

TURNING CHILD RIGHTS FROM DREAM TO REALITY IN NIGERIA: FINDING FUND THROUGH NIGERIAN CHILDREN TRUST FUND ACT (NCTFA) MODEL

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A. INTRODUCTION:

Child's Rights Act was signed into law¹ by the President of the Federal Republic of Nigeria. The Act since then has been passed into law by several State Houses of Assembly with the jurisdiction of the Act now limited to the Federal Capital Territory, Abuja². The Act ensures a host of legal rights³ to children in Nigeria. Some of these rights necessarily require the government to only protect and respect them⁴ while the others require the government to ensure them⁵. In addition, the Act created a host institution that will facilitate the enjoyment of the rights in the Act. Ensuring some of the rights in the Act as well as the establishment and sustenance of the institutions in support of the rights in the Act all need substantial amount of money to establish and sustain. In recent times the economy of Nigeria has been badly affected by the drop in oil prices resulting in the fewer amount of money being available to the States in Nigeria to spend on capital expenditure⁶ situation that have resulted in the Federal Government

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¹ On 31st July 2014.

² State Houses of Assembly had to pass the Act into laws in their domain because of constitutional issues in the passage of the Act by the National Assembly. The chief of these issues is the fact that most of the matters dealt with under the Act are items that are neither in the Exclusive Legislative list in the Constitution or the Residual List. The Constitution empowers the National Assembly to make laws exclusively in respect of the former and concurrently with the State Houses of Assembly in respect of the latter. A matter that is neither in the Exclusive Legislative List or concurrent legislative list is in the presumed "Residual Legislative List" which logically only the State Houses of Assembly can legislate.

³ Bothering on Civil and Political rights and Social, Economic and Cultural rights.

⁴ Particularly the Civil and Political rights

⁵ In the sense doing something concrete to ensure that the rights are enjoyed.

⁶ thebusinessaim.com.ng/5-implications-of-oil-price-free-fall-in-Nigeria/(accessed on 16/1/16)

making available money to many States to enable them pay several months of salaries to its workers. Consequently issues bothering on child's rights have gone down the pecking order in the priority of expenditure for most Nigeria government. For instance 2016 budget ₦ 500 billion was allocated "to tackle unemployment and provide care for the vulnerable"⁷. However the Minister of Labour and Employment, Dr. Chris Ngige suggested that the money is for solving the problems of unemployment among youths⁸. But even if "care for the vulnerable" implies establishing and sustaining institutions that ensure child's rights, there is still need for emphasis on alternative means of funding to not only ease the burden on lean government resources but to get the general public interested in child's right issues.

Against this backdrop, an existing legal frame enabling a non- governmental participation in child's right matters is a welcome development for several reasons. First, although non-governmental partners may not bring in the funds in the size that the government would do, their funds are guaranteed to more regular and timely⁹. Further, involving non-government partners, as earlier mentioned, will assist in creating awareness for child's rights issues. It is therefore appropriate to explore ways generating funds from the Nigerian Children Trust Fund Act (NCTFA).

Our inquiry leads us to identify the rights and institutions supporting them that are created by Child's Rights Act. We consequently examine the provisions of NCTFA to ascertain whether its provisions are sufficiently suited to assist the generation of the much needed funds from non-governmental sources. Our inquiry leads to conclusions on the suitability of NCTFA for the purpose and inevitable suggestions on ways of improving on its suitability and exploiting the extant provision.

B. REVIEW OF RELEVANT PROVISIONS OF THE CHILD'S RIGHTS ACT

The Child's Rights Act is made up of two hundred and seventy eight sections which are divided into twenty four Parts. These sections cover a gamut of legal and institutional framework to ensure and protect the rights of Nigerian children.

The bulk of these legal rights are in Part II¹⁰ of the Act. There are also institutions¹¹ created in the Act to ensure these rights. Among the

⁷ Fred Itua, Politics of 2016 Budget, sunnewsonline.com/news/the-politics-of-2016-budget/ (accessed 16/1/2016)

⁸ Ibid

⁹ Release of funds in Nigeria in respect of issues which governments do not consider a priority can be notoriously slow.

¹⁰ Sections 3-18. Sections 3 significantly restate that children are also entitled to the rights in Chapter IV of 1999 Constitution which is mainly civil and political rights. This is significant because it widely believed

institutions include Family Courts with power to hear and determine matters relating to children¹², Day care for pre-school children¹³, provision of accommodation for children in need¹⁴, provision of accommodation for children for purpose of protection, detention or remand¹⁵, provision of accommodation and maintenance by state governments for children looked after by it¹⁶.

