

THE COMPLEXITIES IN SUSTAINING CHILD'S RIGHTS AND WELFARE AGAINST ABUSE: THE LEGAL PERSPECTIVE

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Abstract

Child's rights and welfare connote the protection and provisions of necessities for the proper upbringing of the child. The parents, guardians, teachers and even elder siblings are expected to care for the wellbeing of the child. Thus, the Constitution of the Federal Republic of Nigeria 1999 (as amended), the African Charter on Human and Peoples' Rights and the Child Rights Act made provisions for the protection of the child's rights and welfare in the Nigerian societies. Sustaining the child's rights and welfare in the society is burdened with some complexities such as domestic violence and sexual inducement. Due to children's vulnerability and inability to protect themselves from undue influence, they have often be victimized with consequential untold hardship, drug abuse and sexual abuse in the Nigerian societies. The recurrent of these ugly trends gave rise to this research. In this regard, the research adopts the doctrinal legal research methodology and examines the complexities in sustaining child's rights and welfare against abuse. The research therefore recommends a reformation in enforcement strategies and frequent enlightenment programmes on child's rights and welfare in every nook and cranny of the society. This will in effect enhance sustainability of the child's rights and welfare in Nigeria.

Keywords: Child, Right, Welfare, Sexual Abuse.

Introduction:

Generally, a child is a person who is under the age of majority. At common law, a child is a person who has not reached the age of 14 years.¹ Child's Rights Act² is one of the protective legislations enacted by the National Assembly to guarantee the rights and wellbeing of children in Nigeria. Children are defined by the Child's Rights Act to be those children under the age of 18 years.³ Parts of the mandate of the National Human Rights (Commission) are to promote, protect and enforce the rights of all children under this age as well as foreign nationals in Nigeria due to their vulnerability.⁴ The Commission takes up the rights of children from foetus when appropriate responsibility of the unborn child is neglected.⁵ The Commission admits and investigates matters bordering on inhuman and degrading treatment of a mother upon whose ripple effect hamper the survival and development rights of the child.⁶

The Constitution of the Federal Republic of Nigeria (Constitution)⁷ being the supreme law of the land with overriding provisions, provides for the protection of the rights of every citizen which includes adults, children and even the unborn child. These rights are known as the fundamental human rights which are meant to protect all citizens from governmental or private interference or encroachment such that the individual citizen can arrange his affairs according to his wishes in

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¹ Bryan A. Garner et al, Black's Law Dictionary, 11 edn. (U.S; Thomson Reuters) 2019, p.299

² Cap. C 50 Laws of the Federation of Nigeria (LFN) 2004

³ Child Rights – National Human Rights Commission, available at ><https://www.nigeriarights.gov.ng/focus-areas/child-rights.html><, accessed 26 August 2023.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

⁷ 1999 (as amended).

order to achieve his maximum development and welfare.⁸ By virtue of nature and tenderness of age, children are vulnerable and as such can be easily forced or carried into any situation whether good or bad, hence in the absence of these rights or protection, they will be left to the mercy of the adults and the state.⁹ Thus, a child is abused if subjected to physical or mental neglect or harm.¹⁰

Pursuant to the provisions of the Constitution, legislative competence in respect of children does not come within either the exclusive or concurrent list.¹¹ Consequently, it essentially falls within the residuary legislative competence of states; hence the major legislation pertaining to children like those on infants, children and young persons, adoption and fostering has since the introduction of the federal system become the responsibility of states.¹²

Every Nigerian child is entitled to be treated with such privileges and rights of protection and care as is necessary for the well-being of the child, taking into account the rights and duties of the child's parents, legal guardians or other individuals, institutions, service agencies, organizations or bodies legally responsible for the child.¹³ Considering the vulnerability nature of children, the need to enforce and protect child's right is fundamental. Thus, it is pertinent that every person, institution, service, agency, organization and body charged with the responsibility for the care and protection of children should conform to the standards established by the appropriate authorities particularly in the areas of safety, health and welfare of a child.¹⁴

