

The health rights of *al-Majirai* children under the Nigerian Law: problems and the need for a new discourse

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Abstract

Background: *al-Majirai* (singular, *al-Majiri*) pupils are one of the most vulnerable child in northern part of the country. Beside socio-cultural challenges that have always been their lots, the *al-Majirai*, as children, were not on many occasions given recognition as a human being that deserve to have right to standard health care. On many occasions, they were caught in the midst of ravaging epidemics, outbreak of banditry and politico-economic and social downturn. To avoid taking responsibility, and in trying to downplay the consequence of this neglect, many parents try to shift blames of the neglect to the society or the government as if they were the author of the rot. This paper discusses the health rights of *al-Majirai* children under the Nigerian law and some problems associated with this development that hampered the realization of the health rights *al-Majirai* children .

Methods: The research methods in this paper are of combined nature. On the one hand is the use of doctrinaire method, which involves exploring available literatures, relevant statutes, and court cases on the topic. On the other hand, the paper uses the findings as provided in the secondary empirical data from other previous studies to analyse the topic.

Results: The research shows that there were enough provisions for the health rights of *al-Majirai* children under the Nigerian law. Such provisions are found in the Child Right Act (CRA), the African Charter on the Rights and Welfare of the Child [ACRWC] and the Convention on the Rights of the Child [CRC] etc., at the national, regional and international level accordingly. It also identified weak family system, ineffective public policy and maladministration at all level of government as some of the problems hampering the realisation of the health rights of the *al-Majirai* children. In order to overcome this problems, the paper advocates that parents of the *al-Majirai* children need to be more responsible by providing healthcare to their wards , and the Muslim *Ummah* and the government, on their part, to discharge their social responsibilities as required.

Conclusion: The health rights of the *al-Majirai* children are among the fundamental rights of every human being. These rights are available for every child under the Nigerian law irrespective of its tribe, colour etc. By charting a new discourse where the health rights of the *al-Majirai* children are protected by the families , the Muslim *Ummah* and the government, the rights would be protected.

Key words: *al-Majirai*, health, rights, vulnerable, children

Introduction

Generally, *al-Majirai* children are just like other children born by other parents. And,

like every normal child, they are expected to enjoy certain rights towards their physical and mental development in life. Among rights they can enjoy as provided by the

law include, but not limited to, right to life, right to human dignity, right against all sorts of degrading and inhuman treatments etc. These cumulative health rights developed from the time of their birth until they are matured enough to take care of themselves.

However, the reality in Nigeria is that these children, instead of enjoying all these rights, are, on the contrary, exposed to all societal neglect and nonchalant attitude of those who are supposed to protect their rights. It all starts from the family and sustained by ineffective public policy of the government and large scale level of maladministration of resources to provide all the needed health care in the country.

Therefore, in order to enjoy the health rights, there is need to embrace a new line of discourse where individuals have to provide health care to their wards rather than expecting the society or the government to carry out this task. This, of course, does not absolve the government or the Muslim *Ummah* of their social responsibilities; rather, it is a duty to assist individuals that genuinely need support and the government must provide the conducive environment for people to live a normal live.

Methodology/Results

This paper adopted the combined methods of research (which comprises the doctrinaire and empirical secondary data) to discuss it. At the doctrinaire level, it explored relevant laws – especially the Child Right Act (CRA),¹ the 1999 Constitution of Federal Republic of Nigeria (as amended, CFRN),² the African Charter on the Rights and Welfare of the Child [ACRWC]), the Convention on the Rights of the Child [CRC]) etc.,³ court cases and literatures on the health rights of the *al-Majirai* children. Furthermore, the findings in some previous research studies were also used as secondary empirical data to explain the topic under study.

The results of the research shows that the child health rights are provided for under the national, regional and international legal regimes. It equally shows that weak family system, ineffective public policy and maladministration in the country, constitutes hindrances to the effective and successful implementation of the health rights of the *al-Majirai* children. It suggests that in order to prevent further perversion of the health rights of the *al-Majirai* children, there is need to chart a

new discourse where health rights of the *al-Majirai* children becomes the primary responsibilities of the parents and government to provide enough fund to the healthcare system in Nigeria.