The Family Court ensures the right to fair hearing avails children in matters relating to them. The Day care for pre-school children ensures that they also on the road to enjoying the right to free, compulsory and universal primary education. The provision of accommodation will assist in ensuring a host of rights including right to life, right to dignity of the child and right to survival and development. Further, the provision of accommodation for purpose of protection, detention or remand also assists in ensuring their right to dignity¹⁷.

There are other rights in the Act which need to be ensured although these are no institutions or structures which the Act requires the government to establish. For instance the leisure, recreation and cultural activities can be effectively ensured through the provision of sporting and recreation facilities¹⁸ by the government and also ensuring that private sector

among Nigerian tribes that children do not have rights that can be enforced but are to be subject to the supposed benefactors who have their interest at heart. Sections 6-11 specifies some of the rights in Chapter IV of 1999 Constitution. This is rather surprising in view of the wordings in section 3 which seems to have covered these rights. However whatever is the reason, it leaves us without doubt as to intention of the Act. Apart from these there are other rights and these rights include the entire rights in Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and some rights like to survival and development (Section 4), right to leisure, recreation and cultural activities (Section 12), right to health and health services (Section 13) and right to free, compulsory and universal primary education (Section 15) which bother on Economic, Social and Cultural Rights.

¹¹ Although institutions assist greatly in ensuring some of these rights, it is still possible to ensure some these rights without an institutional framework.

¹² Section 149.

¹³ Section 172

¹⁴ Section 174

¹⁵ Section 175.

¹⁶ Section 178

¹⁷ Nigerian detention centers: police cells, prisons and others, are notoriously sordid and could be very traumatic for the detainee. The Borstal homes reformatory for teenagers have since collapsed and become extinct.

¹⁸ There is an amazing paucity of recreation facilities in most Nigerian major cities. Even where such facilities exist they are not of the genre that will interest children. They are mostly places where alcohol are consumed.

participates effectively¹⁹. Also the right of the child to enjoy the best attainable state of physical, mental and spiritual²⁰ and the route to attaining it²¹ is without the intervention of any institution or structure created under the Act. Nonetheless this route is not costless for the government²². Further, children in need of special protection have right to such measures of protection as is appropriate to their physical, social, economic, emotional needs and under conditions which ensure their dignity, promote their self-reliance and active participation in the affairs of the community²³. Governments²⁴ are, within the available resources, provide these class of children with such assistance and facilities which are necessary for his education, training, preparation for employment, rehabilitation and recreational facilities in a manner conducive to his achieving the fullest possible social integration and individual development and his cultural and moral development²⁵. Again, although there are no institution and structures established under the Act for the purpose ensuring the right, the government will need to spend money, substantially, to ensure this right.

C. REVIEW OF KEY PROVISIONS OF NIGERIAN CHILDREN TRUST FUND ACT.

The Act essentially establishes a Fund, Nigerian Children's Trust Fund for the purposes of providing integrated welfare services and programmes for the benefit of the Nigerian child²⁶. The Fund is to be sustained by money from four main sources: contributions from the Federal, a State or a local government²⁷; contributions from any person (whether corporate or unincorporated)²⁸; monies earned on realized from investments²⁹ and all

¹⁹ The government can do this by, for instance, outlining and ensuring that private schools comply with requirements to provide recreational facilities before being licensed.

²⁰ Section 13(1)

²¹ Section 13 (2)

²² The government is expected to embark on any a number of money gulping programmes and projects such as provision of necessary medical assistance and health care services to children, provision of adequate nutrition and safe drinking water, good hygiene and sanitation, combat disease and malnutrition etc.

²³ Section 16 (1)

²⁴ As an "authority" as envisaged in section 16 (2)

²⁵ Section 16 (2)

²⁶ Section 1 (1) of the Nigerian Children's Trust Fund Act (Cap. N93) Laws of the Federation 2010.

²⁷ Section 1 (2)(a) of the Nigerian Children's Trust Fund Act (Cap. N93) Laws of the Federation 2010.

²⁸ Section 1(2)(b) of the Nigerian Children's Trust Fund Act (Cap. N93) Laws of the Federation 2010.

