

THE LEGAL RIGHTS OF THE CHILD IN NIGERIA

Introduction

_____The legal rights of the Nigerian child are contained in various municipal laws and international instruments. These laws are based on certain fundamental principles relating to the promotion of human survival, prevention of harm, promotion and sustenance of human dignity and the enhancement of human development. These principles recognise the basic concept that the child is the foundation of the society and he or she assures its continuity. Accordingly, the survival and continuity of the human society depends upon the protection, preservation, nurture and development of the child.

However, it is necessary to define our key words in this topic before discussing these rights in some details

The word *Right* is derived from the Latin word *rectus* which means correct, straight, right as opposed to wrong. It may also mean in accord with law, morality and justice. As a norm, it may mean that to which a person has just and valid claim, whether it be land, or privilege of doing something or saying something such as the right of free speech.

A right in its general sense is either the liberty (protected by law) of acting or abstaining from acting in a certain manner, or the power (enforced by law) of compelling a specific person to do or abstain from doing a particular thing. Accordingly, a Legal Right is the capacity residing in one person of controlling, with the assent and the assistance of the State, the action of others. Thus, every right involves a person invested with the right, or the person entitled, a person or persons on whom that right imposes a correlative duty or obligation; an act of forbearance which is the subject matter of right and in some cases an object, that is, a person or thing to which the right has reference, as in the case of ownership. A right therefore in general, is a well-founded claim; and when a given claim is recognised by the civil law, it becomes an acknowledged claim or legal right enforceable by the power of the State (Opota J.S.C., 1986).

There is no universally accepted legal definition of a child and the word child may depend on the context in which it appears (Re Carton, 1945). There are many statutes concerning children which contain relevant definitions of the word child or cognate expressions like children but in the absence of a general definition provided by a statute of interpretation, it might be unwise to choose one as the acceptable definition of a child (Okoye v. The State (1992) For instance the section 307 of the Criminal Code merely described a child for the purpose of liability for murder. Under the children and young person law a Child means a person under the age of fourteen years.

However, for the purpose of our present discussion it is safe to adopt the definition of the word 'child' contained in two international Instruments namely: The United Nations Convention on the Rights of the Child 1989 and the O.A.U. Charter on the Rights and Welfare of the Child 1991 both of which Nigeria is signatory. Under Article II of the latter a child means every human being below the age of 18 years. Also under Article I of the U.N. Convention a child is every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.

The Rights Of The Child Under Our Municipal Law

The Constitution of the Federal Republic of Nigeria, 1999 guarantees certain Fundamental Rights to every person including children. These rights are contained in Chapter IV of the Constitution, (Section 33-46). These include:

- (1) The Right to life (S..33)
- (2) The Right to dignity of the human person (S.34)
- (3) The Right to personal liberty (S.35)
- (4) The Right to fair-hearing (S.36)
- (5) The Right to privacy and family life (S.37)
- (6) The Right to freedom of thought, conscience and religion (S.38)
- (7) The Right to freedom of expression and the press (S.39)
- (8) The Right of freedom of movement (S.40)
- (9) The Right to freedom from discrimination (S.41)
- (10) The Right to acquire and own immovable property any where in Nigeria
(S.42)
- (11) The Right against compulsory acquisition of one's property without
Compensation (S.43)

There is provision in the Constitution for special procedure for enforcement of these Rights by the Courts through the Fundamental Rights (Enforcement Procedure).

Rules.

Apart from the Constitution, there are other statutes in the country dealing with the rights of the child. These include the Criminal Code which have a range of offences meant for the protection of the child and the preservation of his dignity. Other provisions exempt the child from criminal responsibility and punishment for some offences. A few examples may be given Section 30 provides:

“A person under the Age of seven years is not criminally responsible for any act or omission”.

A person under the age of twelve years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission.

A male person under the age of twelve years is presumed to be incapable of having carnal knowledge.”

Chapter 21 of the Criminal Code dealing with offences against morality contain specific provisions for the protection of the child and preservation of the dignity of his person.