Definition of terms

Magashi writes that *Al-Majiri* (singular) or *Al-Majirai* (plural) are Hausa words that means “child-student.” The two words are derived originally from the Arabic word, *al-Muhajir*, which literally mean “a migrant.” Beyond its literal meaning, it was used in sociological term to represent any person of different ages (but most often used for a child-student in Northern Nigeria) who migrate from his place to another area in search of Islamic education.⁴

As to the meaning of child (plural, children), the *Microsoft Encarta Dictionary* defines it as “somebody not yet of age: somebody under a legally specified age who is considered not to be legally responsible for his or her actions.” In Nigeria, such a child by section 277 of the CRA, is defined as a person below the age of 18 years.

Another important term is health. According to the World Health

Organisation (WHO), it mean “a state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity.”⁵ As to what a right means, there are many definitions given to it by many law jurists. But, for the purpose of this paper, it can simply means what Nchi defines as , “an advantage, interest or a claim due to a person which is decreed by law...”⁶ In other words, it is the law that defines rights and makes provisions for its availability and how to enforce it.

Concept of health rights of al-Majirai children in Nigeria

The health rights of the *al-Majirai* children are derived essentially from some of other rights often described as human rights.⁷ These rights are regarded as God given and arose from the reality that men are created equally. And since all *al-Majirai* children are human beings, it thus means that they are entitled to them accordingly. In other words, every *al-Majirai* children is entitled to these rights by virtue of his humanity.

Normally, the issue of rights do not arise in isolation. Under the human rights law, there is always a reciprocity between rights and duties such that, in this context, the rights of *al-Majirai* children impose duties

on their parents (or anyone that serves as *loco parentis* to him).⁸ Put differently, since they do not give birth to themselves, it presupposes that the duties of taking care of them lies with those who brought them to life. In Hohfeldian analysis of rights, this kind of relationship created what is called correlativity of rights and duties.⁹

The above concept establishes that the right of a person correlates with the duty which other person owes the former. As such, by the correlativity of rights and duties, it thus means that if such rights are denied, whoever is instrumental to the infringement would be liable under the law. Where there is liability, sanction follows. In other words, where rights are violated, the law provide penalty for the violation.

Legal regimes protecting the health rights of al-Magirai children

Generally, there are many provisions in Nigeria statutes protecting the health rights of all citizens. However, besides the general provisions, there are some laws specifically meant for the protection of the health rights of the child in the country. One of these Nigerian laws is CRA, which

replaces, supplements, or complements other relevant laws on children like the Lagos States Children and Young Persons' Law ([CYPL])¹⁰ and the Children and Young Persons' Act ([CYPA]).¹¹

At the regional level, based on Nigeria being a signatory to regional Charters, adopted charter protecting the rights of the child known as the African Charter on the Rights and Welfare of the Child [ACRWC].¹² At the international level, the Convention on the Rights of the Child [CRC]), was adopted by the country and has since been domesticated as CRA (now part of the indigenous law of the Federation of Nigeria).

Under the Interpretation section of the CRA, Sect. 277 of the CRA, provide a definition of a child as “a person below the age of 18 years,” thereby settling the dispute about who a child is under other Nigerian law.¹³ The above definition supersede all other definitions provided based on the provision in section 274 of the CRA titled, the Suspension and Inconsistence.

Health rights of al-Magirai children under the Nigerian laws

The health rights of every child – be he *al-Majiri*, albino, or other classification of children, are not left without being provided for under the Nigerian law. Since these rights are so fundamental to the survival of a child, the drafter of the law took further steps to see that these rights are not just provided but are enforceable through the machinery of the law.