Section 4 of the Child's Rights Act 2003 makes a summary provision of the purpose of these rights and welfare which every Nigerian child is entitled to enjoy as it provides that every child has a right to survival and development. In spite of the numerous legal provisions to ensure that the child enjoys his rights and welfare towards good living, there are certain factors which often creep in to hinder the child from gaining easy access to these rights. In order to ensure that these rights are not always abused but implemented and sustained, therefore poses a serious concern of purpose and intent in this research. To achieve this purpose, this research is divided into four parts including the introduction. Part two discusses the complexities in sustaining Child's Rights and welfare. Part three examines the legal framework relating to the enforcement and sustainability of child's right and welfare while part four concludes the research and makes recommendations.

Complexities in Sustaining Child's Rights and Welfare

Under this heading, this research discusses certain factors explained as complexities under domestic violence and the pandemic of sexual inducement.

a. Domestic Violence:

Domestic violence has been explained to mean violence between members of a household or between romantic or sexual partners.¹⁵ It refers to violence between spouses or sexual partners or violence in a domestic setting relating to intentional child abuse committed by a member of the child's family.¹⁶

⁸ Osita N.O., *Human Rights Law and Practice in Nigeria: An Introduction*, (CIDJAP PRESS 1-3 Enugu-Nigeria) 1999 p.86.

⁹ Etannibi E.O.A. et al., *Civil and Human Rights Education for Nigerian Students*, LEADS- Nigeria 2001, p.35.

¹⁰ Bryan A. Garner et al, *Black's Law Dictionary*, 11 edn. (U.S; Thomson Reuters) 2019, p.299.

¹¹ Nwogugu E.I., *Family Law in Nigeria*, 3rd Edition (Ibadan-Nigeria, HEBN Publishers Plc) 2014. P.346

¹² *Ibid.*

¹³ Section 2 (2) Child's Rights Act 2003 (now Cap. C 50 Laws of the Federation of Nigeria (LFN) 2004), hereinafter referred to as Child's Rights Act.

¹⁴ Section 2 (2) Child's Rights Act.

¹⁵ Bryan A. Garner et al, *Black's Law Dictionary*, 11 edn. (U.S; Thomson Reuters) 2019, p.1881

¹⁶ *Ibid*

Domestic violence has been occurring in Nigerian communities with undesirable results. This happens in different forms such as fight; between husband and wife, children from neighborhood and siblings of a family. Sometimes, it arises in form of threat to life, undue influence, coercion, duress, sexual assault among others. During the occurrence of domestic violence, the family members are adversely affected as there will be anarchy and everyone is psychologically or emotionally distorted. More often than not, cases of domestic violence have resulted to the death or physical injury of victims.

Thus, in the words of Lammers; it was stated to the effect that non-physical degradation of one person by their partners through the conscious or unconscious gaining, regaining or maintaining of power through the repetitive overt and subtle acts and messages that control or attempt to control, which negatively affects the abused partner's emotions or self-value in the long term.¹⁷ A point to note is that most physical abuses suffered by members of the family particularly women or children, result into psychological injury and in most cases after the scars of the physical injury has disappeared, emotional injury resulting from the physical trauma sets in.¹⁸ Psychological abuse is very closely linked to all other forms of abuses since there is a cause and effect relationship between violent acts against women and all other forms of abuses and psychological abuse.¹⁹ A lot of relationships that are physically violent also involve emotional abuse which can be exhibited through isolation, humiliation, rejection and excessive jealous behaviour.²⁰ Domestic violence originates from any form of violence that could lead to psychological trauma and negative charges to a person's psychological and emotional well-being which are consequences of traumatic experiences caused by non-physical or physical forms of abuse.²¹

From the foregoing, the research posits that a child growing under the roof of such home of violence cannot fully enjoy child's rights and welfare since the home is in disarray. Such rights and welfare will surely be in abeyance and could be addressed using legislation like, the Child's Rights Act²², the Constitution of the Federal Republic of Nigeria²³ and the African Charter on Human and People's Rights.²⁴ Thus, section 37 of the Constitution guarantees and protects the privacy of the child his/her home, correspondence, telephone conversations and other communications.²⁵ The exercise of these rights is however subject to the interest of defence, public safety, public order, public morality, the protection of the rights as well as the freedom of others.²⁶ The section also provides the child a right to family life in that the family is seen as the foundation and basic unit of the society, which provides a unique environment for the survival protection and development of the child.²⁷

