



**Prof. Dr Bolaji Owasanoye**

*Implementation of UN Convention  
on the Rights of Children*

# **IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF THE CHILD IN NIGERIA**

**by**

**Bolaji Owasanoye**

Associate Research Professor

Nigerian Institute of Advanced Legal Studies/

Ag. Executive Director, Human Development Initiatives (NGO)

## **Introduction**

In 1989, international child rights law changed with the introduction of the UN Convention on the Rights of the Child (hereinafter CRC) by the General Assembly and its adoption by the Heads of Government at the UN World Summit for Children in 1990. Later in the same year, African states adopted the OAU Charter on the Rights and Welfare of the Child as a follow up to the Declaration on the Rights and Welfare of the Child adopted at Liberia on 17-20 July 1979 (AHG/ST.4 Rev.1). Nigeria ratified the CRC in 1991 and signified to the world its intention to protect the rights and welfare of children and to domesticate the Convention.

One of the local challenges to this obligation however is determining who is a child. Whereas it is possible to identify a child according to the customs of a people, it is not so easy at the national or international level. The easiest way to determine a child in a multi ethnic and cultural country and in an international agreement is by an aged based definition. But the pitfall with an age-based definition is it is arbitrary and risks the possibility of being rendered obsolete by future findings on children. On the other hand, age represents the most objective criterion for determining who falls within the framework of a child protection treaty, legislation or policy. Therefore, both the CRC and the OAU Charter define a child as a person below the age of 18 years unless under the law applicable to the child majority age is attained earlier<sup>1</sup>. The window of "a law applicable to the child" was included not only as a compromise to satisfy the demands of nations who confer adulthood earlier than 18 years but to accommodate situations in which majority may need to be conferred earlier than 18 as for example for the purpose of university admission or for the possession of a driver's license. Aside from age however, the international community adopted other universal principles on the rights of the child.

In Nigeria, the Children and Young Persons Law (CYPL) which is the basic law in most states defines a child as a person under 14 years of age while a young person is between the age of 14 and 17 years.<sup>2</sup> Outside these two definitions there is the customary definition of a child which varies from ethnic group to ethnic group due to the lack of a uniform system of customary laws in Nigeria.<sup>3</sup> In some ethnic groups a boy remains a child until initiated into an age grade society or old enough to contribute financially to community development. In others, childhood terminates at

---

1. Article 1. See the recommendation of a National Workshop on the Review and Application of the Children and Young Persons Law (Federal Ministry of Culture and Social Welfare 1991) that a child should be defined as person 0-18 years.

2. See s.2 CYPL.

3. Towards a Restatement of Customary Law in Nigeria Federal Ministry of Justice 1991.

puberty.<sup>4</sup>

Apparently, the statutory definition adopted through the CYPL is a generalisation, which is neither in conformity with the different systems of customary laws nor the perceptions of the several ethnic groups in Nigeria.<sup>5</sup> As we shall see later, uncertainty dogs the limit of child rights law. The uncertainty centres on whether a person above 14 years should be labelled a child and the lukewarm attitude of government in the provision of infrastructure to protect child rights. But the UN Convention dissolves the uncertainty relating to age by categorically declaring that a child is a person under 18 years of age. The proviso to this declaration that majority may be attained earlier if local legislation permits it does not remove the fact that 18 years was accepted as base after exhaustive debate backed by information provided by several State Parties to the Convention.

### **Traditional Concept of a Child**

Children's rights in Nigeria are up till now largely determined by traditional perceptions that are not in conformity with modernity or recent findings on children. In a few cases, practices tally with international law but in many more cases they fall below acceptable international standards because the local standards are driven by culture, religion, economic development, and level of education and system of government. But the general attitude towards children in the traditional African society is warm, exciting and positive. Regard is both physical and spiritual. In the physical, children represent proof of manhood or fertility. In the spiritual, they represent gifts from God. This is reflected in the names given to children in several cultures. In the Yoruba culture in Nigeria we have -"Olufunso" God has given me this one to look after; "Oluwaseun" - Thanks be to God; "Oluwanifemi" - God loves" me;"Omotayo" – a child is sufficient joy etc. In Igbo, we have "Chinyere" - God gave me this one, In Nupe there is "Baiwa" - Gift of God, etc,

Sometimes children are regarded as the re-incarnation of dead relatives or loved ones. This is reflected in the name given to the child, e.g. In Yoruba, - "Babatunde" - "Father has come back" or "Yeyetunde" - Mother has come back or "Malomo" - Don't go again; "Rotimi". - "stay with me" etc With such beliefs, a family which is not blessed with a child is viewed with pity, distrust or suspicion depending on the circumstances. In addition, the stability of a marriage without children is usually precarious. A childless woman may be pitied, despised, or distrusted and in extreme cases branded a witch.<sup>7</sup>

Although the majority of citizens appreciate children's rights<sup>8</sup>, it has been difficult to

- 
4. Azogu G.I.U. "Women and Children - A Disempowered Group Under Customary Law", in Towards a Restatement of Nigerian Customary Law (Federal Ministry of Justice 1991) at p. 133.
  5. *Ibid.* Onigu Otite reports that there are over 350 ethnic groups in Nigeria see Otite O, Ethnic Pluralism and Ethnicity in Nigeria (Shaneson C.I. 1990) pp 44-57.
  6. According to a study by the Institute of Advanced Legal Studies in 1993 majority of parents regard as a child anyone who is dependent on the parents. See Rights of the Child in Nigeria. Ayua and Okagbue ed. NIALS, 1993; UNICEF Study on Protection and Violations of Children's Rights in Nigeria 1999.
  7. Ifih B.N., "Children In Nigerian" in Laws Relating to Children in Nigeria (UNICEF 1988) at p. 6.
  8. Majority of parents surveyed in the NIALS study recognise that children have rights.

correlate this with reality in the sense of protection for children. Rather, emphasis has been on duty of children to obedience and recognition of power of control by parents or guardians rather than on positive concrete acts for the enjoyment of perceived rights and necessary protection. This is supported by the OAU Charter, which describes the duty of children alongside their rights. The essence of CRC however is to lay down uniform international standards for child rights and to match perception where positive with concrete actions and programmes.

