

Law and Children's Rights Protection: the Nexus for a Sustainable Development in Nigeria

LE DROIT ET LA PROTECTION DES DOITS DES ENFANTS:

LA LIAISON POUR UN DEVELOPPEMENT DURABLE AU NIGERIA

AKWARA, Azalahu Francis¹

SOYIBO, Adekunle G.²

AGBA, Michael S.³

Abstract: Every human society, no matter how primitive it may look, is governed by a code of laws. These laws give order and meaning to their lives and serve for social control and overall development of the society. Some societies deny their citizens especially women and children, their natural and civil rights because they believe that the rights of women and children are adequately protected by their husbands and fathers. But the inhuman treatment meted out to women and children even by their husbands and fathers have brought to the fore the errors and problems of taking for granted the protection of the rights of women and children in the society. This paper therefore examines the dangers posed by taking the rights of children for granted in the society and efforts being made in Nigeria to protect the child for the overall and sustainable development of the society.

Key words: child; rights; survival rights; development rights; participation rights; protection rights

Résumé: Toutes les sociétés humaines, quelle que soit son apparence primitive, est régie par un code de lois. Ces lois donnent un ordre et un sens à leur vie et servent de contrôle social et du développement global de la société. Certaines sociétés négligent les droits naturels et civils de leurs citoyens, en particulier les femmes et les enfants, parce qu'elles pensent que les droits des femmes et des enfants sont suffisamment protégés par leurs maris et leurs pères. Mais les traitements inhumains infligés aux femmes et aux enfants, voire par leurs maris et les pères ont mis en évidence les erreurs et les problèmes de considérer que les droits des femmes et des enfants dans la

¹ (Ph. D.) Department of Social Sciences and Humanities, The Federal Polytechnic, Idah, Kogi State, Nigeria. (Corresponding Author 1) E-mail: aakwara@yahoo.com.

² (LLB, BL.) Department of Social Sciences/Humanities, The Federal Polytechnic, Idah, Kogi State, Nigeria.

³ (Ph. D. in view) Department of Public Administration, Kogi State University, Anyigba, Kogi State, Nigeria. (mike7gsagba@yahoo.co.uk, agbasMike@yahoo.co.uk (Corresponding Author 2)

* Received 21 February 2010; accepted 2 April 2010.

société sont protégés. Le présent article examine donc les dangers posés de considérer les droits des enfants comme acquis dans la société et les efforts déployés au Nigeria, à fin de protéger l'enfant pour un développement global et durable de la société.

Mots-clés: enfants, droits; droit de survie; droit de développement; droit de participation; droit de protection

INTRODUCTION

Development must be sustainable to meet present needs and future. Sustainability safeguards development and guarantees tomorrow's needs. Development is the efficient or judicious utilization of resources (natural, human, industrial, institutional) for creating higher levels of material wealth, social well-being and individual self-fulfillment. Of paramount importance is the human factor in development, without which development is merely a mirage. Human beings are the facilitators of development, and without their children, development can never be sustainable. Thus, children must have the pride of place in every community since the child is the future pool on which the future generation is predicated.

A look down the memory lane reveals that one of the greatest challenges ever faced on earth and still being faced is the need to safeguard the human factor in development. By this, we mean protecting children, giving them a future and thus making development sustainable. Today, half of the world's 2.2 billion children are threatened by poverty and HIV/AIDS (UNICEF, 2005). About 180 million are engaged in the worst forms of child labor; 1.2 million children are trafficked every year; and the number of children who died in 2003 before they were five was 10.6 million (UNICEF, 2004). These are horrendous; and a threat to global human development.

Law and development must go together since law is an essential tool for social engineering. Law can promote development and at the same time, it can inhibit it. Thus, development in any community must reflect in its laws otherwise archaic laws or the absence of a legal regime might retard development. Law must be in harmony with development and must be able to address social problems.

