

DECRIMINALIZATION OF CHILD LABOUR DISGUISED AS HOUSE HELPING IN NIGERIA*

Abstract

The work analyzes child labour and its implications to the society especially the domestic aspect and enlightens Nigerians that child labour is still a crime despite the fact that Nigerians have themselves decriminalized same.

Keywords: Decriminalization, Child Labour, House Helps, Nigeria

1. Introduction

In most family settings in Nigeria, it has become the norm to see children rendering services at no pay or at minimal pay. Such services rendered by these children are actually services which ought to be paid for accordingly. To many such home owners, such children at his service are regarded as apprentices or house helps who are sheltered and fed and in few circumstances have their school fees paid and so they do not deserve to receive emolument for any services rendered. It is important to note that such home owners will not allow their children to render such services as they see same as child labour. This work therefore seeks to elucidate on child labour with particular emphasis on domestic helps which Nigerians do not believe is a crime. Thus, decriminalizing Child labour simply seeks to show that Nigerians no longer see such child labour as a crime especially as it pertains to house helps.

2. Conceptual Clarification

There are basically three concepts deserving of clarification in this work. They are decriminalization, child labour and house help and we shall pay adequate attention to these ones.

Decriminalization

Decriminalization is a noun and its transitive verb form decriminalize has been defined by Webster Merriam's Online dictionary as 'to remove or reduce the criminal classification or status of'¹. Svrakic et al defined decriminalization as the act of removing criminal sanctions against an act, article, or behavior². It is important at this stage to understand that decriminalization differs from legalization. This is because decriminalization refers to removal of criminal sanctions while legalization entails the process of removing all legal prohibitions against a thing.³ It is further defined by Wikipedia⁴ as the lessening or termination of criminal penalties in relation to certain acts, perhaps retroactively, though perhaps regulated permits or fines might still apply. Grant submitted that the concept was actually coined by Jennifer James an anthropologist.⁵ By the usage of the concept decriminalization, the author in this work is of the view that Nigerians have by themselves removed the criminal component of child labour in their usage of domestic and or house helps. It is this meaning that we will intend this concept to assume throughout this work.

Child Labour

Child labour has been defined under international standards as work that is hazardous, demands too many hours, or is performed by children who are too young. It harms children mentally, physically, socially, and morally and interferes with their schooling, preventing them from attending or concentrating. It may also involve them being enslaved, separated from their families, and exposed to serious hazards and illnesses.⁶ The above definition more or less tallies with the definition offered by the ILO when it defined Child labour as:

'The term 'child labour' is often defined as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. It refers to work that:

- is mentally, physically, socially or morally dangerous and harmful to children; and/or

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¹ <https://www.merriam-webster.com/dictionary/decriminalize> accessed on 29/4/2021 at 11:26am.

² D. M. Svrakic, P. J. Lustman, A. Mallya, Taylor Andrea Lynn, Rhonda Finney, Neda M. Svrakic,

'Legalization, Decriminalization & Medicinal Use of Cannabis: A Scientific and Public Health Perspective', *The Journal of The Missouri State Medical Association*, 2012 Mar-Apr; 109(2): 90-98

³ Ibid.

⁴ <https://en.wikipedia.org/wiki/Decriminalization> accessed on 29/4/2021 at 12:43pm

⁵ M. G. Grant, *Playing the Whore* (Verso/Jacobin, 2014), p. 112

⁶ As defined by International Year for the Elimination of Child Labour available online at <https://endchildlabour2021.org/what-is-child-labour/> accessed on 29/4/2021 at 12.53pm.