### **Existing Regime of Child Rights**

The history of child rights and welfare law in Nigeria dates back to 1943 in the Children and Young Persons Ordinance.<sup>9</sup> This was retained as Chapter 32 of the Laws of the Federation of Nigeria and Lagos as revised in 1958. The same was extended to Eastern and Western regions in 1946 and Northern Nigeria in 1958. With the creation of states in 1967 many states adopted the Children and Young Persons law in exactly the same format as the original legislation. This has remained the situation with successive creation of states until the present. In addition however, each state passed laws dealing with isolated matters affecting children depending on its situation. For example, Bauchi State has a law prohibiting withdrawal of girls from school for marriage.<sup>10</sup> More recently, Edo State passed a law outlawing female genital mutilation<sup>11</sup>. These isolated examples though salutary did not comprehensively address child rights protections in all its necessary ramifications. More importantly, they do not fully answer Nigeria's obligation under the CRC.

Under Nigerian criminal law, children enjoy a variety of protection rights from harm and sexual exploitation. In spite of these provisions however<sup>12</sup>, many offences are still rampant due to the non-efficacy of the monitoring and enforcement of the criminal justice system. Correlative to the protection rights of children are the duties of parents, which cut across common law and statutes. These include duty to maintain, protect and be vicariously liable for some of the actions of children. In the case of the girl child, her recognised vulnerability is also addressed depending on the needs of the community. For example, in parts of Northern Nigeria, where many girls are discriminated against in educational opportunities and married off in their early teens, some of the affected states have adopted legislation to counter this problem.<sup>13</sup> However, laws against child marriage are generally not effective, because they are passed to satisfy one group but remains un-enforced to satisfy another.

The civil law counterpart of the Criminal code is the Infants Law, which is applicable in the states

---

9. No. 41 of 1943 as amended by No. 44 of 1945 and No. 27 of 1947.

<sup>10</sup> Withdrawal of Girls from School for Marriage Law No. 5 of 1989, Bauchi State

<sup>11</sup> Female Genital Mutilation Prohibition Law of Edo State, 2000

<sup>12</sup> Examples under the Criminal Code of prohibited acts are indecent treatment of boys under 14 years (Section 216), indecent treatment of girls under 16 years (Section 222), abduction of girls under eighteen years with intent to have carnal knowledge (Section 225), infanticide (Section 327A), killing an unborn child (Section 328; concealing birth of a child by making a secret disposition of its dead body (Section 329), child stealing (Section 371), wilful desertion of a child under 12 years old (Section 372) and dealing in children by way of selling or trading by barter (under CYPA Section 30).

<sup>13</sup> For example, in Bauchi State there is a law against the withdrawal of girls from school for marriage (Cap 170, Laws of Bauchi, 1991).

making up the old Western Region of Nigeria, excluding Lagos. The law does not apply in the Eastern and Northern states of Nigeria, which rely on the common law system inherited from Britain. The Infant's Law deals with guardianship and the custody of children and protects children from contractual obligations except in the case of necessities. All contracts by or against a child are either void or unenforceable. The proposed children's bill however contains provisions akin to those of the Infants law for adoption by all the states of the federation.

For the purpose of the Infants Law, an infant is a person under the age of twenty-one years, whereas under customary law an infant is someone who has not attained the age of puberty according to the decision in *Labinjoh v. Abake*. In other words, once a child attains puberty he or she ceases to be an infant even if the person is under 18 as prescribed by the CRC. Since most children attain puberty before the age of 18, they lose their protection if the customary law is applied although they may still be protected from contractual obligations under the Infant's Law. What emerges from this is the need to adopt the statutorily universal definition of the child as prescribed by the CRC.

Aside statute law some protection is offered by the received common law of England. Parents have a right to damages for actionable tort against their children. For example, enticement of a child under 21 years away from parents, or the seduction of a girl leading to pregnancy, shock or nervous breakdown, will entitle the father to sue for damages on the same grounds as for enticement. Similarly, an occupier has a contractual liability to any child who comes into his premises for any injury caused to the child unless he has taken adequate steps consistent with the peculiar characteristics of children as would prevent such injury. One of the limitations here is that the benefit of redress often goes to the parents and not to the victim.

Also worthy of note is the concept of legitimacy which is used to deny some children of their protection and inheritance rights. By reason of section 42(2) of the 1999 Constitution which says that no person should be denied their rights by reason of circumstances of birth, the application of the legitimacy principle to any child is unconstitutional but the retention of legitimacy legislation by many states implies that some children are still taken through the legitimisation process prescribed in the laws before they can enjoy this constitutional right. Since the matter is yet to be tested in court, it is difficult to say how the court will react, but it is incontrovertible that state law or customary practice cannot override a constitutional provision. Lack of enforcement or recognition of the constitutional provision and the retention of opposing principles in statute books diminish the impact of such provision.

### **Constitutional Provisions**

The 1999 Constitution, which is the apex law in Nigeria, has no direct provisions on the rights of children. Chapter II on fundamental objectives and directive principles of state policy spanning sections 13 – 24 however contain principles which are to guide and direct the Nigerian State in the formulation and execution of policies on child survival development and protection. Section 17 espouses the ideals of freedom, equality, justice, human dignity and the sanctity of the human person; the provision of adequate infrastructure for leisure, social, religious and cultural life; medical and health facilities for all persons; protection for children and young persons from all exploitation, and from moral and material neglect. Under section 21(a), the state is directed to

protect, preserve and promote Nigerian culture, which enhances human dignity and is consistent with the fundamental objectives. The implication of Section 21(a) is that all harmful traditional practices directed against children ought to be outlawed.

Unfortunately, Chapter II of the Constitution is not justiciable and cannot be legally enforced in a court of law, because Section 6(6)(c) of the same Constitution prevents the Courts from looking into whether or not the fundamental objectives and directive principle of state policy have been implemented. Section 6(6)(c) provides

“ the judicial powers vested in accordance with the foregoing provisions of this section shall not, except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principle of State Policy set out in Chapter II of this Constitution.”

This provision has been upheld by the courts as not being obligatory on the government<sup>14</sup> and it has remained a major obstacle to intervention to promote protection rights of children and women.