It is pertinent to note that law, being a dynamic tool in development, has been employed at different times to protect children and their rights. As far back as 1919, an industrial minimum age was adopted by the International Child Labor Convention to regulate children participation in the workplace. With the birth of the United Nations, the Declaration of the Rights of the Child was made in 1959. And on 20th November, 1989, the Convention on the Rights of the Child (CRC) was adopted. Built on varied legal systems and cultural traditions, the convention is a universally agreed set of non-negotiable standards and obligations. It spells out the basic rights of the child everywhere; some of which range from the right to survival; development; protection from harmful influences, abuses and exploitation; to, right to participate fully in family, culture and social life. Every right spelt out in the convention is inherent in human dignity and harmonious development of the child. The convention gave birth to regional treaties like the Africa Charter on the Rights and Welfare of the Child, and national laws like the Child's Rights Act 2003 of Nigeria. This paper examines how these laws have impacted nationally and globally on the development of the child and on human development.

STATEMENT OF PROBLEM

Children are precious assets and sources of joy not only to their parents and immediate families but to the entire society. As the future hope and leaders of tomorrow, they have rights that need to be protected. They have to be cared for and nurtured to develop their potentials so that they can contribute to the development of the society. The saying that "the child is the father of the man" is true if and only if the

right of the child is adequately protected in the society. This therefore makes it pertinent for the following problems to be investigated in this paper:

- (i) Who is a child and what are his rights in the society?
- (ii) To what extent have these rights been abused and protected in the Nigerian society?
- (iii) What are the implications of the abuses, and, or, protection of these rights on the overall development of the child and the society?

WHO IS A CHILD?

Certainly, everyone is a child of some person but not everyone can rightly be regarded as a child. Here we need to know what constitute childhood from the cultural, social and legal points of view.

Under the Nigerian socio-cultural context, the definition of a child varies widely due to lack of uniformity in the cultural systems. In some ethnic groups, a boy remains a child until initiated into an age-grade society or until he is old enough to contribute physically and financially to community development (Ayua and Akagbue, 1995). But in some societies, childhood terminates at puberty.

Under the common law, the age of puberty in the case of a boy is fourteen (14) years, while that of a girl is twelve (12) years. This position was laid down in the case of *Harrod V. Harrod*¹. However, it is not certain whether the common ages for puberty apply in Nigeria. Under customary law, there is no fixed minimum age for puberty. According to Sagay (1999), the age of puberty amongst the Yourbas is fourteen (14) for girls and seventeen (17) for boys. For the Hekiris, it is sixteen (16) for girls and twenty (20) for boys.

However, with regards to *Section 2 of the Children and Young Persons Law* of Lagos State (1973), which provides for the welfare of the young and treatment of young offenders, a child is a person under the age of fourteen (14) years while a young person is one who has attained the age of fourteen years but is under the age of seven years. The Nigerian Labor Act (1974) considers a child as a person below fifteen (15) years of age while the National Child Welfare Policy (1989) defines a child as anybody who is twelve years of age and below. This uncertainty trailing the definition of a child under the Nigeria law was finally laid to rest by *Section 274 of the Childs Rights Act* (2003) which defines a child as a person who has not attained the age of eighteen (18) years. It must be noted that this is in line with the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child both to which Nigeria is a signatory. In any case, it must be borne in mind that children are the most vulnerable members of any community; they are fragile, frail, innocent, naïve, defenseless and often oblivious of danger. They are naturally incapable of enforcing their rights and usually oblivious of them.

WHAT ARE THE RIGHTS OF THE CHILD IN THE SOCIETY?

The term 'right' is often used to describe any advantages conferred on a person by a rule of law. Different jurists have put forward many theories in order to explain the term 'right'.

Vinogradoff (1924) asserted that a right is a kind of claim. Dias (1970) asserted that the behavior of one person is the substrate, which the right of another is founded. Rights are interest or benefit recognized by law. Gray (1916) conceives rights as essentially powers. To professor Hart (1983), rights are protected choices.

