
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> (3) Government shall strive to eradicate illiteracy; and to this end Government shall as and when practicable provide---
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> > (a) free, compulsory and universal primary education;
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> > (b) free secondary education;
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> > (c) free university education; and
> >
> > (d) free adult literacy programme".

RIGHT TO HEALTH:

A child has the right to be cared and catered for medically.In Nigeria of today unlike the time of our parents, a child is entitled to adequate health care and must be immunized against all deadly diseases to safeguard him from attacks. Both the Federal and state Ministries of health are really working and expending monies on the expanded programmes on immunization for the survival of our children.

RIGHT TO SHELTER, FOOD AND CLOTHING:

A child is entitled to be sheltered in a comfortable and well ventilated home, he is entitled to be fed with good and nutritious food for energy body building and strength. A child is entitled to be clothed by his parents or guardian. This clothing may not necessarily be expensive, but a child must be clothed properly, befittingly and in accordance with the season.

OTHER RIGHTS

These rights may include among others, right of the child to have free access to either parents; not to be restrained by any form of protocol. In essence a child whether male or female must be free with both parents and either parents must be ready at all times to play their roles on issues in which their admonition is needed. A male child has the right to ask his father concerning any physical changes he notices in his growth or development ie. adolescent, while a female has the right to ask the mother concerning her own physiological changes as well. The out moded and outdated attitude of parents in shunning their children on issues as the above does more evil than good.

CHILD LABOUR:

The United Nations Convention in its Article 18 calls for an outright prohibition of child labour which is hazardous or likely to interfere with the child's education or development. Therefore any type of employment which increase the risk of a child incurring physical or mental harm or which prevents the child from either attending school or which affects his school performance should be discouraged. The Labour Act[1] in its 5.59 provides that a child under the age of 12 cannot be employed or work in any capacity except where he is employed by a member of his family on light work of an agricultural, horticultural or domestic character approved by the Minister.

A child cannot be required to lift; carry or move anything so heavy as to likely injure his physical development.

Whatever the form of employment is, a child should not be prevented from returning to his parents or guardian at the end of each day's work". The new trend in Europe and United States of America is to refuse to patronise products that are produced with child labour for, example football produced in China and India.

CIRCUMCISION:

This is the performance of surgery on the genitals of both girl or boy. This could be by medical or local surgery. We must draw attention to the fact that there are divergent views among the people of religion on the desirability or otherwise of female circumcision. The argument put toward by

them is that a girl that is not circumcised will grow up to be promiscuous. The short answer to this is that immorality is a thing that is imparted and can be controlled if not totality exterminated by a good family upbringing.

The general answer to the objection of the religionists is that all revealed religions place premium on the prevention of injurious acts to human person be it an adult or child.

Since medically, it has been proved that female circumcision is injurious then there can be no valid ground to continue with the practice.

EARLY MARRIAGE

This is an another area where religions have views different views from the modern trend. It is said that delayed marriage encourages immorality. There is no doubt there is some merit in the assertion but the medical impairment that can result to a young girl given in marriage to a man old enough to be her grandfather far outweighs the merit of the argument. It is our view that the middle of the road approach of modern medicine that one should not marry too early or too late is to be preferred.

There can be no doubt about it that it is an abuse of the right of child who has not attained his or her majority to be forced into a marriage he or she does not like. The result of this act is manifest in the number of divorce cases in our local courts all over Nigeria and cases of elopement in many local communities. The larger society is the worse for the practice.

RECOMMENDATIONS

In order to make the Nigerian child enjoy the type of basic rights accorded his contemporaries in other parts of the world and to give teeth to the statutes, the United Nation Conventions and the African charter on the rights of the child, we make the following recommendations.

1. Government should set up a comprehensive social welfare scheme that will assist low income parents, unemployed parents and widows to cater for their children.
2. Government should through the Local Governments direct the supply of a pint of milk per week to all Nursery/Primary School Pupils, free of charge.

3. Education should be free and made compulsory in Primary and Secondary Schools.
4. The provisions of the laws that protect children from abuse should be strictly enforced.
5. There must be stiffer penalties for parents and guardians that engage in child labour, baby dumping and kidnapping.
6. Employers of labour both private and public should be made to provide day care/Nurseries at the office so that nursing mothers can bring to work babies of between 2 months and 9 months for proper care.

CONCLUSION

We have tried to show that in common with other Nigerians, the Nigerian child is entitled to all the entrenched rights guaranteed in Chapter IV of the 1979Constitution. Be it noted that the incursion of the Military into governance has made the observance of the rights to be more in the breach than observance. It is hoped that no matter how long, the rule of law will hold sway in our polity in the not too distant future. We have also shown that over and above these general rights, the child has some peculiar rights, that must be observed if we are to have well balanced leaders tomorrow in the Nation. In this age and time when the other parts of the world are marching unhesitatingly into the next millennium in all spheres of human endeavour, Nigeria cannot but devote more time, energy and resources to the qualitative survival of her children who undoubtedly will lead this country in that millennium. The salvation of the nation lies in safeguarding the rights of all citizens but the child in particular.

FOOTNOTES

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1. More light could be shed on the topic by consulting more relevant works on the topic.
2. While most of these African traditional societies accorded some rights to the child, the content, extent and quality of the rights revolved around the perception of the elders.
3. Paragraph 8 at page 239.
4. The law is applicable in England but the definition of a child therein is apposite to our discussion.
5. Volume 1 paragraph 3 page 451.
6. There are similar laws enacted in all the former Regions of Nigeria which are now applicable to the states that fall into the said Regions. For example see Children and Young Persons Laws of Oyo State Cap 22 Laws of Oyo State 1978. In this paper we shall rely on the provisions of CYPA Cap 32 Law of the Federation. The Laws of the States on the subject are in **Pari Materia.**
7. Paragraph 9 pages 51.
8. See S.2 CYPA.
9. The Convention was adopted by the 44th UN General Assembly on November 20th 1989.
10. See for example (1) Section 2 of the Local Government Election Decree No.6 of 1996. (2) Section 48(1) (a) of the Local Government (Basic Constitutional and Transitional Provisions) No. 7 of 1997.
11. This is contained in chapter IV of the Fundamental Human Rights paragraph of the said Constitution.
12. See Sections 34-42 of the Constitution.
13. However these sections which are contained chapter II of the Constitution on Fundamental Objectives and Directive Principles of State Policy is not justifiable.
14. see infra.
15. Cap 198 Laws of the Federation 1990.
16. See section 59 (1)(b) of Cap 198.
17. See Section 59 (3) of cap 198.