Unlike the fundamental objectives however, the fundamental human rights provisions spanning sections 33 – 44 of Chapter IV of the Constitution are justifiable and enforceable. The chapter covers provisions on right to life, dignity, liberty, fair hearing, private and family life, thought conscience and religion, expression, peaceful assembly and association, movement, freedom from discrimination and right to own property. Specifically, section 42(2) provides that no citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of birth. This particular provision is a bastion for children born outside wedlock because through it they are given equal rights as children born within wedlock. The fundamental rights provisions are however invoked more in support of adults than children because a child can only sue by its next friend and defend actions by its guardian *ad litem*.

### **Basic Principles of the CRC**

Since the adoption of the CRC the United Nations and its agencies have promoted the tenets of the Convention and today, it is the most widely assented international treaty the world has known. The CRC is founded on four basic principles of the rights of the child namely, the principles relating to the promotion of human survival, prevention of harm, promotion of human dignity and the enhancement of human development. Under each of these principles are rights which are carefully articulated. For effectiveness, the protection of these rights monitored through measurable goals of social progress while at the same time the Convention is made a part of political and public debate.

Some of the recent prominent measurable goals for the protection of the child rights are reflected in international standards assented to by government who promise to adopt them in their policies on health, education and social development. For example, the set goals for halving child malnutrition, control of major childhood diseases, eradication of polio and other childhood

---

<sup>14</sup> *Archbishop Olunmi Okogie v. Attorney General of Lagos State* (1981) 1 NCLR 218

diseases, elimination of micro-nutrient deficiencies, halving of maternal mortality, achievement of primary school education by at least 80% of children, provision of clean water and safe sanitation to communities, improved juvenile justice administration, and the application of the best interest principle in all its ramifications.

### **The Best Interest Principle**

At the heart of child rights law and the CRC is the best interest principle. Anyone who takes decisions affecting children is required to act in the best interest of the child<sup>15</sup>. The relevant article in CRC provides -

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration"

In order to underscore the best interest principle in child rights promotion the phrase "best interest of the child" appears in several places in the Convention i.e in Article 9 on separation of child from the parents; Article 18 with regard to parental responsibility for the up-bringing and development of the child; Article 20 on temporary or permanent deprivation of family environment; Article 21 on adoption of the child; Article 37 on the separation of a child in the criminal justice system from adult criminals; and Article 40 on the presumption of innocence and the treatment of a child in the criminal justice system.

In the OAU Charter on Rights and Welfare of the Child, the same phrase finds place in Articles IV(1) which provides that in all actions concerning the child undertaken by any person or authority the best interest of the child shall be the primary consideration. In Article IX(2) on freedom of thought conscience and religion parents are expected to guide the child in its best interest. In Article XIX(1) on parental care and protection the best interest principle is to be paramount. Similarly, by Article XX(1)(a) parents and all other caregivers are enjoined to ensure that the best interest of the child is their basic concern all the time. Articles XXIV on adoption, XXV(2)(a) on separation from parents and XXV(3) on alternative family care for the child are all founded on the best interest principle.

Although the term "best interest" is prone to varying subjective interpretations, depending on who is taking the decision, the circumstances in which the decision is being taken, and the cultural milieu in which the decision is taken, the principle is used as an internationally acceptable parameter to scrutinise practices which harm children and infringe on their well being and to assess governmental actions relating to children. The inclusion of the principle in the Convention and the draft Children's law is expected to counter and be ultimately used to eliminate harmful local cultural practices against children.

The principle itself is not entirely new to Nigeria's jurisprudence. Prior to the CRC, notable statutory recognition for it is found in the provisions of Matrimonial Causes Act (MCA)<sup>16</sup> and CYPL albeit with severely restricted application. In the MCA, during divorce proceedings, the

---

15. Article 3(1)

16. No. 18 of 1970 now Cap 220 LFN 1990

court is not to make a decree *nisi* absolute where satisfactory arrangements had not in all the circumstances been made for the welfare and where appropriate the advancement and education of children of the marriage under sixteen years of age.<sup>17</sup> Here, the application of the best interest principle is limited to divorce proceedings and where the children are under sixteen years of age.

Under CYPL general provisions are made for the welfare and treatment of young offenders and the establishment of juvenile courts. The Act also makes provisions for juveniles in need of care or protection. Again, the application of the principle is limited to children in need of care and protection and those who come within the ambit of juvenile justice administration. With the adoption of CRC, the restrictive application of the best interest principle is no longer tenable. All children below 18 years are under CRC regarded as needing care and protection depending on their circumstances. Article 3(1) of CRC clearly prescribes that the interest of children either as individuals or as a group should be paramount in the decisions of policy makers at the public and private sector levels.

Undoubtedly, the scope of Article 3(1) covers the child's physical, mental, spiritual, moral and social development. In view of the fact that perceptions about what is in a child's best interest may be coloured by various factors some of which as we earlier noted are culture, religion, education etc., it is important that application of the principle be standardized by legislation. By using Article 3(1) of CRC we can evaluate laws, policies and standards of Nigeria with those of other countries using the same parameter of "best interest" within the context of that environment.

At the heart of the implementation of the CRC in Nigeria is the domestication of the treaty. Varied standards found in statutory and customary laws and the multi-ethnic nature of the country indicated that the first challenge to implementation of the treaty is to domesticate it. To champion this cause, government set up in accordance with the provision of Article 43 of the CRC, a National child Rights Implementation Committee NCRIC in 1994.

## **CRC Implementation**

### **1. Domestication of CRC**

---

17. section 57(1).



The first attempt to fulfil Nigeria's obligation under the CRC to domesticate the treaty was initiated by the National Commission for Women, predecessor of the current Ministry of Women Affairs in 1992. Working in collaboration with UNICEF and other experts a draft children's law was produced which conformed to the CRC and the African Charter on the Rights and Welfare of the Child. The draft was completed sometime in 1996 and was presented for the signature of the late head of state Sani Abacha. But it got caught in bureaucracy and ethnic politics. The rumour gained ground that powerful interests were opposed the draft on the ground that it lacked cultural and religious affinity with Nigeria. Consequently, a Compatibility Committee was reportedly set up by the government to harmonise the draft with culture and religion a move, which was a contradiction because odious culture and religion are the pedestals upon which the rights of women and children have been abused for years. By sheer providence, the product of the Committee could not become law under the last military regime because the political equation changed. The responsibility for passing the law was thus placed on the states by the Constitution.