²⁹ Section 1(2)(c) of the Nigerian Children's Trust Fund Act (Cap. N93) Laws of the Federation 2010.

monies and assets that have become accruable due to the activities of the Board of Trustee of the Fund³⁰.

The Fund is to be administered by a Board of Trustees made up of the National Advisory Council of the National Commission for Women³¹. The Board of Trustees is a body corporate with perpetual succession and a common seal³² as well as ability to sue and be sued in its corporate name³³.

The functions of the Board of Trustees include:

1. To conduct a regular assessment of the financial and material requirements of Nigerian children in such needy circumstances as the Board may determine and to administer the Fund for the provision of relief in respect of the children³⁴;
2. Make grant to voluntary organizations in the Federation from the Fund³⁵;
3. Organise and implement programmes for the welfare of children, especially children who have not attained school age and such other programmes as are embodied in any National Development Plan for the benefit of children³⁶;
4. D
Devise ways and means of raising contributions and donations for the Fund in pursuance of section 1 (2) (b) of the Act and for this purpose, the Board may from time to time organize charity dances, shows, exhibitions and such other fund- raising events it may deem fit³⁷;
5. Acquire assets for and on behalf of the Fund³⁸; and
6. Do such other things which in its opinion are necessary or expedient for the proper performance of the functions conferred on it by the Act³⁹.

The executive chairman has the powers to give the Board directives of a general nature with regard to exercise by the Board of its functions under the Act and the Board shall be bound to comply with the directives⁴⁰.

³⁰ Section 1(2) (d) of the Nigerian Children's Trust Fund Act (Cap. N93) Laws of the Federation 2010.

³¹ Section 2 (1) of the Nigerian Children's Trust Fund Act (Cap.N93) Laws of the Federation 2010.

³² Section 2 (1) (b) of the Nigerian Children's Trust Fund Act (Cap. N93) Laws of the Federation 2010.

³³ Section 2 (1) (c) of the Nigerian Children' Trust Fund Act (Cap. N93) Laws of the Federation 2010.

³⁴ Section 3 (a) of the Nigerian Children's Trust Fund Act

³⁵ Section 3 (b) of the Nigerian Children's Trust Fund Act.

³⁶ Section 3 (c) of the Nigerian Children's Trust Fund Act.

³⁷ Section 3 (d) of the Nigerian Children's Trust Fund Act

³⁸ Section 3 (e) of the Nigerian Children's Trust Fund Act

³⁹ Section 3 (f) of the Nigerian Children's Trust Fund Act.

Interestingly, a “child” is defined as a person who has not attained the age of sixteen years⁴¹. The term “relief” used in Act is said to mean any purpose connected with:

- (a) the provision of scholarship;
- (b) the provision of emergency relief and social assistance, including food stuff, clothing, medical and hospital stores and facilities and means of shelter; and
- (c) the amelioration of the condition of any child affected by the Act⁴².

D. AN ANALYSIS OF THE SOURCES OF FUNDS ENVISAGES BY THE ACT IN LINE WITH CONTEMPORARY REALITIES

As we noted earlier⁴³, a number monies is expected to make up the Fund. First, contributions from the Government of the Federation, a State or a local government⁴⁴. There is no indication that the Fund has been established by the Federal Government and Board of Trustees constituted to manage it as required by the Act⁴⁵. Even if the Fund was in place and the Board constituted, the present reality is that with the present economic situation in Nigeria⁴⁶ most government will be most unlikely to commit money to this cause⁴⁷. In addition, the requirement for the governments to contribute to the Fund appears to be permissive⁴⁸ therefore affording a shield if the governments fail to contribute to the Fund. Another contemplated source of fund is contributions or donations from any person (whether corporate or unincorporated)⁴⁹. The Board of Trustee of this Fund may choose, acting under the power in the Act, to almost unquantifiable latitude to raise money from the public both corporate and unincorporated. There are at two problems with the method of sourcing money. First, most corporate and unincorporated bodies, willing as they may be to contribute to the cause of children’s rights issues may usually

⁴⁰ Section 4 of the Nigerian Children’s Trust Fund Act.

⁴¹ Section 1 (3) of the Nigerian Children’s Trust Fund Act

⁴² Section 1 (3) (a), (b) & (c) of the Nigerian Children’s Trust Fund Act.

⁴³ Footnote 27.

⁴⁴ Section 1 (2) (a)

⁴⁵ Section 2

⁴⁶ Occasioned by the fall in the price of oil, which is Nigeria’s major foreign revenue source, in the global market.