Thus, the concept of rights implies a relationship between two or more person. Man can only have a

right after he has entered the society and by implication entered into relations with other men. It is therefore man's existence within society that accords him the status of a human being, which ultimately entitles him to some rights as a consequence of his humanity. The Supreme Court of Nigeria in the case of *Odogu V. Attorney General of the Federation*² held that a fundamental right is a right guaranteed in the constitution which every person is entitled to enjoy by virtue of being a human being. Thus, if every person who is human is entitled to some rights, then children are also entitled to human rights by virtue of the fact that they are human beings. Under S(307) of The Nigerian Criminal Code (1990), a person is considered to be a human being from the moment he becomes independent of his mother's womb, whether the umbilical cord has been severed or not, at birth.

Children's rights, therefore, are rights that make for their survival, development, protection and meaningful participation in the society. Over the centuries, these rights have been violated. Children of tender age are employed in industries, recruited into the army during wars, trafficked in commercial sex industry and a good number have died due to malnutrition. These violations and abuses have necessitated the formulation of the Convention on the Right of the Child (CRC) in 1989, the African Charter on the Right and Welfare of the Child in 1990 and the Child's Rights Act 2003. In these laws, children's rights have been entrenched in order that they may have the force of law.

EVOLUTION OF CHILDREN'S RIGHTS AND IMPACT ON DEVELOPMENT

It is to be noted that the concept that children have specific rights deserving of enforcement and protection is a relatively modern development. Children have long constituted an invisible force in history. According to Tucker (1974), the children were at the bottom of the social scale despite the fact that they are human beings with human needs, most adults seldom have these at their minds while dealing with children. The popular assumption in time past was that most adults and parents in particular had the best interest of children at heart, thus there was no need to think in terms of children's rights (Augie, 1998).

Violence against children had existed since the early times. Children were killed, abandoned, beaten, sexually abused, thrown into rivers, and exposed on hills and roadsides. Even as late as the 1890s, dead infants were still a common sight in London streets (Lloyd de Mause, 1974). Although an early law of 374 A.D in Rome declared the killing of an infant to be murder, the legal reality differed from social reality. The killing of illegitimate children, according to de Mause (1974), continued until the nineteenth century. Sale of children was another longstanding practice. Child sale was legal in Babylonian times. Child sale continued into the modern era despite ancient Athenian laws which restricted the rights of parents to sell children and the efforts of the Catholic Church to eradicate the practice (Lloyd de Mause, 1974).

The contemporary attitude that a child has rights with a concomitant concern for his or her welfare and happiness, finally took root in the eighteenth centuries in Western Europe. Several factors combined to this modern concept of childhood becoming a valued social status and they include the writings of social philosophers, the replacement of apprenticeship by the growth of schools, and increasing privacy of the family (Aries, 1962).

Before this change in the social status of the child, a child's legal status was subsumed in the father. The Roman *Partria Potesta* epitomized this doctrine of the child as paternal property. This notion persisted well into the modern era thus the *Puissance Paternellie* of the French Civil Code gave the father unchecked authority over children with exclusively paternal rights. German legislations reflected on this concept of paternal authority. The German code of 1896 gave a husband the right to decide all matters of matrimonial life, thus, mothers had no right to the custody of minors or administration of minors' property.

However, as women's position in the family gradually altered, the doctrine of paternal authority was weakened as well as that of the child as paternal property. Under French law, the historic principle "husband is the head of the family" was replaced by "the spouses together assume the moral and material direction of the family". Also, the German Civil Code at the end of the nineteenth century expressly provided that both parents had to exercise their parental powers for the well being of the child. Thus, by the end of the nineteenth century, the benevolent exercise of parental power had become an articulate and explicit requirement.

The gains of this new status of the child saw the introduction of child labour laws compulsory education. Child labour regulations restricted the number of hours per day during which minors could be employed and regulated their working conditions. The English Factories Act (1833) provided salaried inspectors to enforce labor regulations. From this dates there was social concern about the exploitation of children and compulsory education laws that provided new educational opportunities for children were enacted.

These gains are just being seen in Africa. The reason being that the legal framework for children's rights is just developing. However, with laws such as the African Charter or the Rights and Welfare of the Child of 1990 and the Child's Rights Act 2003, the sky is the limit.