Under the 1999 constitution, children as a subject for legislation are a "residual" matter for state legislatures in as much as it is not reserved for the Federal Government under the Exclusive and Concurrent lists of the Constitution<sup>18</sup>. If the opportunity to pass the draft children's law as a decree had been seized during military governance, the same would have become state law with the return of the country to constitutional rule since section 315 of the 1999 Constitution provides that -

"Subject to the provisions of this Constitution, an existing law shall have effect with such modification as may be necessary to bring it into conformity with the provision of the Constitution and shall be deemed to be a Law made by a House of Assembly to the extent that it is a law with respect to any matter on which a House of Assembly is empowered by this Constitution to make laws"

What might appear a setback for the attempt to domesticate the CRC in Nigeria happened during the last military regime. A draft law based on the CRC was prepared with the assistance of UNICEF. Some highly influential policy makers were however said to be uncomfortable with the draft because it was not compatible with certain cultural sentiments therefore a Compatibility Committee was set up to review the draft. The outcome of its work titled Children and Young Persons Law was widely circulated as the proposal to be placed before the defunct military government before return to civil governance. Though essentially in agreement with the Convention, the draft contains some flaws which are highlighted below. It must however be noted that a comprehensive review which is yet to be as widely circulated has been made to the draft with the assistance of UNICEF and other stakeholders and this is likely to be sent to the legislature of the various states of the Federation as a model. Though not perfect, the Children and Young Persons Law of the Compatibility Committee provides a basis for sensitisation and public education and a framework for state legislatures to work with. It is therefore used as reference in this paper.

---

<sup>18</sup> Section 4 and Second Schedule, Parts I and II.

## 2. Preparation of a National Programme of Action

The first notable move made by the government after the execution of the CRC even before the preparation of a draft bill was in the preparation of a National Programme of Action (NPA) for the survival, protection and development of the Nigerian child, in 1992. The NPA was a translation of the World Summit for Children 1990 goals into doable programmes and activities. As indicated in the document, it was prepared parallel to the Federal Government's National Perspective Plan and so it represented Nigeria's social sector agenda for children.<sup>19</sup>

A multi-sectoral task force comprising representatives of the key ministries and agencies whose mandates and activities affect children prepared the NPA. The plan was that each state of the federation would later develop its State Programme of Action in order to carry then campaign to the grassroots. That plan was never implemented because the NPA was itself abandoned along the way although a few of the proposed programmes were implemented for example, actualisation of a Children Trust Fund which had been earlier set up by decree<sup>20</sup>. Till date, this document remains the most comprehensive statement of government intention on children. The NPA began with a review of the macro economic and socio-political context of the country. It then looked at each of the sectors which affect children notably health and nutrition, water and sanitation, education, children in especially difficult circumstances, social mobilisation and advocacy, monitoring and evaluation and the financial implication.

The NPA frankly admitted the fact that the survival, development and protection of children is linked to the state of the world's and national economies, the socio-political environment in which children develop and the welfare of the family, particularly the health education, and socio-economic status of the mother. Hence, the faithful implementation of the programme was subtly tied to these indicators. In 1992, the NPA was projected to cost N171.69m roughly equivalent to about \$68.6m at that time. Sector allocation is indicated below.

**Table 1 - Sector Allocation of Resource under NPA**

SECTOR	N (million)	% of Total
(a) Health	40,389.75	23.52
(b) Nutrition	779.61	0.45
(c) Education	72,989.10	42.51
(d) Water and Sanitation	56,997.05	33.20
(e) Children in Especially Difficult Circumstances	103.73	0.06
(f) Social Mobilisation and Advocacy	406.39	0.24
(g) Monitoring and Evaluation	26.25	0.02
<b>TOTAL</b>	<b>171,691.88</b>	<b>100</b>

Source: NPA, 1992

Since the programme could not be faithfully implemented due to the political crisis which beset the

<sup>19</sup> See the Executive Summary to the National Programme of Action, 1992

<sup>20</sup> No. 30 of 1990.

country 8 months after the programme was launched, the cost of implementation is now much more just as the status of children has worsened since then.

### 3. Establishment of the National Child Rights Implementation Committee

One of the earliest follow up actions to the NPA was the establishment of a National Child Rights Implementation Committee (NCRIC) made up of representatives of relevant Ministries, advocates and one NGO representative. The Committee was set up in 1994 to popularise the CRC and the OAU Charter on the Rights and Welfare of the child. Other functions of the Committee are – to review continuously the state of implementation of the Convention; to develop specific programmes and projects that will enhance the status of the Nigerian child; to collect and collate data on the implementation of the rights of the child; and to prepare and submit reports on the implementation of the children's rights for the UN and the OAU.

In spite of these salutary objectives and the importance of the NCRIC to the implementation of the CRC, law did not back its establishment. This singular fact has hindered its effectiveness and its ability to get resources for its operations. The Committee has operated at the pleasure of UNICEF and the Federal Ministry of Women Affairs and Youth Development (FMWAYD) which was established shortly before the 1995 Beijing Conference. FMWAYD took over the function of the National Commission for Women which was set up in 1984. But the Ministry had introduced into its structure a Child Development Department the first of its kind. The department sees to the implementation of the CRC in collaboration with UNICEF.

A major constrain of the FMWAYD is budgetary allocation. Compared to other ministries FMWAYD got less in budget terms since its establishment. Although child development issues cut across sectors therefore adequate education or health budget will equally impact positively on children, yet the importance of advocacy and public enlightenment especially against harmful traditional practices, which the ministry is well positioned to implement cannot be effectively tackled without adequate budget. If the establishment of the NCRIC is backed by law and it receives some statutory allocation for its work this will be supplemented by the work of the FMWAYD and other stakeholders.

FMWAYD and the NCRIC were able to facilitate the establishment of State counterparts called State Child Rights Implementation Committees before the return to civil rule. The SCRICs's mandate is the same as that of the federal. They are situated within the state ministries of women affairs, which had been created by the various states upon the directive of the federal ministry in 1996. The directive was complied with because Nigeria was then operating a unitary system of government under the military. The same is not likely to happen without dialogue under the current federal dispensation where federating units have autonomy.