In the next few lines, we shall outline some of these health rights with court cases that interpreted them as a binding law. These rights are:

a) Fundamental human rights: The CRA in its Sect. 3 provides that the Chapter IV of 1999 CFRN is applicable to the children as well, when it restates that;

(1) The provisions in Chapter IV 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.

(2) In addition to the rights guaranteed under Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999, or under any successive constitutional provisions, every child has the rights set out in this Part of the Act.

These fundamental rights include rights to life,¹⁴ which by Sect. 33 states that ‘no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.’ In Sect. 41(1) of the CFRN, there is right to freedom of movement, which every Nigerian - sick or well is entitled to throughout Nigeria. It include the right to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereby or exit there from.¹⁵

Another rights provided by the CFRN is freedom from all forms of discrimination. Sect. 42(1) states that a citizen of Nigeria shall not discriminated upon based on communities, ethnic groups, places of origin, sex, religion or political opinions.¹⁶

b) Right to survival and development: Sect. 4 of the CRA states that, “(E)very child has a right to survival and development.” Therefore, there is no justification for anyone to deprive a child of this right simply because he is suffering from physical disability (e.g., autism, albinism, dwarfism, Post-Polio Residual Paralysis [PPRP] etc), and mental disorder (e.g., mongolism, cretinism etc.). Any attempt to kill the child by “mercy killing” (*euthanasia*) amounts to a felonious criminal act of acceleration of death punishable with death as provided under Sect. 311 of the Criminal Code Act (CCA).¹⁷

c) Right to prompt referral: Where there is no adequate facility or where the patient needs specialized medical care that may not be available in the medial facility of first instance, Sect. 17(2) of the NHA provides that such child in needs of such treatment shall, as of duty, be referred promptly to a care centre with better facility.¹⁸

d) Right to emergency care - one of the rights of *al-Majirai* children is to be treated in the case of emergency regardless of whether there is money or not. In fact, in such emergency, like gunshot injury, treatment should be given regardless of

whether money was paid or not as stipulated under Sect.3(1) of the Treatment and Care for Victims of Gunshot Act (TCVGA).¹⁹

In Sect. 20 (1) of the NHA, it was stated that ‘health care provider, health worker or health facility, shall not refuse a person in need of emergency medical treatment for any reason. Where this right is contravened, Sect. 20(2) of the NHA provides that such contravention is a crime punishable upon conviction with a fine of ₦100, 000.00 or to imprisonment for a period not exceeding six months or both.

e) Right against indecent act – the law protect a Child undergoing medical care, just like any other Nigerian citizen, from being victimised in an indecent manner. Sect. 231(2) of the CCA provides that any person who ‘wilfully does any indecent act in any place with intent to insult or offend any person; is guilty of a misdemeanour, and is liable to imprisonment for two years.’(Sect. 231(2).

f) Freedom from all forms of discrimination. Like an adult, a child undergoing medical treatment must not be subjected to any form of discrimination based on Sect. 10 (1) of CRA, which provides that “belonging to a particular

community or ethnic group or by reason of his place of origin, sex, religion or political opinion.” In fact, Sect. 10(2) of CRA further adds that the child should not be “subjected to any disability or deprivation merely by reason of the circumstances of his birth.”

Thus, while undergoing medical treatment, an autistic, Albino, or even HIV positive child must not be discriminated against by anyone. Even while the child is in isolation centre due to severe communicable diseases, the paramount rule is that all care that he needed must be in his best interest and in the protection of his health rights.

g) Right of reasonable care: the *al-Majirai* children are also entitled to enjoy this right under the Nigerian law. Thus, according to Sect. 303 of the CCA;

whoever undertakes to administer surgical or medical treatment to any other person, or to do any other lawful act which is or may be dangerous to human life or health, to have reasonable skill and to use reasonable care in doing such act; and he is held to have caused any

consequences which result to the life or health of any person by reason of any omission to observe or perform that duty.

h) Right to health and health services:

The child is not only entitled to right to health and health services, but all these must be the best attainable in specific condition. Sect.13 (1) of the CRA, expect caregiver to package the care so that he/she can “enjoy the best attainable state of physical, mental and spiritual health.”

