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# AN EXAMINATION OF THE EVOLUTION AND CHALLENGES OF CHILD'S RIGHTS IN NIGERIA

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**Abstract**

It is a general belief that children are the future of tomorrow and due to their fragile nature, they are to be loved, cherished and nurtured until they attain the age of maturity. However, the last decade in Nigeria recorded a dramatic increase in the number of violent crimes against children. Children in Nigeria today are more susceptible to abduction, and other forms of abuse such as sexual, physical, and ritualistic killings. Even though it is not only children that suffer from these violent crimes, they are the most affected due to their weak nature. The abduction of over 200 Secondary School female children in Chibok, North East of Nigeria and the recent trend of using children as suicide bombers are pointers to the fact that violent crimes against children are taking a dangerous dimension and more is needed to be done to protect and safeguard the inalienable rights of the Nigerian Child. This article adopts a library based research methodology to examine the concept of a Child and the evolution of Child's right under the United Nations Convention on the Rights of the Child (UNCRC). The article also examines the Child's rights in Nigeria and the challenges confronting such rights.

**Keywords:** Examination, Evolution, Challenges, Child's Rights, Welfare. United Nations,

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## Introduction

Children have not always been on the Human Rights agenda as they were traditionally regarded as property of their parents (George, Brief History of UNCRC; par. 1). Historically, children were regarded as socially insignificant and were consequently they received no special rights.

The use of children as political hostages and as security for debts, sexual abuse of children, child sacrifices and the infanticide of female and illegitimate children were common in the ancient world (Weisberg 43-44). In Nigeria, some of the most widely reported violation of the rights of Children include street trading/hawking, street begging, child labour, child trafficking, harmful customary practices such as child marriage, tribal and tattoo marks, exploitation of children mainly for commercial purposes, political violence and thuggery. Children are also maltreated, neglected, sexually exploited and physically abused (Network of Human Rights Violations Monitors54-55)

Children like many other marginalized groups until recently have been voiceless and their best interests often ignored. Their vulnerability increased because of their limited access to influence the media, the courts and to political channels of participation, all compounded by their exclusion from voting (Save the Children; Children's Rights in Wales; United Nations Conventions on the Rights of the Child, par. 4).

The intense agitation and advocacy for children rights notion are of relatively recent origin and this is despite the fact that Human Rights have been discussed since the 17th century (Hodgson 7). It was not until the 19th and 20th centuries that the rights of children began to be considered. Initially, the discussion of the children's rights tended primarily to be focused more on protection rights such as outlawing child labour rather than the concept that children were entitled to their own rights as equal citizens of the world (Hodgson 7).



The adoption of the United Nations Conventions on the Rights of the Child by the United Nations General Assembly in 1989 was however a significant development in the recognition and protection of the rights of children. Today, children's rights are being advocated globally. There are several international treaties which not only cover the protection of children, but also embrace aspects of self-determination to the extent that children are granted a degree of autonomy in the enjoyment of their rights such as the African Charter of the Rights and Welfare of the Child (ACRWC).

However, the practical implementation of Child's rights in an African country such as Nigeria is not straight forward as it in in theory. Various cultural and religious beliefs in the country are the major problem and challenges confronting the effective implementation of Child's right. This has somehow made the Child rights unimplementable in the country.

This article therefore adopts a library based doctrinal research methodology to examine the concept of a Child and the evolution of Child's right under the United Nations Convention on the Rights of the Child (UNCRC). The article also examines the Child's rights in Nigeria and the problems and challenges confronting the implementation of such rights. The finding of the article revealed that while there are various rights for children in Nigeria, the implementation of these rights has been bedevilled by series of problems and challenges. The article went on to make appropriate recommendations to overcome these problems and challenges.

## Who is a Child?

There is no specific definition of a Child under the Constitution of the Federal Republic of Nigeria (Abiola 14). However, a look at the various dictionaries and other subsidiary legislations will assist us in finding the definition. The new Lexicon Webster's *Encyclopaedic Dictionary of the English Language* defined a child as 'a boy or girl at any age between infancy and adolescent, a new born baby, a person of any age in relation to his parents. The Black's Law Dictionary defined a child as 'a person under the age of majority.'