CHILD'S RIGHTS ACT 2003 AND SUSTAINABLE DEVELOPMENT

The legal framework for the protection of children's rights in Nigeria before the enactment of the Child's Rights Act 2003 was weak and uncoordinated. Laws relating to children were not child's rights-specific nor did they make adequate provision of children's rights (Ladan, 2004). The federal constitutional arrangement does not situate issues concerning children within the legislative preview of the National Assembly but within state legislatures thereby making it difficult to establish an adequate legal framework applicable to the whole of Nigeria. Likewise, the various states, children and young persons' laws are largely juvenile justice administration biased and not necessarily child's rights-specific. This resulted in serious consequences for the Nigerian child as all manner of evils were perpetrated against children. This ranged from physical abuse to child labour and harmful traditional practices and customs (UN Committee on CRC, 1996).

With the enactment of the Child's Rights Act, the welfare and responsibilities of children as well as those of government and institutions towards children became more defined. In addition, the Act makes provision for the enforcement of these rights by imposing strict penalties for abuses, creation of the Family Court, and bringing of Nigeria's child's rights law to global standard.

These rights can be classified into survival rights, development rights, participation rights and protection rights. Under survival rights, children have the right life³; survival and development⁴; health and health services⁵; dignity of the child⁶; and freedom from discrimination⁷.

Under development rights, they have the right to leisure, recreation and cultural activities⁸; to freedom of thought, conscience and religion⁹; to free, compulsory and universal primary education¹⁰; to parental care, protection and maintenance¹¹.

Under participation right, they have the right to freedom of association and peaceful assembly¹²; freedom of expression¹³; freedom of movement¹⁴; right to personal liberty¹⁵; and under protection right, there is the right of the child in need of special protection¹⁶; right of the unborn child to protection against harm¹⁷; and contractual right of a child¹⁸.

No doubt, this is Nigeria's greatest gift to children and this must not be allowed to waste. Therefore, it is germane that Child's Rights Implementation Committees at the national, state, local government, work towards realizing these rights. It is also pertinent for the different states to enact their own Child's Right Laws as the president has urged.

It must be borne in mind that the greatest assets which we have today as a nation is not the oil deposits of the Niger-Delta, neither is it the mangrove and rain forest stretching from Lagos to Calabar. Rather the greatest untapped and reserved resources, which we have as a nation, is our teeming children and youthful population, here lies our greatest potential, strength and hope.

Almost everywhere in the world, theoretical and empirical reviews show that the children and youth hold enormous potentials for societal transformation and development. But children can hardly assume this front seat without adequate preparations, education, industrialization, genuine invitation as well as support from the society, particularly support from those in power. Certainly, a lot still needs to be done with our teeming children and youthful population if we want genuine development and sustainability. The Tanzanian President, Julius Nyerere has once been quoted as saying that “whoever controls the minds of children also controls their future”. People have been guilty of many errors and many faults, the worst being the abandoning of children, thereby neglecting the foundations of life. Many of the things we need can wait. The child cannot. Now is the time the child’s bones are being formed, his blood is being developed, to him we cannot answer “Tomorrow”. His name is “Today” (Taiwo, 2004).

With the Child’s Right Act, the authors believe Nigeria has a future. The more we invest in the children, the more we are investing in our future. It must be noted that there can be no sustainability if there are no persons to manage tomorrow’s resources. The quality of our nation’s future is directly proportional to the quality of our children, today.

SUMMARY AND CONCLUSION

The Federal Government should be commended for enacting a law that comprehensively safeguards the rights of children. Today, Child’s Right Implementation Committees are being set up across the nation to ensure that these rights are implemented. Likewise, many states are in the process of enacting their own child’s right laws. This, though commendable, is not sufficient. To ensure that the child’s Right’s Act will not be an empty legislation, the following must be done:

Government must ensure the establishment of the Family Court, Child Minding, Day Care Centers and allied homes must be established and provided for under the Act.

The above institutions must be well-equipped and their officers trained and adequately remunerated.

Government should enlighten the public about the right of children.

Government and NGOs should campaign against harmful cultural practices and abuses perpetrated against children.