Under Section 216 any person who unlawfully and indecently deals with a boy under the age of fourteen years is guilty of a felony, and is liable to imprisonment for seven years. Similar indecent practices between males attract imprisonment for three years under Section 217.

Under Section 218, any person who has unlawful carnal knowledge of girl under the age of thirteen years is guilty of a felony, and liable to imprisonment for life, with or without whipping. An attempt to commit this offence is similarly punishable with fourteen years imprisonment under the Section.

Under Section 219 a householder who permits his premises to be used for the above crime or induces its commission in his premises is liable to imprisonment for two years if the girl is above thirteen but under sixteen years of age. However, such householder is liable to imprisonment for life, with or without whipping if the girl is under thirteen years of age

Section 221 prescribes two years imprisonment for anybody who has or attempts to have unlawful carnal knowledge of a girl who is thirteen years or above but below sixteen years of age.

Under Section 222, unlawful and indecent dealing with a a girl under the age of thirteen years attracts imprisonment for three years but where the girl is thirteen years and above but below sixteen years, the punishment of the offender is two years imprisonment.

By Section 222A whoever, having the custody, charge or care of a girl under the age of sixteen years, causes or encourages the seduction, unlawful carnal knowledge or prostitution of, or the commission of an indecent assault upon, such a girl, is liable to imprisonment for two years.

Under Section 222B whoever, having the custody, charge or care of a child or young person of four years but under the age of sixteen years, allows that child or young person to reside in or frequent a brothel is liable to imprisonment for six months with or without a fine.

Procurement of a girl under the age of eighteen years to have inlawful carnal connection with any other person or persons, either in Nigeria or elsewhere attracts imprisonment for two years for the offender. Similarly, Section 225 prescribes two years imprisonment for an offender who abducts a girl under eighteen years of age with intent to have her to be unlawfully carnally known by any man.

The child's right to life guaranteed under the Constitution is further strengthened by the Criminal Code provision prohibiting unlawful killing (S.306) And, for this purpose, a child becomes a person capable of being killed when it has proceeded in a living state from the body of its mother, whether it has breathed or not, and whether it has an independent circulation or not, and whether the navel-string is severed or not. (S.307).

When a child dies in consequence of an act done or omitted to be done by any person before or during its birth, the person who did or omitted to do such act is deemed to have killed the child. (S.309) and this may amount to the crime of murder or manslaughter, as the case may be, under the Criminal Code (S.315-319). Section 328 similarly protects a child from being unlawfully killed during delivery. Under that section, any person who, when a woman is about to be delivered of a child, prevents the child from being born alive by any act or omission of such a nature that, if the child had been born alive and has then died, he would be deemed to have killed the child, is guilty of a felony, and is liable to imprisonment for life.

The Criminal Code also prescribes a set of duties for guardians and those *In loco parentis* to protect the child's right to life, protection and preservation. Section 300-301 imposes duties on those having charge of children either as Masters or guardians or heads of family to provide for necessities of life for the children.

In addition to the above the Children and Young Persons Law contains a separate statutory regime for dealing with juvenile offenders which is softer than that relating to older offenders. Specifically, where a child is found guilty of an offence section 11 provides that no child shall be ordered to be imprisoned. It is also provided that imprisonment may be ordered for a young person only if he cannot be suitably dealt with in any other way such as Probation, fine, corporal punishment, committal to a place of detention or to an approved institution or otherwise. Clearly, the purpose of treating a child like this is to reform him not to punish him. Accordingly under Section 14 of the law, where a child or young person is found guilty in a court, the court is given a considerable range of options for dealing favourably with such offender namely:

- (i) by dismissing the charge or
- (ii) by discharging the offender on his entering into recognizance or
- (iii) by committing the offender and placing him under the supervision of a probation officer; or
- (iv) by committing the offender by means of a corrective order to the care of a relative or other fit person; or
- (v) by sending the offender by means of a corrective order to an approved institution; or
- (vi) by ordering the offender to be caned; or
- (vii) by ordering the offender to pay fine, damages or costs; or
- (viii) by ordering the parent or guardian of the offender to pay a fine, damages or cost; or
- (ix) by ordering the parent or guardian of the offender to give security for his good behaviour; or
- (x) by committing the offender to custody in a place of detention provided under the law; or
- (xi) where the offender is a young person, by dealing with the case in any other manner in which it may be legally dealt with.