¹⁷ Alissa Lykhina, *Women's Lived Experiences of Emotional and Psychological Abuse in Heterosexual Relationships: Behaviours, Effects, Awareness and Support* (DPhil thesis, RMIT University) 2013

¹⁸ Yinka Olomajobi, *Human Rights on Gender, Sex and the Law in Nigeria*, 2nd Edition, (Lagos: Princeton & Associates Publishing Co. Ltd) 2021. P.98

¹⁹ *Ibid*

²⁰ Emotional Abuse (Health Direct) <https://www.healthdirect.gov.au/emotional-abuse>, accessed 6 March 2018 in Yinka Olomajobi, *Human Rights on Gender, Sex and the Law in Nigeria*, 2nd Edition, (Lagos: Princeton & Associates Publishing Co. Ltd) 2021. P.98

²¹ Jessi Nesbitt, *More Than Just Bruises: Psychological Trauma in Women who have Experienced Domestic Abuse* (MED thesis, University of Lethbridge) 2003. P.4

²² Cap. C 50 (LFN) 2004

²³ 1999 (as amended)

²⁴ (Ratification and Enforcement) Act Cap 10 Laws of the Federation of Nigeria, 1990.

²⁵ Abdulmumini Bala Ahmed, *The Law and Child's Rights in Nigeria*, (Lagos-Nigeria, Malthouse Press Ltd) 2015. P.56

²⁶ *Ibid*

²⁷ *Ibid*

The family is the first institution in the life of a child where moral and cultural values are first learnt. In this regard, the parents play a vital supervisory role in caring for the child's welfare and protection. The parents provide for the children, the basic survival and developmental needs which include health care, good nutrition, education, general protection and also instill fear and respect for cultural value as well as good discipline.²⁸

The research argues that a home that is predominant with recurrent cases of domestic violence cannot make provisions for the basic needs required for proper up-bringing of a child. A child from such home will be disadvantaged from his peer groups and where there is absence of legal intervention, such child will become a hoodlum in the society. Where this is the situation a care and supervision order would be necessary which may be executed by persons of credible character. Sequel to the provision of section 53(1) of the Child's Right Act, a court may on the application of a state government, or the appropriate authority or any authorized persons, make a Care Order or Supervision Order placing a child under 18 years of age in the care or supervision of designated person if it is satisfied that the care given or likely to be given to him is not what a parent would reasonably be expected to give to the child or he is beyond parental control.²⁹

b. The Pandemic of Sexual Inducement

Inducement refers to the act or process of enticing or persuading another person to take a certain course of action.³⁰ Sexual inducement on children especially the girl child refers to sexually manipulative activities such as inducing a child into the act of prostitution or pornography. There is sexual inducement when an adult intentionally deceive or manipulate a child into believing that having a sexual intercourse is a good act and not a prohibited act. In other words such act amounts to sexual abuse. The World Health Organization (WHO) defines child sexual abuse as the involvement of a child in sexual acts that he or she does not fully comprehend and unable to give informed consent to or for which the child is not developmentally prepared or that violates the laws or social taboos of society.³¹

Child sexual abuse is evidenced by the activity between child and adult or another child and whom by age or development is in a relationship of responsibility, trust or power, the activity being intended to gratify or satisfy the needs of the other person.³² This may include but not limited to the inducement or coercion of a child to engage in any unlawful sexual activity, the exploitative use of a child in prostitution or other unlawful sexual practices, graphic performances and materials.³³ The acts of sexual abuse on a child includes sexual behaviour such as touching of the breasts, buttocks and genitals, whether the victims is dressed or undressed, fellatio, cunnilingus and penetration of the vagina or anus with sexual organs or with objects as well as watching of pornographic photography.³⁴

