

NEW LEGISLATIONS, SAME OLD RESULTS? AN APPRAISAL OF THE IMPACT OF CHILD'S RIGHTS LEGISLATIONS IN NIGERIA SINCE 2003

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ABSTRACT

It was hoped that Nigeria's Child's Rights Act and State versions of this Law which came into effect on 31st July 2003 and afterwards respectively would achieve at least two crucial purposes: first address the shortcomings noticed in the pre-31st July 2003 legislations and also to help increase the awareness and appreciation of child's right issues among the public in Nigeria. Successfully addressing the shortcomings noticed in the pre-31st July 2003 legislations and increase the awareness and appreciation of child's right issues among the public in Nigeria will be of immense benefit to the cause and welfare of the Nigerian child. In this article, we examined the Child's Rights Act 2003 and State versions of this Law in the various States in Nigeria to see if they achieved these purposes. Our inquiry reveals that there was not much success in achieving these purposes. We offered some recommendations to assist in achieving these purposes.

Key words: Child's Rights legislations, Nigeria, impact, public opinion

1.0 INTRODUCTION

There has been a flurry of specific legislations in Nigeria each addressing significant host of rights of children in Nigeria since August 2003 unlike in previous decades. The 2003 legislation that opened the flood gates in this respect was the Child's Rights

Act 2003 passed by the National Assembly.¹ Many States in the Nigerian Federation soon followed in replicating this Law. It was hoped that the promulgation of the 2003 Act would place child's right issues in the front burner of the legal and human rights space in Nigeria² as well as filling the "gaps" in the various areas of law relating to the rights of the child before 2003. It is therefore of paramount interest to establish if these new legislations have been able to achieve these purposes. Has the public appreciation of child's right issues increased? Have these post 2003 legislations on the rights of the child filled these pre- August 2003 "gaps"?

Prior to 31st July 2003, understanding and appreciation that children have specific rights that should be respected, promoted and enforce appears not be well conceptualized and therefore not wide spread. For instance, P.O. Ebigbo observed (of about the 80s within this period) that, "During this period maternal and infant mortality were very high and the concentration was mainly on health, immunization and control of diarrhea and supply of water. Social mobilization was lowly written and right based programming not been introduced"³

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¹ Many states of the Nigerian federation followed, due to Constitutional issues, the enactment of the 2003 legislation, which is a federal Act, with their own enacted Laws closely modeled after the pattern of the 2003 legislation.

² There was not much awareness and interest in child's rights matters prior to 31st July 2003.

³(The State of Nigerian Children in the Last 50 years, (J Coll. Of Med. June 2011; 16 (1) 57-76 at 58.

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Apart from these, there were some noticeable “gaps” in child’s rights laws that needed to be addressed. It was therefore hoped that the Child’s Rights Act that commenced on 31st July 2003 will address those issues. To assist in this we posed some pertinent questions: What are the key existing legislations on child’s rights in Nigeria prior to the Child’s Rights Act 2003 being promulgated and what were the “gaps” in these legislations that needed to be addressed? What was the public perception of child’s rights issues before 31st July 2003? Has the “gaps” in the legislations that existed on child’s rights before 31st July 2003 been addressed by the Child’s Rights Act 2003 and similar state versions of the legislation? Has the Child’s Rights Act 2003 and similar state legislations resulted in greater awareness among the public and their better appreciation of child’s rights issues in Nigeria?

The aim of this paper is to evaluate the true impact of the Child’s Rights Act 2003 and similar state legislations on the rights of children in Nigeria. This study is significant in at least two respects. First, if there is greater public awareness that children have specific rights to be respected, promoted and enforced, it is likely to result in more wide spread acceptance and compliance with the provisions of the Act. Further, if the noticeable “gaps” in the provisions of the laws on child’s rights are addressed it will enrich the jurisprudence on child’s rights issues in Nigeria and make its laws in this area more effective in protecting the interests of children.

This inquiry is limited to Nigeria and Nigerian legislations. Nigerian legislations specifically on child's rights matters and those dealing with subjects that affect Nigerian children. The purpose is to evaluate the provisions of these specific child's right based legislations and those dealing with subjects affecting children's rights using essentially two tests: Acceptability and sophistication. "Sophistication" is used here to imply the capacity to overcome or improve on the "gaps" noticed in the pre-31st July 2003 legislations in this area. In this respect, "Acceptability" refers to the capacity of the post- 31st July 2003 legislations to scale up public awareness of child's rights matters in general and not to just to specific provisions of legislations relating to Nigerian children.

This research is a combination of the doctrinal, analytical, descriptive and comparative method of research. Except for legislations, the data collected is fundamentally through secondary sources with the internet forming a core base of the data collected.

There are many Post -31 July 2003 commentaries on the Child's Rights Act. Some of them adopted the approach of discussing specific areas of the law as provided for in the Act as it relates to Nigerian children while others adopts a holistic approach preferring to overview or a synoptic analysis the provisions of the entire Act. Among the writers who attempted a holistic approach to analyzing the effects of the Act include those who did an overview of the provisions of the Act and based on this arrived at conclusions of the effect of the Act. One of such is O.