⁴⁷ Mostly because governments are yet to fully appreciate importance of issues bothering on child’s rights

⁴⁸ The use of the word “may” suggests this.

⁴⁹ Section 3 (b) of the Act gives an incline as to the sort ventures the Board of Trustees of the Fund might engage in to raise funds.

want to do it on the terms that their contributions be acknowledged by always associating their names publicly with their contributions. This practice is more suited for concrete than monetary donations or contributions. Secondly, for preceding reason, it is unlikely that much money will be realized from this method will be substantial. The third source is from monies earned and realized from any property or investment acquired by or vested in the Board of Trustees under the Act⁵⁰. The Act also outlines the lawful investments the Board of Trustees may engage⁵¹. First, the Board may invest in securities specified under the Trustee Investments Act. The Trustee Investments Act⁵² provides for three possible investments. The first is all securities created and issued by or on behalf of the Government of the Federation⁵³. Secondly, securities created or issued on behalf of the Government of a State which are declared by the President by notice in the Federal Gazette to be securities to which the Act applies⁵⁴. Further, securities which are declared by the President by notice in the Federal Gazette to be securities to which the Act applies, being securities created or issued by companies or corporations incorporated directly by an Act enacted by the National Assembly or by a Law enacted by the House of Assembly of a State or by an Act or Law having effect as if it were so enacted⁵⁵. Lastly, the debenture and fully paid-up shares of any company incorporated by and registered under the Companies and Allied Matters Act (other than a private company within the meaning of that Act)⁵⁶. However, the power to invest in debenture and fully paid-up shares is subject to number of conditions. First, the nominal value of the fully paid-up shares issued by the company in question is not less than ₦ 1 million⁵⁷. Secondly, the price of the debentures or shares of the class in quoted on the Nigerian Stock Exchange⁵⁸ and third, in the case of an investment in shares of a company, dividends have been paid during each of the three calendar years immediately preceding the current year on all the shares of the company issued when the dividends became due, and the aggregate

⁵⁰ Section 1 (2) (c)

⁵¹ Section 6 (2)

⁵² Cap. T22 Laws of the Federation 2010

⁵³ Section 2 (1) (a)

⁵⁴ Section 2 (1) (b)

⁵⁵ Section 2 (1) (c)

⁵⁶ Section 2 (1) (d)

⁵⁷ Section 2 (2) (a)

⁵⁸ Section 2 (2) (b)

amount of the dividends paid during each of those years in respect of each share ranking for dividend throughout that year was not less than 5% of the nominal value of the share⁵⁹. Even where the company to be invested in meets these requirements, there is a further limitation on the investor of trust fund. The limitation is that the value of the part of the trust fund invested in the exercise of the power to invest shall not exceed one third of the total value of the fund⁶⁰ or the value of the part of the fund so invested in the shares and debentures of a particular company exceeds one tenth of the total value of the fund⁶¹. A third alternative is that the value of the part of the fund so invested in the shares of a particular company to exceed one twentieth of the total of the fund⁶². However, returns on investments on shares and debenture have become less than profitable in the last few years. A number of reasons are responsible for this but the end result is that the Fund is not likely to generate sufficient sum from investing in the shares and debenture of companies to help ensure rights for children in Nigeria.

Other areas of possible of investments include shares in other securities of a society registered under any law relating to co-operatives⁶³, loans to building societies approved by the Minister of Finance⁶⁴, loan on real property, machinery and plant in Nigeria⁶⁵, cash on deposit in or bills of exchange accepted by licensed banks⁶⁶ and other securities as may be prescribed by order of the President⁶⁷. Although the other areas specified offer a wider option to source for money, they may not shield sufficient sum. Direct investment in real estate remains one investment, for now, that has a high profit yield on investment⁶⁸.

E. CONCLUSIONS/ RECOMMENDATIONS:

There is no doubt that not much has been done by governments to ensure the rights in the Child's Rights Laws⁶⁹ and the institutions created by the Laws become reality. The sad truth is that the less than lukewarm

⁵⁹ Section 2 (2) (c)

⁶⁰ Section 2 (3) (a)

⁶¹ Section 2 (3) (b)

⁶² Section 2 (3) (c)

⁶³ Section 6 (2) (b) of the Nigerian Children's Trust Fund Act

⁶⁴ Section 6 (2) (c) of the Nigerian Children's Trust Fund Act

⁶⁵ Section 6 (2) (d) of the Nigerian Children's Trust Fund Act

⁶⁶ Section 6 (2) (e) of the Nigerian Children's Trust Fund Act.