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The definition of a child can also be found in some Nigerian Statutes and subsidiary legislation. The Child's Rights Act, which is the current authority as regards the protection of children's rights in Nigeria, defined a child as 'a person below the age of eighteen years' (Section 274 of the Childs Rights Act 2003). However, the Children and Young Persons Law 2006 Laws of Kwara State (as amended), defined a child as 'a person under the age of fourteen years' and the same Law defined a "young person" as 'a person who has attained the age of fourteen years and is under the age of seventeen years'. The Labour Act also defines a child as 'a young person under the age of twelve years' while it defined a young person 'as a person under the age of eighteen years'. (Section 91 of the Labour Act CAP L1 Laws of the Federation of Nigeria 2004).

The definition of a Child can also be found in various international conventions. For example, The United Nations Convention on the Rights of the Child defined a child to mean 'every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier' (Article 1 of the United Nations Convention on the Rights of the Child 1989). The African Charter on the Rights and Welfare of the Child (ACRWC) also defined a child as 'every human being below the age of eighteen years'. (Article 2, African Charter on the Rights and Welfare of the Child (ACRWC) 1999).

**Evolution of the Rights of the Nigerian Child**

The fundamental rights of children have long been identified and recognized as far back as in 1799 (Onyemachi 380). Hannah More was quoted to have said:

> It follows, according to the actual progression of human beings that the next influx or irradiation which our enlighteners are pouring on us will illuminate the world with grave descants on the rights of youths, the rights of children, and the rights of babies.

The above writing of Hannah More was based on the basic rights of Man which became recognized under the American Declaration of



Independence in 1777 and the French Declaration of Man and Citizen in 1789 respectively. It was however the wanton destructions of lives and properties that characterized World War 1 that brought about the need to safe guard the future and thus brought about the need for urgent steps to be taken to protect the interests of the children since the future of human civilization is the future of children.

On 15 April 1919, Eglantyne Jebb founded the Save the Children Fund International Union which was aimed at alleviating starvation of children in Germany and Austro-Hungary during the Allied blockade of Germany of World War 1("Save the Children" Our History; par. 1).

In 1923, Jebb wrote:

> I believe we should claim certain rights for the children and labour for their universal recognition, so that everybody--not merely the small number of people who are in a position to contribute to relief funds, but everybody who in any way comes into contact with children, that is to say the vast majority of mankind--may be in a position to help forward the movement ("Save the Children" Our History; 2).

Jebb created an initial draft of Children's Charter which asserted the rights of children and the duty of international community to put children's rights in the forefront of planning. This led to the proclamation and adoption of the Declaration of the Rights of the Child by the Save the Children union in Geneva on 23 February 1923. ("Save the Children" Our History; par. 3).Amongst other things, the Declaration contained the following five basic criteria:

- The child must be given the means requisite for its normal development, both materially and spiritually;
- The child that is hungry must be fed, the child that is sick must be nursed, the child that is backward must be helped, the

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delinquent child must be reclaimed, and the orphan and the waif must be sheltered and succoured;

- The child must be the first to receive relief in times of distress;
- The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation;
- The child must be brought up in the consciousness that its talents must be devoted to the service of its fellow men.(Principles 1-5 of the Declaration of the Rights of the Child 1923)

The above Declaration of the Rights of the Child was endorsed by the League of Nations on 26 November 1924 as the World Child Welfare Charter (UNICEF; History of child rights, par. 1) History of United Nations International Children Emergency Fund, par. 5). However, the Declaration was not enforceable by international law but merely served as guidelines for States members to follow and it conferred no legal obligation. Thus, the Declaration was essentially an aspirational document that set out the moral duties of member States of the League of Nation to be guided by its principles in undertaking child welfare (Hodgson 9). It was therefore left to each League Member State to take appropriate action within its resources and particular circumstances.