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I Tajudeen.⁴ Tajudeen reviewed some provisions of the Act and reached the general conclusion that the Act is “constitutionally and culturally sensitive, progressive, compatible, relevant, problem-solving and above all in the best interest and welfare of the Nigerian child”⁵

The approach in this paper is different from that taken by I. O. Tajudeen’s in a number of key areas although both papers attempted an evaluation of the Child’s Rights Act 2003. First, the instrument of the evaluation of the Act as a whole in this paper is derived from data obtained from segments of public opinion of the impact of the Act while Tajudeen’s paper focused on some key provisions in the Act from where he arriving at a conclusion. Secondly, in this paper we also used pre- 31st July 2003 position of the law in various areas to demonstrate the effect of the Act on “gaps”⁶ noticed in the pre-existing provisions of other laws on child’s rights

In same category is Adimula’s attempted exposé on Child’s Right Act 2003 particularly as it applies to Kwara State⁷. Adimula restated, in summary, the provisions of the key Parts of the Act. He then attempted to relate some specific provisions,

⁴ Legal Framework for the Protection of Child Rights in Nigeria,” AGORA International Journal of Juridical Sciences No. 3 (2015) 46-52 <<http://univagora/jour/index./php/aijjs>> (accessed 12/2/2020)

⁵ Ibid

⁶ n 4

⁷ BiolaAdimula “An Overview of the Nigerian Child Rights Act, 2003: Kwara State as Case Study” Nigerian Bar Journal Vol. 3 No.3 2005, 65-78

especially in Part II⁸ of the Act, to specific instances in Kwara State. He concludes by stating that all the rights stated in the Act cannot be compromised for any reason “as all the rights stated in the Act are for the progress, physical and intellectual development of our children”⁹. Adimula’s work is, as the title reveals, just an overview of the Act. No attempt was made to gauge the popularity of child’s right issues before or after the Act came into force. And no further attempt was made to identify “gaps” in the pre- Child’s Rights Act order, if any, which the Act has filled or attempted to fill

However, within this category, there is another group that attempted a more detailed analysis of the provisions of the Act. Among this group is Adeyemi¹⁰. Adeyemi’s offers a detailed historical and analytical discussion of, among others, the nature of the Rights of the Child and an overview of the contents of the Child’s Rights Act and similar legislations in the various states in Nigeria that had re-enacted the Act in their State. In addition, he devoted a part of the work to constraints to effective and successful implementation of Child’s Rights in Nigeria. By “Child’s Rights” he implied the Child’s Rights Act and similar legislations in the various states in Nigeria that had re-enacted the Act in their State. He outlined these constraints to include Legal Constraint, Cultural Constraint and Socio-economic Constraints. In respect of the legal challenges, Adeyemi bemoaned the lack of national applicability of the Child’s Rights

⁸ Rights and Responsibilities of the Child.

⁹ Adimula (n 9) 78.

¹⁰Adedokun A. Adeyemi “Child Rights Promotion, Enhancement, Protection and Implemetation” in Umenweke et al (ed.) *On the Bench the Judicial Imprints of Justice C.E.K. Anigbogu & Contributing Essays* (Awka, SCOA Heritage Nigeria Limited, 2013) 274-322.

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Act in Nigeria due to non-adherence by the Federal Legislature (National Assembly) to section 12 (2) of the Constitution of the Federal Republic of Nigeria 1999 as amended¹¹. This non-adherence to section 12 (2) means there is no constitutional bases for enactment of Child's Rights Act at the Federal Level in Nigeria with the implication that States are left to enact their own Child's Rights Laws since the Federal Legislature lacks the competence to legislate on "Children" which is neither in the Exclusive Legislative List or Concurrent Legislative List¹². He also listed three rights¹³ which are, in his view, facing cultural constraints in their implementation. He concluded that the passage of the Child's Rights Act require a lot of public enlightenment to reverse the cultural attitudes and practices constraining the fulfillment and enjoyment of the provisions of this Act. He further listed some rights¹⁴ which are curtailed in their fulfillment and enjoyment by some socio-economic factors such finances¹⁵. He also dwelt extensively on Family Court¹⁶ particularly on the establishment, basis, jurisdiction and powers,

¹¹ The section essentially empowered the National Assembly to legislate on matters which are not on the exclusive legislative list if they do so to fulfill Nigeria's treaty obligation provided such legislation is ratified by a majority of the Houses of Assembly in the States that make up the Nigerian Federation.

¹² Adeyemi (n 12) 295-296.

¹³ Freedom of expression and right to be heard, protection against all forms of physical or mental violence etc and protection against harmful social and cultural practices.

¹⁴ These rights include the right to privacy, proper development, child labour and social security.

¹⁵ Adeyemi (n 12) 298-299.

¹⁶ Created under section 149 of the Child's Rights Act.

structure, personnel, operation and constitution of the Court as well as the role of the Judiciary in its establishment and operation¹⁷. Finally, he urged everyone, as a responsibility, to take up the advocacy for children's rights, ensure the enactment of the Child's Rights Law in those States which have not yet enacted the Law, ensure its implementation by among other measures, establishing and ensuring the vigorous operation of the various Child's Rights Implementation Committees¹⁸ and the Family Court¹⁹.