It is noteworthy to say that enacting the Act is a necessary condition towards the protection of the child, but is not sufficient. The government needs to consolidate its actions and take all necessary steps needed to make the dreams of the Act a reality.

REFERENCES

- Anya, I.A. and Okagbue, I.E.. (1995). *The Rights of the Child in Nigeria*. NIALS.
- Aries. (1962). *Centuries of Childhood: A Social History of the Family Life*. New York: Random House.
- Augie, A.. (1998). “The Role of the Judiciary in the Legal Protection of Rights of Woman in Nigeria” in *UNICEF Seminar Report on Legal Act and Judicial Protection for Women and Children* (Dec.) p. 32.
- Dias, C.. (1970). *Jurisprudence*. London: Oxford University Press.

- Gray.. (1916). *The Nature and Sources of Law* (Unknown publisher).
- Hart, H. L. A.. (1993). *Essay in Jurisprudence and Philosophy*. London: Oxford University Press.
- Ladan, M. T.. (2004). "The Nigerian Child's Right Act 2003: An Overview of the Rationale, Structure and Contents" in, *Ibadan Bar Journal. Vol. 3, No. 1*, pp. 66-80.
- Lloyd de Mause. (1974). "The Evolution of Childhood" in, Lloyd de Mause (ed) *The History of Childhood*. New York: Random House.
- Sagay, I. E.. (1999). *Nigerian Family Law*. Lagos: Malthouse.
- Taiwo. (2004). "Child Abuse and Contemporary Forms of Slavery in Nigeria: The Remaining Challenges" in, Yakubu (ed) *Nigeria Woman and Her Child: The Remaining Challenges*. Ibadan: Demyax Press.
- Tuker, M. J.. (1974). "The Children Beginning and End: 15th and 16th Century English Childhood" in, Lloyd de Mause (ed) *The History of Childhood*. New York: Random House.
- Vinegradoff. (1924). "The Foundation Theory of Law" *Yale Law Journal Vol. 3*, p. 60.

OFFICIAL DOCUMENTS

- Africa Charter on the Rights and Welfare of the Child 1990.
- Children and Voting Persons Law, CAP 26 Laws of Lagos State of Nigeria 1973.
- Child's Rights Act 2003: Act No. 26, Vol. 90. Federal Republic of Nigeria Official Gazette.
- Constitution of the Federal Republic of Nigeria 1999.
- Criminal Code CAP 71 Laws of the Federation of Nigeria 1990.
- English Report (ER) (1954) Vol. 69.
- Labour Act (1974) CAP 198 Laws of the Federation of Nigeria 1990.
- Nigerian Child Welfare Policy of 1989.
- Nigerian Weekly Law Reports (NWLR) (1996) Vol. 6, Pr 450, p. 508.
- The Constitution of the Federal Republic of Nigeria, 1999
- UN Committee on the CRC, "Concluding Observation on Nigeria's Initial Report on the Implementation of the CRC in Nigeria" Vol. 2, National Child's Rights Implementation Committee, Abuja, 1996.
- UNICEF State of the words Report 2005.
- United Nation's Convention on the Rights of the Child 1989.

CITED CASES

1. (1954) 69 ER 344.
2. (1999) 6 NWLR (pt450) 508.
3. Section 3(1) Child's Rights Act 2003, Section 33 1999 Constitution.
4. Section 4 Child's Rights Act 2003.
5. Section 13(1) Child's Rights Act 2003.
6. Section 11 Child's Rights Act.
7. Section 10 Child's Rights Act.
8. Section 12 Child's Rights Act.

9. Section 7 Child's Rights Act.
10. Section 15 Child's Rights Act.
11. Section 14 Child's Rights Act.
12. Section 6 Child's Rights Act, Section 40 1999 Constitution.
13. Section 3 Child's Rights Act, Section 39 1999 Constitution.
14. Section 9 Child's Rights Act.
15. Section 180, 245 Child's Rights Act, Section 55 1999 Constitution.
16. Section 16(1) Child's Rights Act.
17. Section 17(1) Child's Rights Act.
18. Section 18 Child's Rights Act.