- interferes with their schooling by: depriving them of the opportunity to attend school; obliging them to leave school prematurely; or requiring them to attempt to combine school attendance with excessively long and heavy work.
- Whether or not particular forms of ‘work’ can be called ‘child labour’ depends on the child’s age, the type and hours of work performed, the conditions under which it is performed and the objectives pursued by individual countries. The answer varies from country to country, as well as among sectors within countries.⁷ In as much as not all work done by children will amount to child labour, ILO has extracted what it refers to as the worst forms of child labour thus, ‘all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.’⁸

The ILO further highlighted what it refers to as hazardous child labour as follows:

‘work which exposes children to physical, psychological or sexual abuse; work underground, under water, at dangerous heights or in confined spaces; work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads; work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health; work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.’⁹

Child Labour in Nigeria is the employment of children under the age of 18 in a manner that restricts or prevents them from basic education and development. Child labour is pervasive in every state of the country. In 2006, the number of child workers was estimated at about 15 million.¹⁰

International Trade Union Confederation¹¹ specified certain forms of child labour to include the following:

Domestic work: Very common and sometimes seen as acceptable, it happens in the family home or outside the home. When domestic work is outside the home, children – almost always girls – work very long hours, have no chance to go to school and are isolated from their family and friends.

Agricultural work: A lot of working children are found in agriculture. They often work on the family farm or with the whole family, as a unit, for an employer.

Work in industries: This work can be regular or casual, legal or illegal, as part of the family or by the child on his own for an employer. It includes carpet weaving, gemstone polishing, making garments, chemicals, glassware, fireworks, matches or a range of other products. These tasks expose the children to hazardous chemicals that can lead to poisoning, respiratory and skin diseases, radiant heat, fire and explosions, eyesight and hearing damage cuts, burns and even death.

Work in mines and quarries: Child labour is used in small-scale mines in many countries. They work long hours without adequate protection and training. Child miners suffer from physical strain, fatigue and disorders of the muscular and skeletal systems.

Slavery and forced labour: It is most commonly found in rural areas. It is also frequently linked to the oppression of ethnic minorities and indigenous peoples. Children are often also drawn into armed conflict, forced to be soldiers or to work for armed forces.

Prostitution and child trafficking: It is one of the worst forms of child labour. The dangers faced by children are extreme and range from moral corruption to sexually transmitted diseases to death.

Work in the informal economy: This includes a whole range of activities such as shoe cleaning, begging, pulling rickshaws, selling newspapers, or collecting rubbish. Some

⁷ ILO definition of child labour available online at <https://www.ilo.org/ipec/facts/lang--en/index.htm> accessed on 29/4/2021.

⁸ See Article 3 of ILO Convention No. 182

⁹ Article 3 of ILO Recommendation No. 190

¹⁰See ‘Information Sheet - Child Labour in Nigeria’ UNICEF. 2006. Accessed online at https://en.wikipedia.org/wiki/Child_labour_in_Nigeria

¹¹ https://www.ituc-csi.org/IMG/pdf/guide_CL_EN_Final.pdf accessed on 29/4/2021 at 1.54pm

forms are very easily observed while others are hidden from public view. Activities often take place on the streets but also include domestic work.’

From the above, very clear specimen of child labour includes domestic work which is the hall mark of most homes in Nigeria. It is also observable that a lot of Nigerian children are found in the farm both family owned and commercially owned. It is not abnormal to also find Nigerian children working in industries and in mines respectively. Simple deduction shows that child labour includes any work which is mentally, physically, socially or morally dangerous and harmful to the child. It is in this perspective that child labour will be used in this work.

House Help

This has been defined as a domestic worker (originally a servant); a home help.¹² It is important to state here that the concept house help may come in several variations like domestic help, house maid etc. In seeking clarification of this knotty concept, it will be important to take a thorough look through all these synonyms of the work the subject of the discourse. As domestic help, it was defined as a servant who is paid to perform menial tasks around the household.¹³ The understanding of the average Nigerian is that the house help or domestic worker is that person who is brought into a home that is not his or hers for the purposes of actually assisting in the domestic work of the new family who may as the case appears be left solely responsible for all domestic works and more including the taking charge of the children within the household, children who may either be his or her age mates or people he or she is older by a few short years. The payment of stipend for house help chores is a recent innovation in the history of house helps in Nigeria. The earlier and most current and practical situation is that the house help collects his or her salary in kind through the shelter he or she is provided, the food he or she consumes and the medi-care that is made available when he or she becomes ill. These things as far as a Nigerian is concerned have obviated the need for salary or wages to a house help. Add further that the house help may be a relative and the payment of school fees become an added bonus to the house help. It is also imperative to add here that there are now paid house helps in Nigeria. However the scope of this work is on unpaid house helps. This is so because a paid house help even where he or she is underpaid comes under the category of employees and one cannot assume the criminalization of such a house help. However the work’s focus is on those house helps who are neither paid nor are well taken care off in which case we now consider the legality of having a house help in one’s domestic or social enclave especially in the absence of any form of emoluments.