Since its inauguration, the NCRIC has prepared and submitted one national report on the state of children in Nigeria to the to the UN Committee on the Rights of the Child. In the Concluding Observations of the UN Committee it welcomed the establishment of the NCRIC as a positive step but also noted that a number of factors impede the implementation of the Convention including the political and socio-economic situation of the country, resilience of customary and harmful cultural

practices, inadequate allocation of resources and commitment to the Convention's goals and ideals etc.

### **Overview of the Draft Children and Young Persons Law**

The law is referred to as the Children and Young Persons Law with 172 sections and 4 schedules, which contain regulations, forms and an annex. The law is divided into 17 parts with provisions covering rights and responsibility, protection rights, children in need of care and protection, care and supervision, how to determine paternity of children, possession and custody of children, community and voluntary homes and organisations, registration of children homes, supervision functions and responsibilities of the minister, child justice administration, supervision, approved institutions, and provisions to govern the National and State Child Rights Implementation Committees.

The draft purports to supersede all existing provisions on child rights (s.168 (1) ) but due to the peculiarity of its origin it did not repeal existing state laws.<sup>21</sup>

Being a child of circumstance, the draft is replete with contradictions and inconsistencies, which show that it is a compromise document. These inconsistencies are found in its outlining, poor division into parts and more importantly, in provisions which do not accord with Nigeria's treaty obligations under CRC. Of this, more will be said later. Furthermore, the draft attempts to capture all institutions related to children under one umbrella thereby making it cumbersome, unnecessarily wordy and difficult to understand.

1. The law begins by incorporating the provisions of Chapter IV of the 1979 constitution as if the Constitution would be inapplicable without the section. With or without section 1, Chapter IV of the Constitution applies to all laws and all persons including children. In any case, by this attempt the law throws up other issues for example the duty of parents to guide the religious instructions which their children receive and the kind of association which they keep. An unrestricted application of Chapter IV like the right of a child to freedom of thought conscience and religion and the freedom of association may prevent parents and guardians from using the best interest principle to guide their wards.
2. The birth of every child must be registered and the child must be given a name. (S.3 )  
By implication, the National Population Commission which is charged with the duty to register births and deaths by Decree No.69 of 1992 has to ensure that Births and Deaths registry which is by law situated in Local Government Areas nation-wide are functional. In practice however, this is not so. Therefore, this right is just one example of several rights, which can only be enjoyed if proper administrative steps are taken.
3. The right of the child to health is safeguarded by section 4. Every child under 2 years of age must be fully immunised. Any parent who fails to immunise the child commits an offence.

---

<sup>21</sup> This is not surprising since the draft recognised that children as a legislative subject is a matter for states. State laws, which are not incompatible, would have supplemented the draft.

4. Because the child has a right to parental care and protection the state is not allowed to arbitrarily take a child away from the parent except for the purpose of education, welfare or pursuant to a court order. Similarly, parents are expected to take care of their children within their means. But the law is silent on what will happen if the means of the parents are insufficient to give the child a decent upbringing as recommended by the Convention.
5. By section 7 the development right to education is preserved. Every child is accorded a right to free and compulsory universal primary education. Every effort must be made by parents to give secondary education also but this is not free. In lieu of this the child must be given vocational education. Strangely however, the government is enjoined in the section to provide universal primary education for children, implying that laws made by government to enable it govern is a moral adjuration and not a living document. This is one of the several inconsistencies and legislative inelegance of the draft
6. Section 7(6) preserves a fundamental right for a girl child who gets pregnant during her education. She is to be given every encouragement to complete her education. This provision is welcome and should supersede the current practice whereby school authorities expel pregnant girls on the excuse that they will negatively influence other students. The section recognises that a child mother can become a responsible adult if given adequate support.
7. Section 8 directs that children in especially difficult circumstances (CEDC) be given special protection measures commensurate with their circumstances. Since most of such children are in state run homes, this implies adequate funding for the homes. The position now however is that most of such homes are inadequately funded and many rely on donations from charitable organisations.
8. An interesting part of section 9 is paragraph 1 which allows a child to sue any person who contributed to an injury or neglect he or she suffered from that person before during or after birth such injury may be physical or emotional. By implication, a child may sue its mother for insufficient care during gestation. If the child is born mentally deformed then it can sue by a next friend. Though it appears radical, the provision is an extension of section 309 of the Criminal Code Act which provides that “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”. The right of the child crystallises when it has completely proceeded in a living state from the body of its mother whether it has breathed or not as recognised by section 307 of the same Code. The addition by the draft law is that the child has a right if it also suffers an injury post birth.
9. By section 9 special protection is given to unborn children to inherit from their parents if the parents die before they are born. Although the draft refers to parents who die intestate implying that they left no will. It is submitted that the same right can be enjoyed by the child even if there was a will, which excluded the child because he/she was not born when the will was made. This interpretation conforms to the provision of section 42(2) of the

1999 constitution on right to freedom from discrimination by reason of circumstance of birth. But in another dimension, it lends support for the argument that an *en ventre sa mere* (unborn child) is a human being even while in the womb. At another level, it supports the arguments of anti-abortionists whether or not this was contemplated is not clear.