Under Section 2 of the law, a child means a person under the age of fourteen years and a young person means a person who has attained the age of seventeen years. A Juvenile Court means a Court constituted under the provisions of section 6 for the hearing and determination of cases relating to children and young persons.

International Instruments on the Rights of the Child

Children also benefit from favourable provisions on their rights under various international covenants, conventions and other instruments either jointly with adults or separately. For instance, they enjoy Human Rights under the Universal Declaration of Human Rights by the United Nations General Assembly (1948). Article 1 thereof contains the declaration that “All human beings are born free and equal in dignity and rights” and by Article 2 every body is entitled to all the rights and freedoms set forth in the Declaration. In particular Article 25(2) affirms that “Motherhood and Childhood” are entitled to special care and assistance and, all children, whether born in or out of wedlock, shall enjoy the same social protection.

The International Covenant on Civil and Political Rights (1966) protects basic civil and political rights most of which are now contained in the Fundamental Rights provisions of our Constitution of 1999. The International Covenant on Economic, Social and Cultural Rights (1966) also contains such rights – to work, to join trade unions, to adequate standard of living including food clothing, housing, continuous improvement on living conditions, to highest attainable standard of physical and mental health, to education, primary education (compulsory and free for all) while secondary and higher education should be accessible to all. Nigeria is a signatory to all these covenants and international instruments and therefore they are binding on us.

In addition to these however, two international Instruments make specific special provisions on the Rights of the Child. These are the United Nations Convention on the Rights of the Child (1989) and the African Charter on the Rights and Welfare of the Child (1991). The two instruments contain substantially the same provisions and we shall be referring to the Charter provisions. The provisions include right to life, health, education, special treatment in the administration of justice, protection against child abuse and torture, child labour, harmful social and cultural practices, sexual exploitation, drug abuse, sale, traffic and abduction, apartheid and discrimination, special provision for handicapped children, refugee children those separated from their parents and adopted children. The highlights of these instruments may be summarized as follows:-

- Every child has the inherent right to life, and states shall ensure to the maximum child survival and development.
- Children shall not be separated from their parents, except by competent authorities for their well being.
- Parents shall have the primary responsibility for a child’s upbringing but states shall provide them with appropriate assistance and develop child-care institutions.
- States shall protect children from physical or mental harm and neglect, including sexual abuse or exploitation.
- States shall provide parentless children with suitable alternative care. The adoption process shall be carefully regulated and international agreements should be sought to provide safeguards and assure legal validity if and when adoptive parents intend to move a child from his or her country of birth.
- Disabled children shall have the right to special treatment, education and care.
- Children are entitled to the highest attainable standard of health. States shall ensure that health care is provided to all children, placing emphasis on preventive measures, health education and reduction of infant mortality.
- Primary education shall be free and compulsory. Discipline in schools shall respect the child’s dignity. Education should prepare the child for life in a spirit of understanding, peace and tolerance.

- Children shall have time to rest and play and equal opportunities for cultural and artistic activities.
- States shall protect children from economic exploitation and from work that may interfere with their education or be harmful to their health or well being.
- States shall protect children from the illegal use of drugs and involvement in drug production or trafficking.
- All efforts shall be made to eliminate the abduction and trafficking of children.
- Capital punishment or life imprisonment shall not be imposed for crimes committed before the age of 18.
- Children in detention shall be separated from adults; they must not be tortured or suffer cruel or degrading treatment.
- No child under 15 shall take any part in hostilities; children exposed to armed conflict shall receive special protection.
- Children of minority and indigenous populations shall freely enjoy their own culture, religion and language.
- Children who have suffered mistreatment, neglect or exploitation shall receive appropriate treatment or training for recovery and rehabilitation.
- Children involved in infringements of the penal law shall be treated in a way that promotes their sense of dignity and worth and aims at reintegrating them into society.
- States shall make the rights set out in the instrument widely known to both adults and children.