3. Factors Affecting the Availability of Non-Paid House Helps

Oludayo and Adeyinka¹⁴ classified three types of families that most likely require the services of domestic servants or house helps. According to them, the three types include the Starter family which comprises the newly wedded and those with immature children who need extra care and are working; the Transiting family type where the children are all grown up and could take up responsibility and the third one which is the mature families which comprises pensioners, families with adults, widows, and working women who are grandmothers.¹⁵ It is important to state that the Starter family type appears to be the first port of call in the course of this work. This is most likely on the pedestal that they actually won’t be able to pay for the cost of a house help. A transiting or mature family knows the need for a domestic servant and have revisited the need and at the same decided to pay for services rendered outside the requisite accommodation and food that may form part of the perks of that job. For a starter family, the need to have a paid house help is one of the last thing to consider. It is usually a helper who can be sent to school while staying with the family. Sequel to the subheading under discussion, it is therefore more likely that poverty, illiteracy, greed and corruption may form part of the reasons for the availability of non-paid domestic house helps. We shall now take these factors seriatim.

Poverty

Poverty generally is a major cause of crime in this part of the country. It is a fact that there is a correlation between poverty and crime. According to Papaioannou, Poverty has been put forward as a decisive motive for crime. Individuals lacking the basic means of subsistence are more likely to become involved in criminal activity when they experience a negative income shock. As income levels decline, engaging in property crime becomes more opportune relative to participating in more ‘peaceful’ economic activities and the stolen

¹² https://www.lexico.com/definition/house_help accessed on 29/4/2021 at 2.15pm

¹³ <https://www.thefreedictionary.com/domestic+help> accessed on 29/4/2021 at 2.30pm

¹⁴ O. Tade & A. A. Aderinto, ‘Factors Influencing the Demand for Domestic Servants In Oyo State, Nigeria’ *International Journal of Child, Youth and Family Studies* (2012) 4.1: 521–545 pp at 530

¹⁵ See Oludayo & Adeyinka.

property might be regarded as a buffer in alleviating distress'¹⁶ The United Nations classifies crime as being high on the list of difficulties impeding a country's development. This means that 'governments trying to deal with poverty often also have to face issues of crime as they try to develop their country's economy and society.'¹⁷ Some other opinions have raised concerns over the issue of poverty being the major cause of crime as it is seen that inequality evidenced from poverty add more impetus to crime than poverty really. It is further argued that poverty may lead mostly to property crimes¹⁸. In all the above the key understanding is that poverty contribute to the increase in crime. One can state this as a fact because in most cases, the parent sending away a child for house help services is usually not financially capable of taking responsibility for that child hence the need to send him or her away believing that the family where the child is sent will certainly take the child through school and give the child such life that the biological parents may not offer. In the end one clear fact is that poverty encourages the house help syndrome.