Although Adeyemi's work suggested that there was a need for "every one of us to take up the advocacy for children's rights"²⁰ there was no attempt in the work to explain the level of public awareness of child's rights matters prior to the Child's Rights Act on 31st July 2003. Further, no effort was made to inform us of any changes that the Child's Rights Act has brought to Child's Rights advocacy since it was enacted in July 2003. Similar to Adeyemi's discourse is also Ladan's work.²¹Ladan examined two issues: whether Nigeria is obligated to promote and protect children's rights, using law, among other measures and examination of the rationale, structure and contents of Child's Rights Act 2003.²² In resolving the first issue, Ladan referred to the United Nations Convention on the Rights of the Child and AU mediated African Charter on Rights and Welfare

¹⁷ Adeyemi (n 12) 298-299.

¹⁸ Adeyemi (n 12) 300-318.

¹⁹Ibid 318-319.

²⁰ Ibid

²¹TawfiqLadan, "The Nigerian Child Rights Act 2003: An Overview of the Rationale, Structure and Contents" Nigerian Bar Journal Volume 2 No. 2 April 2004 p. 219-240.

²² Ibid, 220

of the Child both of which Nigeria has ratified as constituting reference framework for determining the obligation of any State party including Nigeria.²³ Further, he finds domestic obligation on Nigeria to promote and protect children's interest in Chapter 2 of the 1999 Constitution of Nigeria.²⁴ In responding to the second issue, he rationalized the Child's Rights Act came into being because of the non-child's rights specificity of Chapters 2 and 4 of the 1999 Nigerian Constitution as well as the non-child's rights and responsibilities specificity of the Children and Young Persons Laws²⁵ Ladan then outlined the structure of the Act as being a rights/ responsibility approach and gave a summary of the provisions of the Parts of the Act. He concluded that in its rights/ responsibility approach, the Act is constitutionally and culturally sensitive, progressive, compatible, relevant, problem solving and in the best interest and welfare of the Nigerian Child.²⁶ The emphasis of Ladan's is, however, different from the focus of this paper. Unlike Ladan's contribution, this paper focuses on the impact of the Act and similar legislations both in raising public awareness on Child's Rights issues and improving the existing substantive law provisions on Child's Rights.

A different category of academic literature includes the work of non-legal scholars who tried to evaluate the effects of the Act using a non-doctrinal approach. In this category is the work of

²³ Ibid 220 – 227.

²⁴ Ibid 226 -227.

²⁵ Ibid 227-228

²⁶ Ibid 240.

Udo and Edem²⁷. The aim of their intervention was” to analyse of the implementation of Child Rights Law so far²⁸ To carry out this analysis, the posed three question: How do Civil Servants, Industrialists and Traders differ in their assessment of the implementation of Child Rights Law in Nigeria. How do male and female Civil Servants, industrialists and traders differ in their assessment of the implementation of Child Rights Law in Nigeria? How do Civil Servants, Industrialists and Traders in Urban and rural area differ in their assessment of the implementation of Child Rights Law in Nigeria? Based on the analysis of data collected, they recommended that the provisions of laws that protect children from abuse be strictly enforced and that there be stiffer penalties for parents and guardians that break the child Rights Law²⁹ They concluded by stating that “the child Rights Law if well implemented could lead to a wholesome development of a Nigeria child (sic). Such a child would avoid (sic) himself or herself all the opportunities created by Government for one to have a meaningful life”³⁰ Our work is doctrinal while Udo and Edem is non-doctrinal. Also, the research questions are essentially different from that in this work.

²⁷ “An Analysis of the Implementation of Child Rights Law in Nigeria” African Research Review (Vol. 5(1), Serial No. 18, January 2011) 129-138.

²⁸ Ibid, 129.

²⁹ Udo, Akpan Oko and Edem, Eno (n 24) 135

³⁰ Ibid.

2.0 KEY LEGISLATIONS ON RIGHTS OF CHILDREN IN NIGERIA BEFORE CHILD'S RIGHTS ACT 2003 AND "GAPS" NOTICED IN THEIR PROVISIONS.

There are several legislations in Nigeria dealing with aspects of Children's Rights before the promulgation of the Child's Rights Act of 2003. These legislations essentially took a sectoral approach to tackling issues affecting the rights of children in Nigeria and as such there was no single legislation with comprehensive provisions on most of the rights of the Nigerian child.

The oldest legislation in Nigeria essentially on child's rights issues is the Children and Young Persons Law. This law was first promulgated in 1943 as Children and Young Persons Ordinance.³¹ The aim of this Law was essentially to provide rules for the welfare of juveniles and the treatment of young offenders and establishment of Juvenile Courts. As the title of the law suggests, its scope covers only children and young people. This law categorizes children as persons who are less than fourteen years while Young People are categorized as people who have attained fourteen years but has not attained seventeen years.³² The implication is that persons who are seventeen years and above are not within the ambit of this Law. "Children" and "Young People" are collectively referred in Laws as "Juveniles".³³ This Law essentially provides that where any person under the age of seventeen is apprehended and cannot be brought forthwith to court, the Police can inquire into

³¹ Ordinance No. 41 of 1943.