10. Section 10 preserves the common law rule of incapacity of a minor (i.e. a person yet to attain adulthood) to enter into contractual obligation except for necessities. The section provides immunity to children from suits even after they become adults. It does not matter if the child ratified the contract. The provision complements the Infants Relief Act currently applicable in some states.
11. Duties of children as prescribed in the OAU Charter are found in section 11. The only limitation to these is the age and ability of a child.
12. Sections 13 preserves the best interest principle. It is complemented by sections 12 and 14. Every one charged with the upbringing of a child must do so with utmost care. The sections are again complemented by section 9(1) which allows a child to sue upon attaining adulthood, any person who inflicted or contributed to any injury or neglect suffered by the child.
13. Sections 15 to 36 cover the protection rights of children. They cover child marriage, betrothal, tattoos and skin marks, all forms of female genital mutilation, exposure to dangerous drugs, use of children in criminal activities, abduction from custody with or without transfer abroad, exploitative child labour including begging, sale and trafficking in children, sexual abuse and unlawful sexual intercourse with children, recruitment into armed forces and exposure to harmful publications including those on violence and pornography. All these offences are punishable with stiff penalties ranging from heavy fines to life imprisonment. Undoubtedly, protection provisions are at the heart of child rights laws therefore they cannot be trifled with. Unfortunately, the draft does not go far enough in some cases and is contradictory in others. In particular are sections 15 - 18 on child marriages. Although the law prohibits child marriage it unfortunately defines a child for the purpose of the sections as a person under 14 years of age only. This is in utter disregard of findings on the harmful effects of child marriage to the mental and physical wellbeing of the girl child. The provision seeks to satisfy the desire of those who prefer to marry girls aged 14 – 18 and is one of the outcomes of the cultural compatibility exercise. Another disturbing compromise is found in section 24(2) on domestic help. Although it prohibits exploitative child labour it allows children to be used as domestic help on the condition that the child is provided with the basic things of life. This begs the question of what the basic things are and the risks to which child helps are exposed. There is no credible mechanism, which may be employed to monitor that a child has the basic things of life in the secrecy of a private home. The proper thing would have been to outlaw using children as domestic helps thereby making it a strict liability offence to do so. It is of course realised that only improved economic situation can reduce or eliminate child labour. Similarly, in section 26 the draft says no person shall have sexual intercourse with a child except in lawful marriage

thereby implying that a child can be married lawfully. It is a negative complement to the odious provisions in sections 15 – 18.

14. Other protection measures introduced by the law relate to the power of the state government to request a child assessment order (s.37), emergency protection order (s.38) power of specialised children police to remove a child from danger to a safe accommodation, (s.39), power of authorised persons to bring children in need of care and protection before a court (s.46), of the government or other appropriate person to obtain a care and supervision order generally (s.47), and power of court to make education supervision orders (s.54),

By reference to specialised children police the draft says in section .101(1) that this special unit will be established within the existing structure of the police because there is no such unit in existence at the moment. Again, this is a challenge thrown up by the draft because states do not have their own police force and cannot create nor mandate the creation of special units within the police. This provision will have to be sidestepped in state laws.

15. One of the innovations in the draft is that it permits the use of scientific test to determine the paternity of a child where it is in dispute in a civil proceeding.(Part VII). In making an order under this part, the court must take account of religious precepts. But it is not clear whether it is the precepts of the mother or the father, which will count, or both. Furthermore, the consent of the parties who will donate blood must be sought and obtained. To underscore the voluntary nature of the process, where the court gives a direction that paternity should be determined and any party to whom direction is given fails to take any step to comply with the direction, he does not commit an offence but the court may draw any inference from the refusal of the person. to comply with a direction.
16. Part VIII mistakenly printed as Part VII comprising (sections 66 to 79) is on possession and custody of children and it addresses situations where the parents of a child are not living together. Elaborate procedure is introduced to safeguard the welfare of the child so that the circumstances of birth may not affect him or her. S.66(1) say where a couple give birth to a child outside marriage, either of them can apply or they may jointly apply to the court for an order of parental responsibility. S.66(2) anticipates that parental responsibility agreements may be concluded by the parties in accordance with rules made by the Chief Justice of the Federation.. The court is empowered to make different orders in the interest of the child. Despite elaborate provisions on possession and custody it is surprising that the draft did not seize the moment to unify the rules on adoption and fostering of children. It is ominously silent on these.

### **Child Justice Administration**

Parts XIII, XIV and XV sections 99 – 153 cover the whole gamut of juvenile justice administration. These parts are special because they supercede the existing regime under the Children and Young Persons Law currently in force in all states except otherwise stated. Juvenile justice administration is internationally recognised as a special arm of the wider system of administration of justice because of the appreciation that child offenders are special and should

not be treated in the same manner as adult offenders. The argument is that the state should not expose children who have committed offence to the formal criminal process in order not to foreclose their rehabilitation and reintegration into society

Juvenile justice administration in Nigeria involves a number of government agencies and laws. As such, a child offender ought to be processed through various stages comprising the police, lawyers, judicial officers, social workers and prison officers in a manner which shows sensitivity to the best interest principle earlier discussed. Although not all children must pass through every stage yet current experience is that child offenders are treated as adults. Many are convicted and sent to prison without ever making contact with a social worker or getting the opportunity to be heard.

Section 99 of the draft law provides that

“No child shall be subjected to the criminal justice process or criminal sanctions, but a child alleged to have committed an act which would constitute a criminal offence if he were an adult shall be subjected only to the child justice system and processes set out in existing laws.”

Section 100 addresses one of the most serious problems of child justice administration, which is adverse publicity. By s.100 child offender’s privacy must be protected. There must be no publicity about the trial or investigation. Secondly, under the draft law the police are mandated to explore disposal of the case without resort to trial. (s.102) In addition, a child offender has the following rights, presumption of innocence, to be notified of charges, to remain silent, to the presence of a parent or guardian, to legal representation or free legal aid. (s.103).

Under the draft, a child offender must be carefully processed through the criminal justice system. In particular, detention must be a last resort; parents must be immediately notified or as soon as practicable. Where there must be detention it must be in a secure accommodation or a community home. (s.105). The exception is where the offender has attained 15 years of age, or the offence is a violent one, a sexual offence or punishable by not less than 14 years imprisonment or the offender has a history of absconding from remand. (s.111(5)). This is a salutary strategy to avoid child offenders from being sent to prison or kept in police cells as awaiting trial. The challenge is for there to be sufficient homes in lieu of prison or police cells. When a child is before a court the proceedings must be conducive to the best interest of the child with every encouragement given him or her to participate in the trial (s.108) and every opportunity given the family to participate (s.109). Very elaborate provisions are made with regard to the mode of the trial.(ss. 108 – 110).

Before a juvenile trial is concluded, social workers referred to as appropriate officers must investigate the background of the offender.(s.112) The essence is to guide the court determine an appropriate order in the case. The range of orders which may be made by a court include imposition of fines, damages or a compensation, security for good behaviour given by parent or guardian and remand in custody in a secured accommodation or kept in a place of detention. The court is not allowed to send a child to prison, subject to the death penalty, execute



a death penalty against an expectant or nursing mother. (s.113-114). Other possible judicial orders are listed in s.116. These are to dismiss the charges, discharge the offender, place the child under supervision of an officer, commit the child by a corrective order to the care of a guardian, send the child to an approved institution, order the child to participate in counselling or undertake community service, order the parents to pay a fine, damages or compensation, or enter into recognisance to exercise proper control over him or her, make an order for the treatment of the child, or make an order for fostering, guardianship or placement in a community or educational institution. As a rider, the court can deal with the case in any other manner appropriate to it. The assumption here is that it will be in the best interest of the child. It should be mentioned that the court is to receive periodic reports on the offender and where there is improvement in behaviour the court is to be informed for the possibility of a more favourable order.