In particular, Article 14 dealing with health and Health Services provides:

1. Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health.
2. States Parties to the present Charter shall undertake to pursue the full implementation of this right and in particular shall take measures:
 - (a) to reduce infant and child mortality rate;
 - (b) to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
 - (c) to ensure the provision of adequate nutrition and safe drinking water;
 - (d) to combat disease and malnutrition within the framework of primary health care through the application of appropriate technology;
 - (e) to ensure appropriate health care for expectant and nursing mothers;
 - (f) to develop preventive health care and family life education and provision of service;
 - (g) to integrate basic health service programmes in national development plans;
 - (h) to ensure that all sectors of the society, in particular, parents, children, community leaders and community workers are informed and supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of domestic and other accidents;
 - (i) to ensure the meaningful participation of non-governmental organizations, local communities and the beneficiary population in the planning and management of basic service programmes for children;
 - (j) to support through technical and financial means, the mobilization of local community resources in the development of primary health care for children.

Assessment of the Rights of the Child in Nigeria

The philosophy behind these rights are well founded and directed towards the achievement of the continuity of the human race in an atmosphere of peace, harmony development and happiness. The various laws and instruments on the rights of the child discussed so far emphasize summarily that “in all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration” (Art. 4:1, African Charter”.

However, despite copious provisions in our municipal laws and international instruments on the rights of the child, there appears to be a gap between law and practice resulting in gross inability of the child to realize these rights at present. Child labour and child abuses are still rampant with the presence of street children and children beggars. Corruption in Government has robbed children of the finance necessary for the implementation of the rights of the child the health care delivery system. The scourge of the HIV/AIDS in the country is a threat to the right to life and Government has not addressed the issue. Sexual harassment, and abandonment of children are still rampant exposing them to physical and moral insecurity. The right to education appears to be replaced by exploitative child labour in some parts of the country. Many parents are still abandoning their responsibilities towards their children despite these laws. There is need for more political will and economic power on the part of the government to implement these laws in the interest of the Nigerian child. Finally, it is recommended that all stake holders must be properly educated and enlightened on these rights. Parents, children, families, and the Governments should be alert to their responsibilities under these laws and pay greater attention to their implementation.

References

1. The State of the World's children 1977, a Report by UNICEF, Oxford University Press (Annual Periodical).
2. The Rights of the Child in Nigeria I.A. Ayma & I.E. Okabue (ed.), Nigeria Institute of Advanced Legal Studies, Lagos 1996.
3. A.A. Adeyemi, “Children in Especially Difficult Circumstances in the Contexts of the United Nations and the O.A.U. Charter on the Rights of the Child” (1997) 1 N.J.P.L. 16.
4. The Hon. Justice C.A. Oputa J.S.C. (retired) “Human Rights in the Political and Legal Culture of Nigeria” Second Justice Idigbe Memorial Lecture, Uniben, 1986.
5. Joy Ezeilo, Women and Children's Rights in Nigeria, Women's Aid Collective, Enugu, 2001.
6. Nigerian Current Law Review Institute of Advanced Legal Studies, Lagos, 1996.
7. United Nations Convention on the Rights of the Child 1989.
8. African Charter on the Rights and Welfare of the Child 1991, African Journal of International and Comparative Law, March 1991.

9. The Criminal Code Act, Cap. 77, Vol. 5, Laws of the Federation of Nigeria 1999.
10. Constitution of the Federal Republic of Nigeria 1999.
11. Children and Young Persons Law, Cap. 1, Laws of Lagos State 1973. (All other States have similar legislation).

P. Ehi Oshio,
Barrister, Solicitor & Legal Consultant,
Associate Professor and former Dean of Law,
Faculty of Law, University of Benin.