⁶⁷ Section 6 (2) (f) of the Nigerian Children's Trust Fund Act.

⁶⁸ In almost all major cities in Nigeria.

⁶⁹ Including the Child's Rights Act.

approach to child right issues, especially implementing the provisions of the Child's Rights Laws, over the years⁷⁰ have now come back to haunt us. With the dwindling resources available to governments⁷¹ it is unlikely that child's rights issues will attract much sympathy from governments which it did not do in the past few years of relative economic gains. It is against this backdrop that it is argued in this paper that the implementations of the provisions of NCTFA, which before now has been neglected, would help to ensure that the rights under the Child's Rights law and the institutions in support are made a reality by ensuring them.

In this regard it is suggested that the NCTFA be amended to strengthen it for that purpose. Specifically the definition of a child in the NCTFA⁷² should be amended from sixteen years to read eighteen years as in the Child's Rights Act⁷³. Further, the power conferred on the President⁷⁴ to widen the option of investment⁷⁵ should be utilized by him to include real estate investment and other financially rewarding areas of investments.

The fund raising options offered by NCTFA should be dexterously used to raise money towards ensuring the rights in the Child's Rights Act and institutions that support them.

Despite all we have said about the NCTFA, it may be argued that it faces a tricky constitutional hurdle. For instance, the legislative power of the National Assembly in Nigeria is limited to items in the Exclusive legislative list⁷⁶ and the Concurrent legislative list⁷⁷. The legislative power of the State Houses of Assembly is limited to items in the Concurrent legislative list⁷⁸, items not in the Exclusive legislative list⁷⁹ and any other matter with respect to which such Houses are empowered to make laws in accordance with the provisions of the Constitution⁸⁰. Matters relating to children are neither in the Exclusive legislative list or the Concurrent legislative list. The seeming

⁷⁰ Including the last few years of relatively high revenue to the country from crude oil sales.

⁷¹ Both at the federal and state level.

⁷² Section 1 (3) of the Nigerian Children Trust Fund Act.

⁷³ This is also the international standard as can be seen from major international document like the Convention on the Rights of the Child.

⁷⁴ Or the Governor as specified in the Child's Rights Laws of the various States.

⁷⁵ Section 6 (2) (f) of the Nigerian Children's Trust Fund Act.

⁷⁶ Section 4 (2) of the 1999 Constitution.

⁷⁷ Section 4 (4) (a) of the 1999 Constitution

⁷⁸ Section 4 (7) (b) of the 1999 Constitution.

⁷⁹ Section 4 (7) (a) of the 1999 Constitution.

⁸⁰ Section 4 (7) (c)

implication of this is that the National Assembly does not have competence to legislate on such issues. The further implication *apparently* is that the National Assembly does not have the legal backing to legislate NCTFA into existence. However, we find an immediate answer to this argument in the Constitution. The Exclusive legislative list empowers the National Assembly to establish and regulate authorities for the Federation or any part thereof to promote and enforce the observance of the Fundamental Objectives and Directive Principles of State Policy in Chapter II of the Constitution⁸¹. The Fundamental Objectives and Directive Principles of State Policy requires Nigerian government to, among others, direct its policy towards ensuring that children, young persons and the aged are protected against material neglect⁸². The NCTFA therefore falls within this ambit.

To afford states the opportunity of enjoying this unique opportunity of raising huge monies to support child's rights matters⁸³ there may need for the various states to enact laws in mode of NCTFA in their domain⁸⁴.

The NCFTA may have gone unnoticed over the years but it holds a huge potential to give child's rights matters the needed leap by affording an avenue for fund generation in these austere times.

⁸¹ Item 60 (a) of Exclusive Legislative List

⁸² Section 17 (3) (f). Section 17 (3) (g) –(h) is also relevant to the discourse.

⁸³ It will be preposterous to assume that any sum raised from the Fund, if distributed among the States in Nigeria, will be sufficient to meet the demands of child's rights matters within the domain of every state.

⁸⁴ It is contended that the validity which we ascribe to Nigerian Children Trust Fund Act from the Exclusive Legislative list does not affect the powers of the state Houses of Assembly to legislate laws in similar mode into existence since children matters in not specifically in the Exclusive legislative list and therefore not the basis upon we founded the validity of Nigerian Children Trust Fund Act.