Furthermore, Art. 14 (a) – (c) of the ACRWC , apart from providing that “ right to enjoy the best attainable state of physical, mental and spiritual health,” also requires all state parties to the Charter to “pursue the full implementation of this right and in particular shall take measures:

- (a) to reduce infant and child mortality rate;
- (b) to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
- (c) to ensure the provision of adequate nutrition and safe drinking water;”

i) Right to dignity of the child. The protection of the dignity of any individual is not based on age factor. A child, among other individuals, is universally recognised as a free person and entitled to be respected as such. Sect. 11(a) to (d) of the CRA outlines some protectable areas on the dignity of the citizen. These are:

Every child is entitled to respect for the dignity of his person, and accordingly, no child shall be;

(a) subjected to physical, mental or emotional injury, abuse, neglect or maltreatment, including sexual abuse;

(b) subjected to torture, inhuman or degrading treatment or punishment;

(c) subjected to attacks upon his honour or reputation; or

(d) held in slavery or servitude, while in the care of a parent, legal guardian or school authority or any other person or authority having the care of the child.

j) Right to the best attainable state of physical and mental health - Art.16 (1) of the African Charter of Human and People's Rights (ACHPR)²⁰ provides for every child the right to enjoy the best attainable state of physical and mental health. Interestingly,

Nigeria not only adopt and ratify it, but has gone further to domesticate the Charter through the enactment of the African Charter of Human and People's Rights (Ratification and Enforcement) Act.²¹

In Art. 16(2) of ACHPR any state who is a party to the Charter, is under obligation to provide necessary measures 'to protect the health of their people and to ensure that they receive medical attention when they are sick.' The Court, while interpreting this article in the case of *Odafe and Ors. v. Attorney-General and ors.*²² explains this point clearly as follows;

Article 16 of African Charter Cap 10 which is part of our law recognizes that fact and has so enshrined that '[e]very individual shall have the right to enjoy the best attainable state of physical and mental health'.

Article 16(2) places a duty on the state to take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

Problems of enforcing the health rights of al-Majirai children in Nigeria

With all the provisions for various health rights of the child, one would expect that these rights are enjoyed by those they were meant for. On the contrary, there were many problems impeding their enforcement and enjoyment. Some of these problems are discussed in the following lines under three sub-headings. These are:

a) Weak family system – Black, while trying to define family described it as a “collective body of persons who form one household under one head and one domestic government and who have reciprocal natural and moral duties to support and care for one another.”²³ Therefore, where such ‘reciprocal natural and moral duties’ were absent or lacking, such family is referred to as been weak or dysfunctional.

One of the weaknesses is the sending of underage children to study miles away without adequate healthcare provisions. In a study by Khalid, it was found that about 83.49% of the *al-Majirai* children are between the ages of 5 -15 years, out of which 33.33% are in the age category of 5-9 years.²⁴ This means that the child were too young to cater for themselves. Today,

this is the reality before us, which some members of our Muslim *Ummah* try to explain away.

Another fact is, the children are learning under extreme condition, exposing them to psychological trauma. In another study conducted by Zakir et al on 300 *al-Majirai* children, the researchers revealed that: “99% of the participants interviewed gets daily food from begging on the streets, (90%) eat food twice a day with carbohydrates as common type of food they consume. This predisposes them to malnutrition and several types of disease due to lack of nutrients required to build and repair their body system. This shows 50% of the participants suffer from illnesses such as typhoid fever, malaria, skin rashes, cholera and most of them are treated in a chemist, because they cannot afford hospital treatment. So they can only go to a chemist and receive treatment without an accurate diagnosis and wrong treatment may be given while some cannot even afford chemist due to insufficient resources.”²⁵

Today, we have seen evidence of this systemic failure in reality where on many occasion the *al-Majirai* children is denied of health care because of lack of fund. The current author has worked as a bedside

nurse for over two and half decades in the hospital and has witnessed instances where child was brought to the health facility with grade six third degree bedsore/pressure ulcer (according to the European Pressure Ulcer Advisory Panel Grading system). On many occasions, some *al-Majirai* came with gas gangrene on one of the upper or lower limbs. In some of these situations, the father complained of lack of means or do not even appear at all.