The 1924 Declaration of the Rights of the Child represented the first step toward the development of international norms concerning the global protection of children, as earlier international agreements had merely focused on particular problems affecting children such as working conditions and slavery. Its five basic principles for child welfare and protection were adopted by the United Nations General Assembly on 20 November 1959 and were expanded to create a new version of Declaration of the Rights of the Child by adding ten more principles to the original five (Humanium; Declaration of the Rights of the Child, 1959Origin of the Declaration of the Rights of the Child, par. 2). This date is now adopted as the Universal Children's Day (United Nations; World Children's Day, Background, par. 2) The Declaration of the Rights of the Child 1959 was the first international instrument to contain a comprehensive statement of children's rights, claims or entitlements (Alston 58). It embodied the



most important policy statement on children's rights and represented the greatest step forward in raising children and their needs higher on the national and international agendas (Alston 59).While the Declaration of the Rights of the Child of 1924 merely reflected concerns for the material needs of children afflicted by the devastation of World War I, the Declaration of the Rights of the Child of 1959 adopted by the United Nations addressed the needs and interests of children in a wider social welfare context covering such areas as housing, social security, health and medical care, food and nutrition, education and each child's entitlement from birth to a name and a nationality(Alston 59).

The 1959 Declaration of the Rights of the Child also introduced the concept of affirmative action for the handicapped child(Principle 5 Declaration Of The Rights Of The Child 1959) and prohibited all general forms of neglect, cruelty and trafficking, set the minimum age for employment and as well as prohibited any employment which would prejudice the child's health, development or education(Principle 9 Declaration Of The Rights Of The Child 1959)and it applied generally to children in a more specific manner than the provisions of the Universal Declaration of Human Rights (Alston 59).

In 1978, the Polish Government submitted to the United Nations Commission on Human Rights a proposed text for a draft Convention on the Rights of the Child with a view to its adoption in 1979 (Hodgson 10). This Polish initiative was inspired by the desire to transform the aspirational ideals of the Declaration of the Rights of the Child 1959 into legally binding international obligations and provided an opportunity and impetus to define more clearly and to harmonize Human Rights standards for children (George, Brief History of UNCRC; par. 1).

The proposal was not meant to replace the Declaration on the Right of the Child of 1959 but to supplement it. However, the proposal was not easily accepted by the members of the United Nations. Some

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argued that it was not necessary because there existed a declaration on the Rights of the Child and others argued that the Rights of the Children were also protected by the Universal Declaration on Human Rights and other International Covenants (George, Brief History of UNCRC; par. 2).

The United Nations Commission on Human Rights in 1979 set up a Working Group to review the proposal of the Polish Government. The Working Group consisted of members from 43 member States and the delegates from other member States also attended as observers while Non-Governmental Organizations (NGOs) in consultative status with U.N. Economic and Social Council were also represented (George, Brief History of UNCRC; par. 2).

After a decade of drafting efforts, the General Assembly adopted the United Nations Convention on the Rights of the Child (UNCRC) on 20 November 1989 to commemorate the 30th anniversary to the day of the adoption of the Declaration of 1959 (UNICEF; History of child rights, par. 12) and it was entered into force on 2 September 1990 (UNICEF; Convention on the Rights of the Child text, par.1). This provided an enabling environment for the United Nations to make convincible attempts to consolidate the international law on the basic rights of children to survival, education, improved health conditions and protection from all forms of abuse and exploitation.

The United Nations Convention on the Rights of the Child 1989 is today the most widely ratified convention in United Nations history having been ratified by 194 countries including every member of the United Nations except Somalia, South Sudan and the United States. It is the first international human rights instrument to attempt a comprehensive definition of children's rights (Hodgson11). Although numerous international conventions and declarations dating back to the early part of the 20th century have been concerned with the protestion of children, their texts have been drawn up separately with scant regard for children's global needs (Hodgson12).