²⁸ Jamo N.M., Civil and Human Rights under the 1999 Nigerian Constitution: Need for some Amendments. In Ladan M.T. (ed) (Zaria: Ahmadu Bello University Press) 2001. P.97

²⁹ Nwogugu E.I. Op. Cit. p.361

³⁰ Bryan A. Garner et al, Black's Law Dictionary, 11 edn. (U.S; Thomson Reuters) 2019, p.926

³¹ Onyinye Hope Chime et al., Prevalence, Pattern and Predictors of Child Sexual Abuse Among Senior Secondary School Students in Enugu Metropolis, *The Malays J Med Sci.* 28 (4): 123-137, 2021. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8407794/> accessed 28 August 2023.

³² World Health Organization, Report on the Consultation on Child Abuse Prevention (WHO/HSC/PVI/99.1) (Internet) Geneva, Switzerland: World Health Organization; 1999 <https://www.who.int/mip2001/files/2017/childabuse.pdf>. (Google Scholar) 01 November 2019 in Onyinye Hope Chime et al. Op. Cit., n.31

³³ *Ibid*

³⁴ Seldak A., et al., Fourth National Incidence Study (NIS-4) of Child Abuse and Neglect: Report to Congress. Washington DC: the US Department of Health and Human Services Administration for Children and Families. 2010; Ogunfonoka A.A. and Fajemilebin R.B., Impact of a School-Based Sexual Abuse Prevention Education Programme on the Knowledge and Attitude of High School Girls. *The Journal of School Nursing*, 2012;28

In the same vein as the Child's Right Act was enacted to curtail sexual offenses relating to child's abuse, the Sexual Offences Act Bill 2013 passed by the Senate of the Seventh National Assembly was also introduced to make regulations dealing with matters of sexual offenses and preservation of human dignity from unlawful sexual act.³⁵ The bill has also brought some reforms in that it has created new offenses that were not part of the former prohibitory legislation; a significant change put in place by the bill is that sexual crimes are no longer gender specific where men were viewed as the main perpetrators of sexual crimes and women as victims.³⁶ The bill also introduced new offenses such as child pornography, incest, indecent exposure, deliberate transmission of HIV or other life threatening, gang rape, among others.³⁷

Legal Framework of the Protective Legislation on Child's Rights and Welfare:

The research examines herein the legal framework of the Child's Rights Act which came into force on the 31st July 2003.

a) The Child's Right Act

The rights of a child under the Child's Rights Act, is an important development with regards to the rights and welfare of a child. The legislation retains all the rights of child under the various laws and goes further to provide some additional rights to the Nigerian child.³⁸ The provisions of the Child's Rights Act recognize all the rights of children as fundamental, restores their confidence, self-esteem, improve their status and as well demand that in all matters relating to the child, his or her best interest, welfare and well-being must be the paramount consideration.³⁹ Thus, the structure of the Act has been informed by the mandate to draft a legislation which will incorporate all the rights and responsibilities of children and which will consolidate all the laws relating to children into one single piece of legislation as well as specify the duties and obligation of government, parents, guardians and other authorities or bodies in relation thereto.⁴⁰

Furthermore, the Act provides to the effect that the Nigerian courts and other bodies settling conflicts or having anything to do with the interest of the child should base their decisions on what is best for the child and that when administrative authorities intervene or in situations where regulations are made in schools, at home, in the civil society or when programmes are designed for children, or actions taken on behalf of children, their best interest must always be the paramount consideration.⁴¹ Sequel to the foregoing, part 1 of the Child's Rights Act provides to the effect that, in every action concerning a child whether undertaken by an individual, public or private body, institutions or service court of law, or administrative or legislative authority, the best interest of the child shall be the primary consideration.⁴²

The Act makes provisions to the effect that the protection of a child and necessary care for his welfare should be given serious attentions.