³²For instance, Children and Young Persons Law (Cap. 21) Laws of Enugu State 2004, section 2 and Children and Young Persons Law (Cap. 20) Laws of Anambra State 1991, section 2.

³³Ibid

the matter and release the person on self recognizance or by his parents or guardian, with or without sureties.³⁴ The Police will not release if the offence of Young Person involves homicide or grave crime, or it is in the interest of the person to remove him from association with reputed criminals and prostitutes or if he believes that the release of such a person will defeat the ends of justice.³⁵ This latter provision concedes a lot of powers of the Police in terms of deciding to release or not to release and is noticeable defect. The assumption that the police will ordinarily work for the “ends of justice” may not be counted on. This is because Nigerian police, as have been shown, often readily abuse powers entrusted which require the application of subjective decision. The Laws also created a Juvenile Court constituted by a magistrate alone or with such other person as the Chief Judge shall appoint.³⁶

Limiting criminal matters involving persons below seventeen to only courts manned by Magistrates belies the reality that some persons in this category are still charged to court for offences that are not necessarily tried in courts of summary jurisdiction. This Law, including its variants, criminalizes the disclosure of

³⁴ Children and Young Persons Law (Cap. 21) Laws of Enugu State 2004, section 3 and Children and Young Persons Law (Cap. 20) Laws of Anambra State 1991, section 3.

³⁵Children and Young Persons Law (Cap. 21) Laws of Enugu State 2004, section 3 and Children and Young Persons Law (Cap. 20) Laws of Anambra State 1991, section 3.

³⁶Children and Young Persons Law (Cap. 21) Laws of Enugu State 2004, section 6 (1) and Children and Young Persons Law (Cap. 20) Laws of Anambra State 1991, section 6 (1).

information that is likely to lead to the identification of the young person and children who appear before the Juvenile Court.³⁷ However, surprisingly it made an exception to this rule by empowering the court to permit the publication of things likely to lead to the identification of the young person and children.³⁸ It is inconceivable that a situation might arise that will justify the disclosure of information that will lead to the identity of child or young person that appeared before a Juvenile Court or a similar court. The Law also makes the parent or guardian vicariously liable for the actions of the Juvenile offender by requiring them to pay any fine, damages or costs imposed on a Juvenile offender by the courts except they can satisfy the court that they have not conducted to the child or young person's crime.³⁹ Generally, children of less than seven year are criminally responsible for any act or omission⁴⁰ while those who are less than twelve years but more than seven years are generally not criminally responsible unless it can proved that they knew the implications of their action.⁴¹ The intervention by this Law tends to put this whole burden on parents and

³⁷Children and Young Persons Law (Cap. 21) Laws of Enugu State 2004, section 6 (6) and Children and Young Persons Law (Cap. 20) Laws of Anambra State 1991, section 6 (6).

³⁸Ibid

³⁹ Children and Young Persons Law (Cap. 21) Laws of Enugu State 2004, section 11(1) and Children and Young Persons Law (Cap. 20) Laws of Anambra State 1991, section 11(1).

⁴⁰ See for instance, Criminal Code (Cap. 36) Laws of Anambra State 1991 section 20 (1), Criminal Code (Cap. C 38) Laws of Federation 2010 section 30.

⁴¹ See for instance, Criminal Code (Cap. 36) Laws of Anambra State 1991 section 20 (2), Criminal Code (Cap. C 38) Laws of Federation 2010 section 30.

guardians by making them to be vicariously liable for the actions of their Juvenile wards. This idea of imputing vicarious liability on parents and guardian for the actions of the wards stems from the nurturance approach to appreciation of child rights issues. Children, under this approach, are seen as objects to be nurtured by parents and guardians because of their future usefulness and not necessarily because they are autonomous individual.⁴² In other words children are seen as objects of intervention rather than legal subjects.⁴³ However, international and trans-national movements in child's rights advocacy show that the notion or approach of child's autonomy or self determination is now accorded equal, if not greater, attention with nurturance approach.⁴⁴

The Pre- 31st July 2003 position of children with respect to contract is cluttered. The contract with a child⁴⁵, according to the law as contained in some pre-31st July 2003 legislations could be legally valid, void or voidable. Valid contracts are essentially contract for necessities which does not contain harsh or oppressive terms,⁴⁶ contracts to pay tax or duty in respect of

⁴²Michael D.A. Freeman, "The Limits of Children's Rights" in M. Freeman and P. Veerman (eds) *The Ideologies of Children's Rights* (Kluwer Academic Publishers, 1992) 29-46

⁴³ *Ibid*, 30.

⁴⁴ Michael D. A. Freeman, "Introduction: Rights, Ideology and Children" in M. Freeman and P. Veerman (eds) (n. 43) 3-6

⁴⁵ This Law actually refers to children as "infants". An infant is defined as a person who has not attained the age of twenty one years. See Contracts Law (Cap. 30) Laws of Anambra State 1991, section 2.