There are separation between the parents and the *al-Majirai* children over a long period. In fact as Amzat writes, “for most people, *al-majiri* is not an enviable reference category in the social realm. It is not controversial to conclude that the *al-Majirai* children live in a deplorable condition. Neither is it controversial to submit that they form part of the under-class, which needs help of other people in order to live.”²⁶

Ordinarily, for a child to migrate in pursuit of Islamic knowledge is not also a problem. After all, many children of their ages are in boarding schools receiving good feeding, under comfortable accommodation and receiving good health care. It hence, becomes a problem, where, parents absolve

themselves the responsibility of providing adequate health care.

Therefore, the *al-Majirai* children deprived of parental care cannot access health care service. One of the cause of this neglect was attributed to the prevailing view among some parents attributing the provision of free medical care as the responsibility of the government or duty of the Muslim *Ummah*. It thus means that whoever fail to help their *al-Majirai* children has not done well. Unfortunately, such mentalities was shared by most of the grown up *al-Majirai* children, this author has had discussion with some years back. A study comprising of 150 *al-Majirai* participants in Borno states was carried out, by, Chukwu, Haruna and Fiase, on the question of whether the *Almajiri* feel neglected by the society. They found out that out of the 150 participants, 103 (69%) felt neglected while 47 (31%) do not felt neglected.²⁷

b) Ineffective public policy – Nigeria, by the WHO standard, was expected to allocate minimum of 15% of its national budget for effective health care delivery in the country. It is however on record that from the past ten years, the range was between 5-8%. Although, Nigeria is a signatory to many regional Charters and

international Convention on the need to improve the healthcare of its citizens, the healthcare service is grossly inadequate.

For instance, Sect.13 (1) of the CRA and Art. 14 (a) – (c) of the ACRWC at the national and regional level respectively, made provisions for child to “enjoy the best attainable state of physical, mental and spiritual health.” The result was abysmal as such, the vision remains a mirage.

During the outbreak of the COVID-19 pandemic all over the world, Nigerians were embarrassed to hear that many Intensive Care Units in Nigeria lack ventilator for resuscitating dying patient.

This ineffective policy of the Nigerian Administration becomes glaring in basic care support. In fact, the Federal Government, in order to implement the Basic Minimum Package of Health Services (BMPHS) provided by Sect.11(1) of NHA, set aside only 1% of its consolidated Revenue Fund, grants by international donor partners; and funds from any other source (Sect.11(3) of the NHA). Besides all this, Sect. 20 of NHA) provides penalty for failure to treat emergency patient but because of the ineffective public policy, the same legislatures that passed the law failed to indicate how such hospital or

clinic that give the emergency treatment, may be reimbursed. All these inconsistency hinder the proper implementation of the health rights of the child.

c) Maladministration of health care system at all levels of Government –

Another problem impeding the effective healthcare system is lack of priority for health care system at all level of administration. In most instances, healthcare facilities lack equipment to work with couple with shortage of medical staff. Ambulance services are either not available or too inadequate to provide prompt service in emergency cases.

In a study conducted by Ogbonna²⁸ on sectorial expenditure for selected sectors, the allocation to health has always been low with 6.24%, 4.64%, and 6.0% in 2015, 2016 and 2017 respectively. While discussing this statistics, the researcher states as follows:: Since 2016, government reform programmes in the northern part of Nigeria has targeted rehabilitating, feeding and educating the Almajiris who are usually exploited by criminals for social and criminal vices. A sum of N575million (\$1.1million) was released to feed schoolchildren in five states in January 2017. However, this is grossly inadequate considering the population

involved and sustainability is largely a problem to grapple with. In government hospitals, welfare services are comatose. Occasionally, hospitals use selected criteria to pay for patients who have been discharged and cannot pay for their bills. This is only available to less than 5% of the people.