The United Nations Convention on the Rights of the Child stipulates that member States shall undertake to disseminate the Convention's principles and take all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the Convention. (Article 4 of the United Nations Convention on the Rights of the Child 1989). In this regard, the Nigerian Government signed the Convention on 26 January 1990 (UNICEF; Factsheet on the Child's Rights Act in Nigeria, Background, par.2). In order to comply with the requirements of the Convention and to implement rights of Children as provided under the Convention, the Nigerian Government domesticated the Convention in 2003 when the Child Rights Act (CRA) was signed into law by the then sitting President, Chief Olusegun Obasanjo (UNICEF; Factsheet on the Child's Rights Act in Nigeria, Domestication of the Convention on the Rights of the Child: the Child's Rights Act, par. 1-3). The Child Rights Act 2003 (CRA) incorporates all the rights and responsibilities of Nigerian children and consolidated all laws relating to children in Nigeria into a single law and specifies the duties and obligations of government, parents and other authorities, organizations and bodies (UNICEF; Factsheet on the Child's Rights Act in Nigeria, Structure and Content of the CRA, par. 1).

**The United Nations Convention on the Rights of the Child 1989**

The United Nations Convention on the Rights of the Child (UNCRC) is a comprehensive legally-binding international agreement setting out the civil, political, economic, social and cultural rights of every child, regardless of their race, religion or abilities (Save the Children; what is the UNCRC, par. 1).

The Convention acknowledges that the family is the fundamental unit of the society and stresses the role of parents as the primary care-givers with responsibility for the up-bringing of their children and obliges governments to support parents in fulfilling their essential role.(Article 5 of the United Nations Convention on the Rights of the Child 1989) While in other human rights instruments, economic, social and cultural rights of children have been dealt with separately

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from civil rights to political rights, the Convention adopted an integrated and holistic approach to the rights of children in an innovative way(Children's Rights Alliance, The UN Convention on the Rights of the Child, par. 3). The rights provided under the Convention are all seen as necessary for the full and harmonious development of a child's personality and are inherent to the dignity of the child.

The Convention contains four articles which are referred to as the Convention's general principles because they are considered basic to the implementation of all of the other rights contained within the Convention. The four general principles are:

- All the rights guaranteed by the Convention must be available to all children without discrimination of any kind(Article 2 of the United Nations Convention on the Rights of the Child 1989);
- The best interests of the child must be a primary consideration in all actions concerning children(Article 3 of the United Nations Convention on the Rights of the Child 1989);
- Every child has the right to life, survival and development(Article 6 of the United Nations Convention on the Rights of the Child 1989); and
- The child's views must be considered and taken into account in all matters affecting him or her (Article 12 of the United Nations Convention on the Rights of the Child 1989).

The Convention consists of a Preamble and is divided into 3 parts of 54 substantive Articles. Part I of the Convention consist of Articles 1-41 which deals primarily with the rights of the Child and are often divided into three broad categories as follows:

- Provision rights which include the right to an adequate standard of living, the right to adequate health care, the right to free education, and the right to legal and social services;
- Protection rights which include protection from discrimination, protection from abuse and neglect, protection from bullying, protection from being kidnapped, and safety within the justice system;



- Participation rights which include the right to freedom of expression, the right to take into account the opinion of a child when decisions are being made about him or her, the right to information and the right to participate in public life.

Part II of the Convention on the other hand consist of Articles 42 – 45 which defines how compliance with the Convention is to be monitored and fostered while Part III of the Convention which consist of Articles 46 – 54 deals with the implementation measures of the Convention.

It is worthy to note that since the Convention was adopted in 1989, United Nations had made some additions to the Convention. These additions are known as Optional Protocols which are meant to complement the original Convention. Two Optional Protocols were adopted by the General Assembly on 25 May 2000 in response to the growing exploitation of children around the world (United Nations, Assembly adopts two protocols on rights of child, Press Release GA/9711).According to the United nation, these two Optional Protocols addressed some of the worst forms of human rights abuses perpetrated against children worldwide.

The first, the Optional Protocol on the Involvement of Children in Armed Conflict, requires parties to ensure that children under the age of eighteen are not recruited compulsorily into their armed forces, and calls on governments to do everything feasible to ensure that members of their armed forces who are under eighteen years of age do not take part in hostilities (United Nations, Assembly adopts two protocols on rights of child, Press Release GA/9711). The second, the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography requires parties to prohibit the sale of children, child prostitution and child pornography(United Nations, Assembly adopts two protocols on rights of child, Press Release GA/9711).