Illiteracy

Illiteracy has a correlation with crime. Literacy is defined as the ability to understand, evaluate, use and engage with written texts to participate in society, achieve one's goals, and develop one's knowledge and potential. It encompasses a range of skills from the decoding of written words and sentences to the comprehension, interpretation, and evaluation of complex texts. It does not, however, involve the production of text (writing).¹⁹ The consequences of illiteracy are many and harmful in several respects. As well as affecting illiterate individuals themselves in their daily lives and often jeopardizing their future, this scourge has a significant effect on society, both socially and economically.²⁰ 'The consequences of illiteracy on individuals and society include the following: Limited ability to obtain and understand essential information; Unemployment: The unemployment rate is 2–4 times higher among those with little schooling than among those with Bachelor's degrees; Lower income; Lower-quality jobs; Reduced access to lifelong learning and professional development; Precarious financial position; Little value is given to education and reading within the family, and this often leads to intergenerational transmission of illiteracy; Low self-esteem, which can lead to isolation; Impact on health: Illiterate individuals have more workplace accidents, take longer to recover and more often misuse medication through ignorance of health care resources and because they have trouble reading and understanding the relevant information (warnings, dosage, contraindications, etc.)'²¹. 'On the part of the society, illiteracy has the following impact on the society; Since literacy is an essential tool for individuals and states to be competitive in the new global knowledge economy, many positions remain vacant for lack of personnel adequately trained to hold them; The higher the proportion of adults with low literacy proficiency is, the slower the overall long-term GDP growth rate is; The difficulty understanding societal issues lowers the level of community involvement and civic participation'²². 'Without the basic tools necessary for achieving their goals, individuals without an adequate level of literacy cannot be involved fully and on a completely equal basis in social and political discourse'.²³ It follows therefore that illiteracy can lead to all sorts of confusion chief of which is sending a child to work without pay *et al.*

Greed and Corruption

Greed and corruption will be taken jointly for the purpose of this work. It has become important to consider greed and corruption as a cause of crime in Nigeria. Greed has been defined as 'intense and selfish desire for something, especially wealth, power, or food'²⁴ Wikipedia defined greed as 'an uncontrolled longing for increase in the acquisition or use of material gain; or social value, such as status, or power'.²⁵ Wikipedia offered the following as the definition of corruption:., 'corruption as it is defined by the World Bank is a form of dishonesty or a criminal offence which is undertaken by a person or an organization which is

¹⁶ Kostadis J. Papaioannou 'Hunger makes a thief of any man': Poverty and crime in British colonial Asia' *European Review of Economic History*, Volume 21, Issue 1, February 2017, Pages 1–28, <https://doi.org/10.1093/ereh/hew019>

¹⁷K. Beetseh cited in S. Yaacoub, Poverty, Inequality and the Social Causes of Crime: A Study between United States and Europe, *International Journal of Science and Research (IJSR)* (2017) Vol 6 Issue 10, pp. 629-634)

¹⁸A. Petrosino, J. Derzon, & J. Lavenberg, (2009) 'The Role of Family in Crime and Delinquency: Evidence from Prior Quantitative Reviews', *Southwest Journal of Criminal Justice*, 6(2)

¹⁹ Literacy Foundation, available online at <https://www.fondationalphabetisation.org/en/causes-of-illiteracy/glossary/> accessed on 8/9/21 at 12:09pm

²⁰ Ibid

²¹ Ibid

²² Ibid

²³ ibid

²⁴ Oxford Online Dictionary accessed on 8-9-21 at 12:32pm

²⁵ Wikipedia available online at <https://en.wikipedia.org/wiki/Greed> accessed on 8/9/21 at 12:33pm

entrusted with a position of authority, in order to acquire illicit benefits or abuse power for one's private gain'²⁶ The insatiable quest or desire for money may move most parents to give out their wards for domestic slavery. It is also possible that corruption may lend a helping hand towards abandoning the welfare of a child for few monetary advantage/leverage. In the final analysis we submit that any or all of these elements may increase the prospects of child labour/ domestic help within the Nigerian context.

4. Effects on Children

Children who serve as house helps in some circumstances share the same life style as those engaged in child labour and thus manifest the same effect. Most of these children are trafficked, abused and beaten. Some escape with only light beating others are not so lucky. Some are sexually abused and in some cases impregnated while yet others are trafficked around the country or even outside the country. Most of these children lack the basic education and suffer huge psychological damage to their persona. The story of Titi, a 14 year old house help is one that should cause all right thinking men and women especially parents to have a rethink.²⁷ There is therefore an urgent need to erase this ugly reality existing in our society.