Charting a new discourse

Based on all the analysis made so far, it becomes imperative that for *al-Majirai* children to enjoy their health rights as human beings, both the individuals and the Muslim *Ummah* have to embark upon a new discourse, a paradigm shift that would insist parents of the *al-Majirai* children must be made to provide the healthcare of their wards as expected. Over the years, some parents try to shift their responsibility to the *Ummah* or the government by claiming to be incapable financially. In fact, many *al-Majirai* children have to be taken away from the hospital in a critical condition after signing Leave Against Medical Advice (LAMA). This is unacceptable and it is such situation we must discouraged - especially with the level of global economic downturn.

It is true a child can be in *al-Majiri* , *Tsangaya* or *Islamiyyah* schools and study with comfort under good atmosphere as

done in other Muslim countries. Where the parents still think he can apply the same form of *al-Majiri* system of the past to solve today's social problem, calls for rethink. Parents should stop day dreaming of the past; the past characterised by era of pyramid of groundnut in the North, abundance food and cash crops that allow farmers to provide *al-Majirai* children with free food to eat to their satisfaction etc., without hesitation has gone.

Today, the reality is that parent must be responsible for the healthcare of their children , otherwise the children would grow up to constitute a recruiting ground for insurgence, banditry, and kidnapping as documented in many research studies.²⁹ In a study conducted by Sarkingobir et al (using a structured questionnaire applied on 120 *al-Majirai* respondents in Sokoto metropolis), the result of the study shows that they were Muslims, Hausa/ Fulani, males and Nigerians. The major occupations of their fathers were farming (66.7%), business (16.7%), and those without any job (16.7%). Thirty three point three percent of the fathers were married to two wives; 25.0% married to three wives; 16.7% married to one wife each, and 16.7% married to four wives.

The researchers while discussing the outcome of the field work state the following findings: “American Psychological Association (n.d.) said the children with food problems experience psychological effects. From these findings, it can be seen that, *Almajiri* children failed to come with enough food or money to sustain them throughout their stay at school. Moreover, this determined that, the main food of the *Almajiri* children is the carbohydrate, which they got in an uncertain, unacceptable and socially problematic way. Remnants, lowly, and unchosen food is served to the pupils.”³⁰

In order to prevent this, there may be need for our legislature to pass law to compel parents that have the means, but refused to spend it on their children waiting for the government to provide and protect the rights of their *al-Majirai* children. The situation deteriorate to this extent because, for some times, some of these parents slept comfortably at home, eat regular diets, but send away their children to study under humiliating environments, were not made to pay for the neglect. Such parents want the society to take pity on their children but they themselves lacks such pity. It is these kind of parents who must be stopped. “We

are shepherds,” so says the Prophet (SAW), and “we shall be asked on how we shepherd our flocks.”

Conclusion

From the foregoing, it has been able to show that the health rights of *al-Majirai children* are provided for under the Nigerian law . These rights are not only provided for but are enforceable. Today, the *al-Majirai* children have become victims of the infringement of their health rights. On one part is the contribution of the parents to this violation as they failed woefully to secure rights of their children by trying to shift the responsibilities to the societies and the government. On the other hand is the failure of the Muslim *Ummah* and the government to ensure these rights are protected and applied to those that deserve them. Therefore, to prevent further infringement of these rights, every parent of these *al-Majirai* children must wake up to provide the desired health care to their children, and where they are negligent, they must be compelled through law to perform their duties. Also, the Muslim *Ummah*, through pressure group, must not allow individuals who have failed to perform their responsibilities drag the country inside cesspool of insecurity. Through check and

balance, the health right of al-*Majirai* children would gradually be restored and stability would be maintained in all our home.

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