⁴⁶See for instance, Contracts Law (Cap. 30) Laws of Anambra State 1991, section 18 (1). The term "necessaries" is defined in Contracts Law (Cap. 30) Laws of Anambra State 1991, section 17 as "a contract

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his trade or business,⁴⁷ contract for the burial of his child, wife or husband⁴⁸, lawful and reasonable contract by an infant not to compete with his employer after the termination of his apprenticeship, service or employment with that master⁴⁹ and a contract of apprenticeship service or employment for the overall benefit of an infant.⁵⁰ Indeed, a child's liability to pay for "necessaries" include repayment of loan made to him to purchase necessities and which he actually used to do so,⁵¹ payment to persons who bought and delivered necessities to him at his request⁵² and "necessaries" supplied to his wife or child⁵³ Voidable contract include beneficial contracts by a child for acquisition of an interest in property of a permanent nature with continuing obligation.⁵⁴ A voidable contracts remains valid

for the supply to an infant of such goods, services, instruction (including formal education) and benefits as are suitable to the condition in life of the infant and his actual requirement at the time the contract was made and includes a contract by an infant for his education, apprenticeship and training in business or otherwise, insofar as the same is for the overall benefit of such infant and is not vitiated by harsh or oppressive terms"

⁴⁷ Contracts Law (Cap. 30) Laws of Anambra State 1991, section 21 (1)

⁴⁸ Contracts Law (Cap. 30) Laws of Anambra State 1999, section 23

⁴⁹ Contracts Law (Cap. 30) Laws of Anambra State 1991, section 25 (2)

⁵⁰ Contracts Law (Cap. 30) Laws of Anambra State 1991, section 26 (1)

⁵¹ Contracts Law (Cap. 30) Laws of Anambra State 1991, section 22 (1)

⁵² Contracts Law (Cap. 30) Laws of Anambra State 1991, section 22(2)

⁵³ Contracts Law (Cap. 30) Laws of Anambra State 1991, section 23.

⁵⁴ Contracts Law (Cap. 30) Laws of Anambra State 1991, section 28 .

until repudiated⁵⁵ Void contracts, on the other hand, include contract of loan other than a contract for a loan for the purchase of necessities and which he actually used for that purpose,⁵⁶ contract for goods and services other than necessities,⁵⁷ account stated, even where some of the item in the account are necessities,⁵⁸ any contract of guarantee,⁵⁹ a release of a legal claim or contract to release a legal claim,⁶⁰ recitals in a deed made during infancy,⁶¹ an agreement to refer any dispute to arbitration,⁶² any bill of exchange drawn, endorsed or accepted by a child whatever the consideration and whether there is consideration or not⁶³ and any security given in respect of a loan even if the loan was used by the child to purchase necessities.⁶⁴ A contract void against a child cannot be subsequently ratified

⁵⁵Contracts Law (Cap. 30) Laws of Anambra State 1991, section 2.

⁵⁶ Contracts Law (Cap. 30) Laws of Anambra State 1991, section 30(2) (a)

⁵⁷ Contracts Law (Cap. 30) Laws of Anambra State 1991, section 30 (2) (b)

⁵⁸Contracts Law (Cap. 30) Laws of Anambra State 1991, section 30 (2) (c)

⁵⁹ Contracts Law (Cap. 30) Laws of Anambra State 1991, section 30 (2) (d)

⁶⁰ Contracts Law (Cap. 30) Laws of Anambra State 1991, section 30 (2) (e)

⁶¹ Contracts Law (Cap. 30) Laws of Anambra State 1991, section 30 (2) (f)

⁶² Contracts Law (Cap. 30) Laws of Anambra State 1991, section 30 (2) (g)

⁶³ Contracts Law (Cap. 30) Laws of Anambra State 1991, section 30 (2) (h)

⁶⁴Contracts Law (Cap. 30) Laws of Anambra State 1991, section 30 (2) (i)

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by him⁶⁵ even if he attains majority⁶⁶ or new consideration given.⁶⁷ Also, the child shall not be liable for a contract arising out of a contract which is void⁶⁸

The complex⁶⁹ nature of the provisions of this law makes it difficult to appreciate. This is a “gap” in this Law that needs to be addressed if people are to appreciate and conform to the provisions of the Law and ultimately benefit from it. Further the retention of twenty one years as the age of majority went against current of Pre- 31st July 2003 international treaties which fixed the age of majority to less than eighteen years.⁷⁰

Under our various inheritance legislations, children are not permitted to make wills and if they do, such wills are void.⁷¹ However, children can inherit the immovable and movable

⁶⁵ Contracts Law (Cap. 30) Laws of Anambra State 1991, section 30 (3)

⁶⁶ Contracts Law (Cap. 30) Laws of Anambra State 1991, section 31(1)

⁶⁷ Contracts Law (Cap. 30) Laws of Anambra State 1991, section 31 (2)

⁶⁸ Contracts Law (Cap. 30) Laws of Anambra State 1991, section 34 (1)

⁶⁹There are at least thirty one sections dealing with matters relating to the capacity of children to enter into contract with it numerous subsections. Comprehending such enormous provisions in this area is a daunting task for legal practitioners much less a lay man no matter ho educated.