A third Optional Protocol to the Convention deals with Communication Procedure which allow children or their representatives to file individual complaints for violation of the

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rights of children, was adopted in December 2011 and was opened for signature on 28 February 2012 (United Nations Human Rights, Optional Protocol to the Convention on the Rights of the Child on a communications procedure General Assembly resolution A/RES/66/138, Article 1-24). The protocol currently has 45 signatures and 10 ratifications while it was entered into force on 14 April 2014 following the tenth ratification.

It is important to note that every right covered in the Convention is seeking to guarantee the health, well-being, and safety of children and youth. These rights are minimum standard and are essential to the proper development of the children and therefore non-negotiable. The Convention recognizes children as part of a community and provides that the community must be committed in promoting the safe and healthy development of all children. (Article 5 of the United Nations Convention on the Rights of the Child 1989).The greater point of the Convention is that children's rights are important not only for children, but for all of society. A society that doesn't recognize these rights and doesn't make the adequate investments in young people will do damage to itself in the future since its youth will not develop to their fullest ability having not lived a healthy childhood(Preamble to the United Nations Convention on the Rights of the Child 1989).

**The Child Rights Act 2003**

Prior to the ratification of the United Nations Convention on the Rights of the Child (UNCRC), Child Right issues in Nigeria were guided by various legislations at both Federal and State levels. Notable among these were the Children and Young Persons Act which dealt mainly with Juvenile Justice Administration, and the Labour Act which sought to regulate child labour and to protect children from exploitative labour and abuse (UNICEF; Factsheet on the Child's Rights Act in Nigeria, Domestication of the Convention on the Rights of the Child: the Child's Rights Act, par. 1-3).

After the adoption of the UNCRC by the United Nations General Assembly in 1989, the African Union Assembly of Heads of States and Governments adopted the African Union Charter on the Rights and



Welfare of the Child (ACRWC) in July 1990 (UNICEF; Factsheet on the Child's Rights Act in Nigeria, Domestication of the Convention on the Rights of the Child: the Child's Rights Act, par. 1-3). Nigeria signed both international instruments and ratified them in 1991 and 2000, respectively. Both instruments contained a universal set of standards and principles for survival, development, protection and participation of children and recognize children as human beings and subjects of rights(UNICEF; Factsheet on the Child's Rights Act in Nigeria, Domestication of the Convention on the Rights of the Child: the Child's Rights Act, par. 1-3).

Pursuant to Article 4 of the UNCRC which stipulates that member States shall undertake to disseminate the Convention's principles and take all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the Convention, a draft Child Rights Bill, principally aimed at enacting the principles enshrined in the UNCRC and the ACRWC into law in Nigeria was prepared in the 1993.However, it was not passed into law by the then Military government because of opposition from religious groups and traditionalist (Abiola 14) and subsequently a special committee was set up in order to harmonize the Child's Bill with Nigeria's religious and customary beliefs (ACERWC; Report on the implementation of the convention on the rights of the child by Nigeria).

The Bill providing for the rights and responsibilities of children in Nigeria as well as for a renewed system of juvenile justice was again rejected by Parliament in October, 2002 on ground that its contents are contrary to Islamic values, traditions and culture. (Integrated Regional Information Networks; Nigeria: Focus on the challenge of enforcing children's rights). It should be noted that the main objection against the Bill was a provision setting 18 years as the minimum age for marriage as this was said to be incompatible with religious and cultural traditions in various parts of the country where girls are given in marriage at a young age.

The decision to reject the Bill again was criticized by many National and International NGO's as well as other sectors of the civil society in Nigeria. The legislators were thereafter persuaded to reconsider its

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decision to oppose the Child Rights Bill (Abiola 14). The Bill was finally passed into law by the National Assembly thus domesticating the UNCRC and the ACRWC in July 2003 and was promulgated as the Child Rights Act September 2003.

**Domestication at State Level**

The provisions of the Child Rights Act 2003 supersede all other legislation that has a bearing on the rights of the child having been enacted at the national level and the States are expected to formally adopt and adapt the Act for domestication as State laws. State laws inimical to the rights of the child are also to be amended or annulled as may be required, to conform to the Act and to the UNCRC (UNICEF; Factsheet on the Child's Rights Act in Nigeria, Domestication of the Convention on the Rights of the Child: the Child's Rights Act, par. 1-3).