Sections 117 – 153 deal with a number of provisions on how to deal with institutional and non-institutional orders. These deal with how appropriate public officers are to monitor a child under institutional and non-institutional orders. The objective of an institutional order is to afford an opportunity for training and treatment through care, protection, education and vocational skill to assist the child to be socially constructive and productive roles in society.(s.129(1) Of particular importance is the fact that a female child offender under institutional order shall be treated fairly, receive no less care, protection assistance treatment and training than a male child. She is also to be given special attention as to her personal needs and problems.(s.129(3)). The indication here is that correctional institutions must be properly funded for the objectives of institutionalisation to be achieved.

Another innovation in the draft is found in s.131, which says that government should keep track of developments in juvenile justice administration, by research. Check the data and periodically design appropriate policies to address the problems.

### **Monitoring**

Part XVI sections 154 – 162 deal with monitoring provisions through child rights implementation committees, which are specifically established at the national state and local government levels. Prior to the return to civil rule in 1999, the National Child Rights Implementation Committee (NCRIC) and the State Child Rights Implementation Committees (SCRIC) were operating somehow especially at the national level. The performance of states and the few LGAs in which the committees existed varied significantly depending on a number of factors<sup>22</sup>. The provisions in Part XVI were introduced and could have worked under a military set up with a unitary style but not under a federal structure especially where the subject matter falls under the constitutional ambit of states. The challenge with the return to civil rule is that each state may adopt its own monitoring mechanism. Undoubtedly, the best monitor is the civil society. This is not to say that a national strategy cannot be evolved but it is not likely to be successfully centrally controlled except there is some monetary inducement to back it up.

---

<sup>22</sup> See UNICEF Report on Child Rights Implementation in Nigeria (UNICEF, 2000); see also Bolaji Owasanoye, "Situation Report in UNICEF Zone B" Paper presented at Workshop on CRC, CEDAW and Draft Children's Law for Speakers of State Houses of Assembly, Wives of State Governors in Zone B, Benin January 16-17, 2001.

Whatever the case, it is not likely to be done through a single legislation for the whole country.

There are several pitfalls in the draft law some of which we have mentioned. But there are others. Firstly, the best evidence rule in section 13 of the draft ought to appear as one of the earliest sections in view of its integral importance to the whole subject of child rights. Secondly, several matters of detail which should be banished to regulations, rules or some other subsidiary instrument made under the law are included in the main law e.g. procedural details on child assessment and emergency protection orders, powers of the specialised children police and judicial orders which may be made. The relevance of these provisions is not in doubt but they are more appropriate for the rules of procedure recommended under s.45. Their inclusion makes the draft unnecessarily wordy and lengthy.

In an attempt to make the law a one-stop legislation for all matters relating to children several provisions are included on institutions which deal with or should deal with children. Some of these are already in existence in some states under other names but they do not exist nation-wide. Secondly, there are institutions proposed which the state has no power to create e.g. the specialised children police which states cannot create. Institutions recognised in the draft as critical to child rights promotion are however proposed these are Community Homes in part IX, Voluntary Homes in Part X and registered children homes in part XI.

One of the most fundamental omissions is the silence on the mode of instituting actions on behalf of children where the appropriate person charged with the responsibility does not. Such person may be the parent or guardian or a state official. Where these do not act there ought to be opportunity for affirmative actions on behalf of children. It is therefore suggested that the category of person who can institute actions on behalf of children should be widened. Furthermore, the rule of evidence contained in section 154(1) of the Evidence Act Cap 112, Laws of the Federation of Nigeria 1990 on the admission of evidence of children must be relaxed to accommodate what children have to say. Also, the draft failed to propose uniform rule for adoption and fostering of children.

In spite of its shortcomings, the draft law provides a framework for enactment of child rights legislation for Nigeria in line with the CRC and the OAU Charter. The challenge is to modify *in extensio* what is proposed in it to conform to Nigeria international obligation.

### **Children and the Sharia Legal System in Nigeria**

One cannot conclude this paper without discussing the dimension introduced to the protection of the rights of children by the Northern states of Nigeria. As is widely known, Islam is one of the two dominant religions in Nigeria, which is predominantly practised in the North such that the customs and culture of the people are virtually fused with the practice of the religion.

In 1999, shortly after return to civil rule, Zamfara states in the North decided to introduce a Sharia legal system in the administration of justice contrary to the provision of the constitution which provides in section 10 that the Government of the Federation or of a State shall not adopt any religion as state religion. The Sharia Courts (Administration of Justice and Certain Consequential

Changes) Law came into effect on the 27<sup>th</sup> of January, 2000 ostensibly to apply to Moslems alone but its application has been extended beyond the adherents of Islam as reports indicate that non-Moslems have been tried under the system<sup>23</sup>.

The biggest impact of the system on children is in relation to the criminal justice system.. The Sharia legal system does not take into account the need to treat children in the criminal justice stream differently and so section 5(b) of the Zamfara Law gives Sharia courts blanket jurisdiction over criminal proceedings in Islamic law or relating to any offence, penalty or forfeiture, punishment or other liability in respect of an offence committed by any person or against the state. By this provision child offenders are liable to lashing, whipping, amputations etc without receiving any privilege except that section 7(v)(a) provides that a Sharia court may exclude the public from attending its sittings where juveniles are involved or in the interest of justice. By implication, juveniles must appear before Sharia courts.