⁷⁰For instance, Convention on the Rights 1990, Article 1.

⁷¹See for instance, Administration and Succession (Estate of Deceased Persons) Law (Cap. 4 Laws of Anambra State 1991) section 139.

property subject to the *lex situ*.⁷² Similarly, children can inherit immovable property in intestate succession. In both testate and intestate succession, where children are beneficiaries the personal representatives of the deceased is empowered to appoint trustees for residue or share for the child.⁷³ Where a personal representative intends to appropriate estate fund in or towards satisfaction of any legacy bequeathed by the deceased or of other interest or share in the estate as the personal representative may seem just and reasonable, he is enjoined to have regard “to the rights of any person who may thereafter come into existence”⁷⁴

Labour Act⁷⁵ categorizes persons under eighteen years into two for purposes or work: those who are under twelve years⁷⁶ and those who are apparently⁷⁷ over twelve years but less than eighteen years.⁷⁸ Persons in the former category are not allowed

⁷²Administration and Succession (Estate of Deceased Persons) Law (Cap. 4 Laws of Anambra State 1991) section 164 (1) & (2).

⁷³ Administration and Succession (Estate of Deceased Persons) Law (Cap. 4 Laws of Anambra State 1991) section 116 (1)

⁷⁴ Administration and Succession (Estate of Deceased Persons) Law (Cap. 4 Laws of Anambra State 1991) section 115 (7).

⁷⁵Labour Act (Cap. L1) Laws of the Federation 2010

⁷⁶ Known as “Child” (Children). See Labour Act (Cap. 4 Laws of Federation of Nigeria 2010) section 91 (1).

⁷⁷The Act did not expressly state that this category are over twelve years but this may be implied from the definition of “Child” and the provisions of sections 58, 59, 60, 61, 62 and 63 of the Act on the rights of children and young persons to engage in certain types of work.

⁷⁸Known as “Young persons” See Labour Act (Cap. 4 Laws of Federation of Nigeria 2010) section 91 (1).

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to do work outside the home and the work they are permitted to do at home must be such that does not hinder their physical development⁷⁹ The latter category although permitting persons above twelve years to work however graded the types of work they can do apparently according to their age.⁸⁰

Children, like every other person, have a fundamental right to be heard in court⁸¹ Evidence Act regulates how children are to tender evidence⁸² in court. The pre- 31st July 2003 Evidence Act essentially provides that every person is competent to give evidence in court unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to these questions by reason of among others, tender years.⁸³ The implication of this is that a child can testify as a witness in all judicial proceedings in Nigerian courts.⁸⁴In Criminal trials, this meant first, the evidence a child witness who does not, in the opinion of the court, understand the nature of an oath may still be received in evidence, though not on oath, if, in the opinion of the court, such child is possessed of sufficient intelligence to justify the reception of the evidence,

⁷⁹LabourAct (Cap. 4 Laws of Federation of Nigeria 2010) section 59 (1).

⁸⁰ Labour Act, sections 58, 59, 60, 61, 62 and 63

⁸¹ Constitution of the Federal Republic of Nigeria, section 36 (1). Indeed the use “a person” suggests that children are also contemplated in this section.

⁸² Including oral evidence

⁸³ Evidence Act (Cap.112) Laws of the Federation 1990, Section 155 (1).

⁸⁴Except in the courts specifically mentioned in section 1 (4).

and understands the duty of speaking the truth.⁸⁵ Secondly, if the court is of the view that the child is sufficiently intelligent and also understands the need to speak the truth, then the deposition of the child may be taken though not on oath and shall be admissible in evidence in all cases where such deposition if made by an adult would be admissible.⁸⁶

There are also legislations affecting children such as Adoption Laws,⁸⁷ Infant Law⁸⁸. The Adoption Law of Anambra State for instance provides for the adoption of juveniles.⁸⁹ An adoption order is not to be made by the court unless any of these conditions has been fulfilled by the applicant. First, the applicant or, where it is a joint application⁹⁰, one of the applicants must have attained the age of twenty –five years and is at least twenty-one years older than the juvenile. In the alternative, the applicant has attained the age of twenty-one and is a relative of the juvenile. Or the applicant is the mother or father of the juvenile.⁹¹

There were also legislations⁹² dealing with the issue of guardianship.⁹³ The surviving spouse is made an automatic

⁸⁵Evidence Act (Cap.112) Laws of the Federation 1990, Section 183 (1).

⁸⁶Evidence Act (Cap.112) Laws of the Federation 1990, Section 183 (2).

⁸⁷ For instance, Adoption Law (Cap. 6) Laws of Anambra State 1991.
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⁸⁹“Juvenile” is defined in to mean a person who is under the age of seventeen years. (Adoption Law (Cap. 6) Laws of Anambra State 1991, section 2)

⁹⁰From a married couple.