The Child Rights Act 2003 has been domesticated (passed by the States assemblies and assented to by the State Governors) in 24 States which include Abia, Akwa-Ibom, Anambra, Benue, Cross River, Delta, Ebonyi, Edo, Ekiti, Imo, Jigawa, Kwara, Lagos, Nassarawa, Ogun, Ondo, Osun, Oyo, Plateau, Rivers, Niger, Bayelsa, Kogi and Taraba States while Adamawa, Bauchi, Borno, Enugu, Gombe, Kaduna, Kano, Katsina, Kebbi, Sokoto, Yobe and Zamfara States do not yet have a law conforming to the Child Rights Act 2003(UNICEF; Factsheet on the Child's Rights Act in Nigeria, Domestication of the Convention on the Rights of the Child: the Child's Rights Act, par. 1-3).

**Rights of the Nigerian Child under the Child Rights Act 2003**

Under the Child Rights Act 2003, the provisions in Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 or any other successive constitutional provisions relating to Fundamental Rights are to apply as if those provisions are expressly stated in the Child Rights Act. (Section 3(1) & (2) of the Child Rights Act 2003) What this portend is that Fundamental Rights entrenched in Chapter IV of the Constitution of the Federal Republic of Nigeria are equally applicable to Nigerian Children.



Some of the other inalienable human rights of the Nigerian Children provided under the Child Rights Act 2003 are discussed briefly below:

**i. Right To Name, Survival and Development**

Every Nigerian Child has a right to a name and shall be given a name on his or her birth or on such date as is directed by the culture of his or her parents or guardian (Section 5(1) of the Child Rights Act 2003). The birth of every Nigerian Child shall be registered in accordance with the provisions of the Birth, Death etc. (Compulsory Registration) Act 1992(Section 5(2) of the Child Rights Act 2003). The rights of the Nigerian Child to survival and development are also guaranteed under the Child Rights Act 2003(Section 4 of the Child Rights Act 2003).

**ii. Right to Leisure, Recreation and Cultural Activities**

Every child is entitled to rest and leisure and to engage in play, sports and recreational activities appropriate to his or her age and they are entitled to participate fully in the cultural and artistic activities of the Nigerian, African and World Communities (Section 12 (1&2) of the Child Rights Act 2003). The Government or any other body responsible for the care and welfare of a child shall, at all time, ensure adequate opportunities for the child in the enjoyment of his or leisure, recreational and cultural activities (Section 12 (3) of the Child Rights Act 2003).

**iii. Right to Health and Health Services**

Children in Nigeria are entitled to enjoy the best attainable state of physical, mental and spiritual health (Section 13(1) of the Child Rights Act 2003). Therefore, the Government and or any other body responsible for the care and welfare of a child shall endeavour to provide for the child the best attainable state of health (Section 13(2) of the Child Rights Act 2003). Failure to provide adequate health care for a child will constitute an offence on the part of the parents or guardian (Section 13(3) of the Child Rights Act 2003).

**iv. Right of a Child in Need of Special Protection Measure**

A Nigerian Child who is in need of special protection measures has a right to such measure of protection as is appropriate to his physical,

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social, economic, emotional and mental needs and under conditions which ensure his dignity, promote his self-reliance and active participation in the affairs of the community (Section 16(1&2) of the Child Rights Act 2003).

**v. Legal Age of Marriage**

The Act regards the fixing of the legal age of marriage and betrothal as protection of the rights of a child. The Act fixed the minimum age of marriage for both boys and girls at 18 years and for the first time, any marriage contracted before the child attains that age, is rendered null and void (Section 21 of the Child Rights Act 2003). Consequently, any person who marries a child, or to whom a child is betrothed or who promotes the marriage of a child or who betroths a child is liable on conviction to a fine of N500,000 or imprisonment for a term of five years or both fine and imprisonment(Section 22-23 of the Child Rights Act 2003).