(6):459-468. doi:10.1177/1059840512446949. (PubMed/CrossRef/Google Scholar/) cited in Onyinye Hope Chime et al., Op. Cit. n.31

³⁵ Omoba Oladele and Opeolu Osinuga, Nigeria's Sexual Offences Bill 2013, Matters Arising, SSRN Electronic Journal, Doi:10.2139/ssm.2634134, 2015 <https://www.researchgate.net/publication/315450817-Nigeria's-Sexual-Offences-Bill-2013-Matters-Arising> accessed 28 August 2023

³⁶ *Ibid*

³⁷ *Ibid*

³⁸ Abdulmumini Bala Ahmed, Op. Cit. p.75

³⁹ *Ibid*

⁴⁰ *Ibid*, n.76

⁴¹ *Ibid*

⁴² Section 1 Child's Rights Act

A child shall be given such protection and care as is necessary for the well-being of the child, taking into account the rights and duties of the child's parents, legal guardians, or other individuals, institutions, service agencies, organizations or bodies legally responsible for the child.⁴³ Every person, institution, service agencies, organization and body responsible for the care or protection of children shall conform with the standards established by the appropriate authorities, particularly in the areas of safety, health, welfare, number and suitability of their staff and competent supervision.⁴⁴

Other important provisions of the Act are the provisions prohibiting child's marriage. Many parents in the Nigeria societies have forced their children particularly the girl child into unwanted marriages probably for monetary gains. Most of these marriages are influenced and contracted by some wealthy individuals for their lust and selfish interest. This is a serious violation of the child's right against her consent and willingness to make a choice as she cannot do that as at the time such marriage will be contracted by her parents against her wish. The result of this practice is the multiple domestic violence and broken marriages in the societies.

The Act provides that no person under the age of 18 years is capable of contracting a valid marriage and accordingly a marriage so contracted is null and void and of no effect whatsoever.⁴⁵ The betrothal of a child is also prohibited by the Act to the effect that no parent, guardian or any other person shall betroth a child to any person and that a betrothal in contravention of subsection (1) of section 22 of the Act is null and void.⁴⁶ It follows therefore that a person who, with regards to marriage of a child or the betrothal of a child, marries a child or to whom a child is betrothed or who promotes that marriage of a child or who betroths a child, will be taken to have committed an offence and liable on conviction to a fine of five hundred thousand naira (₦500,000) or imprisonment for a term of five years or to both such fine and imprisonment.⁴⁷

The research submits that these provisions of the Act prohibiting child's betrothal and marriage appear to be very silent in the society as people witness and celebrate such marriages in different parts of Nigeria.

Furthermore, another section of the Act that remains silent is section 24 which prohibits the practice of tattoos and skin marks on a child. Skin marks are frequently put on children under the guise that they are tribal marks. According to the Act, no person shall tattoo or make a skin mark or cause any tattoo or skin mark to be made on a child and that a person who tattoos or makes a skin mark on a child commit an offence under the Act and is liable on conviction to a fine not exceeding five thousand naira or imprisonment for a term not exceeding one month or to both such fine and imprisonment.⁴⁸

Today in our Nigerian societies what we see is the ill-model of tattoos in most of the youths, all in the name of civilization. Tribal mark is another barbaric custom that refused a change as a result of which people are defaced with different marks or cuts all over their faces. This is the reality despite the provision of the Act that prohibits such practice. Similarly, another failing aspect of the law relating to the protection and preservation of the child's rights and welfare is the aspect

⁴³ Section 2 (1) Child's Rights Act

⁴⁴ Section 2 (2) Child's Rights Act

⁴⁵ Section 21 Child's Rights Act

⁴⁶ Section 22 Child's Rights Act

⁴⁷ Section 23 (a), (b), (c) & (d) Child's Rights Act

⁴⁸ Section 24 (1) & (2) Child's Rights Act

prohibiting the introduction of the child into the use of narcotic drugs and other criminal activities. Sections 25 and 26 of the Act provided thus;

No person shall expose or involve a child in the use narcotic drugs and psychotropic substances; or expose or involve a child in the production or trafficking of narcotic drugs or psychotropic substance; a person who contravenes the provisions of subsection (1) or (2) of this section commits an offence and is liable on conviction to imprisonment for life.⁴⁹

Use of children in other criminal activities;

No person shall employ, use or involve a child in any activity involving or leading to the commission of any other offence not already specified in this part of the Act. A person who contravenes the provisions of subsection (1) of the section commits an offence and is liable on conviction to imprisonment for a term of fourteen years.⁵⁰