So far, no rules have been made to exclude juveniles from the public sittings of Sharia courts but the law has been harshly implemented against children. Some examples will suffice. Zamfara State defiantly implemented the Sharia code against a child mother in December last year. Bariya Magazu, a peasant girl child aged between 13 and 17 was found pregnant without being married and she did not have sufficient evidence to identify the one she said could be the father of the child out of three men who slept with her. The case was surrounded by some controversies. The first relates to the age of the child victim. While she, though unsure, put her age at 13 – 14, newspaper reports put it at 17. The Sharia court judge said that as long as she started menstruating she is considered a responsible adult. The girl's evidence was that she was coerced to have intercourse while the media said her father owed money to the three men she identified as the possible father. The men were acquitted for insufficient evidence and Bariya was sentenced to 180 lashes, 100 for being pregnant and 80 for false accusation against the men. The sentence was to be carried out 40 days after delivery of the child, which would have been January 27, 2001. A number of NGOs offered to prosecute an appeal of the sentence on behalf of the girl but the appeal could not be prosecuted because the family was threatened and it withdrew from the matter.

Due to the outrage the episode generated both within and outside the country, the Zamfara State government carried out the sentence before the date in order to forestall an injunction from a higher court. Although the case drew the ire of the international community against Nigeria, it did not change anything least of all the attitude of those determined to implement Sharia.

In another Northern State, Kebbi, an Upper Sharia court in Birnin Kebbi sentenced a 15 year old boy to have one of his hands amputated for stealing N32,000.00 (about \$250.00 ) from a businessman. His accomplices were lashed 50 strokes of the cane publicly and 18 months imprisonment. Sentences like amputation and other serious sentences are subject to the ratification of the State Sharia Implementation Committee, which will recommend to the State Executive Council.

---

<sup>23</sup> The Guardian, Thursday May 24, 2001, at p.3

Contrary to the defiance of Sharia states, the courts in Nigeria have ruled that Sharia is applicable to personal law and not penal law. What the Constitution allows under section 277 of the 199 Constitution, is for a State to establish a Sharia Court of Appeal to adjudicate on issues of personal law. As recently as year 2000, the Court of Appeal in *Maida v Modu*<sup>24</sup> held that application of the Sharia is to personal law and no more. Before this case, the Supreme Court made a similar pronouncement in *Usman v Kareem*<sup>25</sup>. Besides, the courts have held that it is unconstitutional for State to extend the jurisdiction of a Sharia Court of Appeal beyond the personal law stated in the Constitution.<sup>26</sup>

In spite of strident public criticism both local and international, against the Sharia legal system, Zamfara state and other states in the North introduced the Sharia legal system in the face of a helpless federal government who failed to challenge the unconstitutionality of the action in order not to upset the country's fragile political balance. The general belief is that the political elite of "Sharia states" capitalise on the ignorance of their citizens to sell them a theocratic state in lieu of genuine development.

### **Conclusion**

Implementation of CRC in Nigeria has been shaped by many factors, which impede development and prevent Nigeria from maximising the potential offered by its rich natural resources. In spite of these natural resources, especially petroleum, Nigeria has fared worse than other sub-Saharan African countries in basic social indicators. Undoubtedly, improved governance is the fastest route to improvement in the country's capability to fulfil its international obligations. But there are other internal factors.

Inability of the country to harmonise the legal framework on children right is traceable to the federal constitutional arrangement which does not situate children and women issues within the legislative purview of the central government but with state legislatures, thereby making it difficult to establish a uniform legal framework applicable throughout the country. Bearing in mind that law is crucial, we must note that even if passed, if it is not implemented the situation will not improve.

Poverty, illiteracy and ignorance, also help to perpetuate discriminatory practices. In this condition it has proven difficult for government to enforce laws and policies and implement programmes to uphold the rights of children. Consequently, the broad picture around the country on the implementation of the UN CRC is one of tokenism and scattered legal and policy initiatives, which lack uniformity or real impact. Related to this is the overbearing influence of culture and tradition that fail to recognise the individuality of children beyond seeing them as gifts from God. Practice is driven more by cultural sentiments rather than by constitutional, legal or international obligations.

The next factor is the breakdown in the fabric of the family institution. The family, which is the

---

<sup>24</sup> (2000) 4 NWLR pt 651 at 99

<sup>25</sup> (1995) 2 NWLR pt 379 pg 537

<sup>26</sup> see also *Muninga v Muninga* (1997) 11 NWLR pt 527 pg 1

vehicle of protection for children, is also the vehicle for abuse. The collapse of the family institution is not unconnected with poverty, which has systematically increased since the continued decline in the price of oil upon which the economy depends. The introduction of structural adjustment programme (SAP) at the insistence of the developed countries with the connivance of the IMF and the World Bank has further impoverished families. The out come of SAP is a wider gap between the rich and the poor and the destruction of the social and cultural safety nets previously offered by the family.

Unfortunately, the various poverty alleviation programmes offered by government have not worked as they ought due to poor design, weak implementation, corruption and inadequate funding. Amongst such programmes are the Peoples Bank and Community Banking projects<sup>27</sup>, Better Life for Rural Women Programme, the Directorate of Foods Roads and Rural Infrastructure Programme<sup>28</sup>, (DFRRI) the National Directorate of Employment Initiative (NDE)<sup>29</sup>, the Family Support Programme (FSP) and the Trust Fund established under it,<sup>30</sup> the Family Economic Advancement Programme<sup>31</sup> (FEAP) and the present government's Poverty Alleviation Programme (PAP) which was recently re-christened National Poverty Eradication Programme (NAPEP).

Rapid growth in population currently put at 2.8% annually has further compounded the ability of the country to address child rights development. One of the outcomes of this rapid urbanisation and the creation of more children in especially difficult circumstances, those engaged in worst forms of child labour, prostitution, deviant behaviour and children in conflict with the law. The inability of the government to get an accurate record of the population continues to hinder planning not as a result of inertia on the part of government but because false figures are returned by those who see census only as a basis for resource allocation and share of political power.

In the light of these myriad of problems, child rights protection and the implementation of CRC is merely inching forward. Judging by the nature of policy pronouncements and the support coming from development agencies however, government appears determined to overcome the odds and fulfil its obligations whether domestic or international.

---

<sup>27</sup> introduced by Decree no.22 of 1990 and Decree No. 46 of 1992 respectively

<sup>28</sup> established by Decree No. 4 of 1987

<sup>29</sup> established by Decree No. 24 of 1989

<sup>30</sup> vide Decree No. 10 of 1995

<sup>31</sup> established by Decree No. 11 of 1997