**vi. Right to Education**

The Child Rights Act 2003 introduced new laws that tend to enhance the child's right to education. By virtue of that Act, every child now has the right to free, compulsory universal basic education which the government has undertaken to provide as a matter of duty (Section 15 (1) of the Child Rights Act 2003). The Act also imposes on every parent or guardian the responsibility to ensure that his child or ward attends and completes his primary school education and junior secondary education (Section 15 (2) of the Child Rights Act 2003) while every custodial parent or guardian of a child who has completed his basic education shall endeavour to support the child to senior secondary school except where the child is made to learn an appropriate trade (Section 15 (3) & (4) of the Child Rights Act 2003).

**vii. Right of The Unborn Child to Protection Against Harm**

The Child Rights Act also provide for rights of an unborn child in Nigeria. This is a significant departure from the previous laws on children in Nigeria which hardly recognize rights of children talk more of rights of an unborn child.



A child may bring an action for damages against a person for harm or injury caused to the child wilfully, recklessly, negligently or through neglect before, during or after the birth of that child (Section 17(1) of the Child Rights Act 2003). Where the father or mother of an unborn child dies intestate, the unborn child is entitled, if he was conceived during the lifetime of his father or mother, to be considered in the distribution of the estate of the deceased (Section 17(2&3) of the Child Rights Act 2003).

**viii. Right to Parental Care, Protection and Maintenance**

Every child has a right to parental care and protection, and accordingly, no child shall be separated from his parents against the wish of the child except for the purpose of his education and welfare or in the best interest of the child (Section 14(1a-b) of the Child Rights Act 2003). Section 14 (2) of the Child Rights Act 2003 further extended the child's right by providing that the child's right to maintenance by his parent or guardian can be enforced by the child in the Family Court.

**ix. Contractual Rights of a Child**

A Nigerian Child cannot enter into a contract except a contract for necessaries. Any other contract shall be void (Section 18(1 & 2) of the Child Rights Act 2003).

**Challenges to the Effective Implementation of the Child Rights Act 2003**

The enactment of the Child Rights Act 2003 was a significant development in the recognition and the protection of child's rights in Nigeria. However, the implementation and enforcement of the provisions of the Child Rights Act 2003 have been far from being functional and effective due to a number of challenges some of which are discussed below:

**i. Enabling Environment**

The environment needed for enforcing provisions of the Child Rights Act is not available. Education is far from being free, poverty is the order of the day, housing schemes are inadequate, efficient

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social system is absent and policies for children are virtually non-existence especially for orphans and vulnerable children.
It has been said that for education to be a meaningful right, it must be available, accessible, acceptable and adaptable. It is the duty of the government being the prime duty bearer to respect, protect and fulfil this concept. However, it is an open secret that the funding of government in the education sector, and infrastructure are far from adequate. Parents and guardians still need to spend huge amounts of money to send their children and wards to school to attain even the minimum level of basic education in spite of the poverty level in the country (Abiola 14).

**ii. Traditional and Cultural Beliefs**

The family and by extension the society have failed to come to terms with the fact that children have rights. It is a taboo for the Nigerian child to sue or seek redress against their parents; therefore even where children are aware that their rights have been infringed upon or violated, especially by their parents, it is an uphill task to have such rights enforced (Abiola 14).

**iii. Religious Beliefs**

Religious diversities especially between the Northern and Southern part of the country are a major challenge to the enforcement of the Act. Some areas of controversy which has not allowed for effective enforcement are the areas of the definition of the child, marriageable age and adoption.

The Act defines a child has been under 18years old (Section 277 of the Child Rights Act 2003). Islamic scholars have not come to an agreement on the age limit of a child however their point of agreement is that puberty is the end of childhood which could be as early as 13 years for the girl child.