⁹¹ Adoption Law (Cap. 6) Laws of Anambra State 1991, section 4 (1).

⁹²Such as Infants Law (Cap. 70) Laws of Anambra State 1991.

guardian of an infant⁹⁴ on the demise of a spouse and he is also to act in consort with any other person appointed by the deceased before his demise or by the court, as it deems fit.⁹⁵

3.0 PUBLIC PERCEPTION OF CHILD'S RIGHTS IN NIGERIA BEFORE 31ST JULY 2003.

As we stated earlier, public perception of child's rights before 31st July 2003 was not framed in terms of children having rights.⁹⁶ It even posited that child's rights matters suffered the fast out – dated cliché that assumes that parents, guardians and older persons in the society always had the best interest of the child at heart and thereby in the best position to cater for the child's needs⁹⁷ This may account for unsavory sail the Act had during its first sojourn for approval in the National Assembly. This is because the law makers of House of Representative rejected the Act⁹⁸ at second reading stage on 30th October 2002.⁹⁹ That

⁹³A guardian is defined as a person who has legal authority or duty to care for another's person or property especially because of the other's infancy, incapacity or disability. A guardian may either be appointed for all purposes or for a specific purpose (E. I. Nwogugu, Family Law in Nigeria (3rd Edition) (2014, HEBN Publishers Plc) citing Black's Law Dictionary (8th Ed) 2004 p. 725.

⁹⁴An infant is defined in section 1 of the Infants Law (Cap. 70) Laws of Anambra State 1991 as "a person under the age of twenty-one years but purposes of Settlement and Guardianship does not include married persons.

⁹⁵ Infants Law (Cap. 70) Laws of Anambra State 1991.

⁹⁶P.O. Ebigbo (n 5)

⁹⁷Ojebiyi et al, "Societal Awareness of Child's Rights Act Among Rural and Urban Dwellers in Ogun State" J. Hum. Soc. Sci. & Crtv. Arts 2016, 11 (1 & 2): 14-25 at 3

⁹⁸Then the Child's Rights Bill.

position of the law makers appears to be a reflection of the prevailing dearth in societal appreciation of children issues capable of being framed in terms of rights.

4.0 GAPS NOTICED IN PRE-2003 LEGISLATIONS AND ATTEMPTS TO ADDRESS THEM IN CHILD’S RIGHTS ACT 2003 AND OTHER SIMILAR LEGISLATION

Child’s Rights Act appear to have resolved the issue of the dichotomy between “children” and “young people” as used in the Children and Young Persons Laws of the various states in Nigeria. The Act, in line with earlier international documents on Child’s rights¹⁰⁰, defined a “Child” as a person under the age of eighteen years.¹⁰¹ This is commendable and is also in the Child’s Rights Laws¹⁰² of the various States in Nigeria.

The power given to police to deny release to a child offender because he feels the “ends of justice” will be defeated if he is released is no longer available under the Act. The Police are accordingly enjoined to, without delay; consider the issue of release of an apprehended child offender.¹⁰³ It appears¹⁰⁴ from

⁹⁹ Augie, Amina “Brief on the Road to the passage of the Child’s Rights Act (C.R.A) 2003” Report of the two-day Advocacy Group consultative meeting held at Peninsular Resort, Epe Road, Ajah, Lagos State from the 21st – 24 April (2004) p. 9.

¹⁰⁰Convention on the Rights of the Child and African Charter on Human and Peoples Rights.

¹⁰¹Child’ Rights Act (Cap.C 50) Laws of the Federation of Nigeria 2010, section 277.

¹⁰²For instance,

¹⁰³Child’s Rights Act (Cap) Laws of the Federation of Nigeria 2010, section 211 (1) (b)

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the provisions of the Act that it is only the Court that has power to authorize an apprehended child to be kept in police detention.¹⁰⁵ This definitely is progressive because as was noted in this work, police tend to abuse powers given to them especially when the power requires them to exercise their discretion.

The Act, instead of Juvenile Courts, with limited jurisdiction¹⁰⁶ established a Family Court at the High Court and Magistrates Court level¹⁰⁷ and with seemingly¹⁰⁸ limitless jurisdiction in both civil and criminal matters.

The Act criminalizes, like the Children and Young Persons Laws of the various states, disclosure of information that is likely to lead to the identification of the child whose matter is before the Family Court¹⁰⁹ and, unlike the Children and Young

¹⁰⁴The Act was specific in giving this power to the court with no mention of such power to the police.

¹⁰⁵Child's Rights Act (Cap) Laws of the Federation of Nigeria 2010, section 212 (3)

¹⁰⁶In terms of fines and punishments that can be imposed on the convicted child offender.

¹⁰⁷Child's Rights Act (Cap) Laws of the Federation of Nigeria 2010, section 150

¹⁰⁸The ability of the court to impose fines and punishment although apparently limitless because matters before such courts can be heard and determined by a High Court judge is however still subject to the Constitution of the Federal Republic of Nigeria which may, expressly or impliedly, limit or authorize the limitations of the powers of the judges.