5. Legality of House helps in Nigeria

It has been a cardinal principle of law that parties to a contract of employment must possess the capacity to contract under the law.²⁸ The reason for bringing this here is to establish that domestic servant/ house help is a contract for which both parties must agree. However, the nature of house help in Nigeria deprives the house help the opportunity to consent validly to the contract or the agreement he is involved in. It is a common knowledge that an infant can enter into a contract under the common law but then the common law is always subject to modification by the statute. In Nigeria, the issue of employment is regulated by the Labour Act.²⁹ It is stated that an infant under twelve years of age cannot be employed other than by a member of his family, and even then he may only be so employed on light agricultural, horticultural or domestic work approved by the Minister of Labour.³⁰ If the non-adult person is over twelve years but under sixteen years, he cannot still work underground or on a machine.³¹ From the above it is clear that a child cannot be adequately employed in a valid employment. It is right to state that a child may be engaged in a contract of apprenticeship under the Labour Act.³² For such contract of apprenticeship, same must be in writing and attested to by an authorized labour officer before it can be recognized in law.³³ Section 49(1)³⁴ listed two classes of apprentices ie those between 12 and 16 years, who can only be apprenticed to a master by their parents or guardian and 16 and above being those who can apprentice themselves to a master.³⁵ The essence of these clarifications is to show that a child cannot be employed except as stipulated in the law or where he is apprenticed. Outside these two scenarios, the engagement of a child for work even where he is earning income is an illegality. Onyekachi Umah was emphatic when he stated that 'it is a criminal offence in all parts of Nigeria, to employ, recruit, transport, harbour, receive or hire any human being in Nigeria that is less than 12 years old as a house-help, maid, domestic worker or staff of any appellation. This offence is punishable with imprisonment for not less than 6 months but not more than 7 years'. He placed reliance on this assertion on Sections 23(1) (a) and 82 of the Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015.³⁶ The said enactment was made in 2015 and punishes for house helps less than 12. It is a fact that Nigerians employ house helps less than 12 and where the house help is above 12 then the issue of Labour Law arises. The simple conclusion is that it is illegal to have house helps in Nigeria especially minor ones which form the nucleus of this work.

²⁶ <https://en.wikipedia.org/wiki/Corruption> accessed on 8/9/21 at 12:38pm

²⁷ Adaobi Tricia Nwaubani, 'Trafficked, beaten and abused: The life of a Nigerian house girl' *Independent Newspaper* of Monday July 24, 2017 available online at <https://www.independent.co.uk/news/world/africa/nigeria-house-girls-trafficking-beaten-abused-servants-modern-slavery-titi-14-case-study-a7856861.html> accessed on 8/9/21 at 3:14pm.

²⁸ *Dunkwu v. Oar (Nig) Ltd*(2021) LPELR-54577(CA)

²⁹ Labour Act Cap L1 LFN, 2004

³⁰ S.59

³¹ S 59(5)

³² Part 3 Labour Act

³³ See Section 50 LA

³⁴ Labour Act

³⁵ See 49 (2-3) LA

³⁶ Onyekachi Umah, It Is A Criminal Offence To Have House Helps, Maids And Domestic Workers In Nigeria That Are Less Than 12 Years; Daily Law Tips #450 available online at <https://learnnigerianlaws.com/it-is-a-criminal-offence-to-have-house-helps-maids-and-domestic-workers-in-nigeria-that-are-less-than-12-years-daily-law-tips-tip-450-by-onyekachi-umah-esq-llm-aciarb-uk/> accessed on 8/9/21 at 2:50pm

6. Conclusion and Recommendations

Despite the existence of these enactments and regulations, Nigerians have carried on as if all is well. To the average Nigerian employing a house help, there is no offence in what he is doing hence the decriminalization. Nigerians believe it is not an offence and see it as a form of assistance offered to the parents of the house help. The parents of the house help see same as an opportunity for the child in question. It is only the child that goes through the ordeal of a house help. Recently we have been hearing several forms of abuses being meted out on such house help. It is believed that the decriminalization gave rise to this for if the employer is conscious that it is still an offence, such employer will not employ and if he did not employ then he will not abuse. It is recommended that NAPTIP should engage in awareness creation over this issue. Further, it should be included in civic education taught at the primary school level. More importantly, the enforcement agents should also engage in full enforcement as it is believed that all these will reverse the trend of decriminalization.