Sections 21 and 23 of the Child Rights Act forbids child marriage and provide penalties for is contravention, the Sharia law however allows marriage of children who have reached puberty regardless of the age of the child. This has somehow generated a lot of controversies as can case be seen in the marriage between Senator Ahmad Sani Yarima and girl from Egypt who was below 18 years at



that particular point in time. While Child Rights advocates in Nigeria claimed that since the girl is below 18 years, the Senator has contravened the provision of the Child Rights Act. However, the Senator claimed that there is no age limit for marriage in the Quran and as such he cannot be held to contravene the Child Rights Act which is against his religious belief (BBC, 'Marriage between Senator Ahmad Sani Yarima and underage girl from Egypt and was investigated for having violated Nigeria's Child Rights Act of 2003).

The sections of the Act pertaining to Adoption of children also run contrary to the Quran injunctions. (Quran 33 Verses 33-34 provides as follows: 33:4 'Allah has not made for any man two hearts within him; nor has He made your wives whom you desert by Zihar, your mothers, nor has He made those whom you assert (to be your sons) your sons. These are the words of your mouths. And Allah speaks the truth and He shows the way 33:5 Call them by (the names of) their fathers; this is more equitable with Allah; but if you know not their fathers, then they are your brethren in faith and your friends. And there is no blame on you in that wherein you make a mistake, but (you are answerable for) that which your hearts purpose. And Allah is ever Forgiving, Merciful.)

**iv. Inadequate Functioning and Training of the Law Enforcement Agencies**

The Child Right Act provides for the establishment of family courts for each of the States of the Federation and the Federal Capital Territory (Section 149 of the Child Rights Act 2003) for the purpose of hearing and determining matters relating to children. These Courts are virtually non-existent in the states and the few in existence are not well equipped (Abiola14).

**v. Illiteracy**

Majority of the populace are not conversant with the content of the Child Rights Act. The legal framework for the protection of the child is not only unknown by the children or their parents, but also social welfare agencies and all other persons or bodies who are in a position to protect the rights of the children. For the Act not to be a toothless bulldog the government needs to take all necessary steps to realize

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its dreams of developing Nigerian children and giving them a future (Abiola 14).

**Conclusion**

Even though the Human Rights of every citizen in Nigeria is constitutionally entrenched under Chapter IV of the 1999 Constitution, the Children in Nigeria are not accorded any special rights as they are deemed as property of their parents. Parents in Nigeria enjoyed an absolute right to their children's obedience, services and earnings, and full control over their person and property.

The enactment of the Child Rights Act 2003 was however seen as a significant development in the recognition and protection of the rights of the Nigerian Children. The Children are now seen as having rights that are inherent human rights which are not to be perceived as optional or as a question of favour or kindness to children, or as an expression of charity.

However, notwithstanding the significant developments introduced by the Child Rights Act, Children in Nigeria today are still subjected to various forms of attacks and abuses.

It is worthy to note that our most valuable resources in Nigeria today are the Children as they are the leaders of our future. What we give to them today shapes our tomorrow. We must therefore make sure we give our very best not just monetary but also spiritual, emotional, psychological and physical support to these children.

Accordingly, the Federal Government, the various States Governments and all other major stakeholders including the parents need to do more to ensure proper, effective and efficient implementation and protection of the rights of the children in Nigeria.

**Recommendations**

It is recommended as follows:

- Concerted efforts should be made for the effective adoption and implementation of the rights and principles enshrined in the Child Rights Act 2003 in all States in Nigeria;



- Adequate measures should be provided to enforce the rights of children through the appropriate legal and non-legal mechanisms;
- The Nigerian Government should adhere to and implement international norms and standards and cooperate with international human rights mechanisms and procedures;
- The Federal Government should strengthen the National Human Rights Commission so that the Commission will be able to improve its monitoring processes and structures.
- Government at all level in Nigeria should promote the allocation of resources for the promotion and protection of children's rights
- Government at all level in Nigerian should empower children for a more effective participation in decision making and implementation of policies affecting them, and facilitate their participation
- The Constitution must be amended to make education for children up to a certain level, a fundamental right that can be enforced.

It is important to note the varieties in the minimum age limit stipulated in the various Nigerian Statutes and subsidiary legislation will pose a lot of problem in the process of interpretation. This can cause discrimination between children of same age in different parts of the country. It is therefore important for the government to review this aspect with a view to making a particular age workable for the purpose of implementing the rights of Nigerian Children.

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