Section 30 of the Child's Right Act prohibits the acts of buying, selling, hiring or otherwise having dealings with children for the purpose of hawking or begging from alms or prostitution. It provided to the effect that no person shall buy, sell, hire, dispose of or obtain possession of or otherwise deal in a child.⁵¹ A child shall not be used for the purpose of begging for alms, guiding beggars, prostitution, domestic or sexual labour or for any unlawful immoral purpose;⁵² or as a slave or for practices similar to slavery such as sale or trafficking of the child, debt bondage or serfdom and forced or compulsory labour;⁵³ for hawking of goods or services on main city streets, brothels or highways;⁵⁴ for any purpose that deprives the child of the opportunity to attend and remain in school as provided for under the compulsory free Universal Basic Education Act;⁵⁵ procure or offered for prostitution or for the production of pornography or for any pornographic performance;⁵⁶ and procure or offered for any activity in the production or trafficking of illegal drugs and any other activity relating to illicit drugs as specified in the National Drug Law Enforcement Agency Act.⁵⁷

The Act provides that any person who contravenes the provisions of the forgoing commits an offence and is liable on conviction to imprisonment for a term of ten years.⁵⁸ In terms of the content, the Act borrowed a leaf from the United Nation convention on the Rights of the child and the African Union Charter on the Rights and welfare of the child in respect of the guiding principles for the promotion and protection of the rights of children.⁵⁹

The Child's Right Act has comprehensive provisions covering all aspects relating to the protection, development, survival, education, welfare and a life free from disease, drug abuse, hunger et cetera of the child. But in effect, the beautiful provisions of the Act have been far from realization as there are plethora recurrent cases of domestic violence and child's rights abuses in the Society.

⁴⁹ Section 25 (1) (a) (b) & (2) Child's Rights Act

⁵⁰ Section 26 (1) & (2) Child's Rights Act

⁵¹ Section 30 (1) Child's Rights Act

⁵² Section 30 (2) (a) Child's Rights Act

⁵³ Section 30 (2) (b) Child's Rights Act

⁵⁴ Section 30 (2) (c) Child's Rights Act

⁵⁵ Section 30 (2) (d) Child's Rights Act

⁵⁶ Section 30 (2) (e) Child's Rights Act

⁵⁷ Section 30 (2) (f) Child's Rights Act

⁵⁸ Section 30 (3) Child's Rights Act

⁵⁹ Ladan M.T., An Overview of State Obligations in Respect of Children's Rights in Nigeria. A Paper presented at the National Stakeholders Forum on the passage of the Child's Rights Bill, 2003 at National Assembly Complex, Abuja, 2003. p.31 cited in Abdulmumini Bala Ahmed, Op. Cit. p.76

Conclusion and Recommendations

A child growing under the roof of a home predominant with domestic violence has a very minimal chance of getting it right in life as such child grows wild in the society and also get involved in immoral life style, drug abuse, prostitution, stealing, cultism and the like. The paper therefore concludes that the provisions of the Act are comprehensive enough to arrest this ugly trend hindering the Nigeria child from enjoying his/her right to life free from ill-treatment, hard labour, sexual abuse, drug abuse and diseases. It is commendable that the Act incorporated the provision of the constitution of the Federal Republic of Nigeria and that of the African Charter on Human and Peoples' Rights, dealing with rights, interest, welfare and well-being of a child.

However, as good as the provisions of the Act, there is no effective and efficient strategy to enforce the provisions of the Act.

Sequel to the forgoing the research recommends the following:

- a) A serious enlightenment programme for the enforcement and protection of child's right and welfare should be organized frequently in every community both in urban and rural areas;
- b) A reformation is also recommended in the area of enforcement of the comprehensive legal provisions for the sustainability of the child's rights and welfare;
- c) The Federal, State and Local Government should beef up implementation strategies by equipping the relevant agencies to carry out their works effectively and efficiently;
- d) Government and religious groups should establish more family counselling units to quell domestic violence cases.