¹⁰⁹Child's Rights Act (Cap. 50) Laws of the Federation of Nigeria 2010, section 157

Persons Law¹¹⁰, the Court is conceded no power to permit a disclosure of the child's identity.

The Act essentially retained the provision of the Children and Young Persons Law which makes the parents or guardian vicariously liable for the actions of the child by requiring them to pay any fine, damages or costs imposed by the Family court on a child except the parents or guardian can satisfy the court that they have not condoned to the child's crime.¹¹¹

The Act appear to have simplified the rights of a child in respect of contracts by restricting such contract to being valid or void¹¹² unlike the pre-31st July 2003 position which made room for such contracts to be voidable at the instance of the child. In addition, there is the blanket definition of a child as a person below the age of eighteen years under the Act¹¹³

The Act did not also disturb the pre-existing inheritance and succession rules as contained in legislation around the States. There is nonetheless an innovative provision recognizing that an unborn child conceived during the lifetime of his deceased father, has a right to be considered in the distribution of the estate of the deceased father who died intestate.¹¹⁴

The Act did not find anything wrong with the provisions of Labour Act on child labour. It therefore reiterates the relevant

¹¹⁰ n 38

¹¹¹Child's Rights Act, section 220

¹¹²Child's Rights Act, section 18

¹¹³Child's Rights Act, section 277.

¹¹⁴Child's Rights Act, section 17 (2)

provisions of Labour Act¹¹⁵ on labour by young people.¹¹⁶ In addition the Act seeks to prohibit any form of transaction involving children as commodities.¹¹⁷ The Act made efforts¹¹⁸ to particularize the meaning of “work in any capacity” used in section 59 (1) (a) of the Labour Act.

The Act empowered the courts to accept unsworn evidence of children in judicial proceedings not only in criminal cases but also in civil matters.¹¹⁹ A written sworn evidence of a child witness can be used in any judicial proceedings, criminal or civil, as if the child gave a sworn evidence before the court.¹²⁰

The provision of the Act with respect to adoption¹²¹ is different from that in the laws of the States before the Act¹²² For an adoption order to be successfully made to the court under the applicants, if they are a married couple, are expected to present a marriage certificate or sworn declaration of age, birth certificate or sworn declaration of age, two passport photograph of each applicant, medical certificate from a government hospital and any other information the court may require for purposes of the adoption.¹²³ The provisions of the Act in this regard consists a significant departure from the provisions under some state legislations like that in Anambra State. This “development”

¹¹⁵Labour Act, Sections 58,59,60,61,62 and 63.

¹¹⁶Child’s Rights Act, section 29.

¹¹⁷Child’s Rights Act, section 30 (1)

¹¹⁸Child’s Rights Act, section 30 (2)

¹¹⁹Child’s Rights Act, section 160 (1)

¹²⁰Child’s Rights Act, section 160 (2)

¹²¹ Child’s Rights Act, section 126 (1)

¹²²For instance, Adoption Law (Cap. 6) Laws of Anambra State 1991.

¹²³Child’s Rights Act, section 126 (1)

appears to be targeted at restricting same- sex couples or partners from adopting children in Nigeria. This is because same-sex couples cannot marry in Nigeria and if they marry elsewhere their marriage will not be recognized in Nigeria.¹²⁴ Therefore by requiring same-sex couples or partners to provide their marriage certificate and passports an opportunity is provided for the courts to ensure that the extant law that forbids same sex marriages is not violated. The mandatory age difference between the applicant for adoption and the person to be adopted in contained in some state legislations is retained the Act by requiring the applicants to show evidence of their age.¹²⁵

The Act gives right to a member of a child's family or an appropriate authority right to apply to the court to appoint the person or authority joint guardians with the parents of the child where the person or authority bringing the application feels that the parents of the child or one of the parent is not fit to a guardian of the child¹²⁶A surviving parent is given a right to appoint a guardian who will start acting after his death¹²⁷ Also a single parent is given right to appoint a guardian over his child who will act in the event of his death.¹²⁸A family member or an appropriate authority appointed as joint guardian with an unfit parent or parents is given the right to apply to court to be made a sole guardian with such order as to custody and right to access to the parent (s) as the court may deem fit having regard to the welfare of the child.¹²⁹The court may order the parents or parent

¹²⁴See Same-Sex Marriage (Prohibition) Act 2015, section 1.

¹²⁵Child's Rights Act, section 126 (1)(b)

¹²⁶Child's Rights Act, section 83 (2)

¹²⁷Child's Rights Act, section 83 (3)

¹²⁸Child's Rights Act, section 83 (4)

¹²⁹Child's Rights Act, section 83 (5)

who are joint guardian with a member of the child's family or an appropriate authority pay to such member of the child's family or an appropriate authority some money towards the maintenance of the child¹³⁰ These provisions were introduced by the Act.

5.0 HAS CHILD'S RIGHTS ACT 2003 AND OTHER SUBSEQUENT LEGISLATIONS RESULTED IN GREATER AWARENESS AND BETTER PUBLIC PERCEPTIONS OF CHILD'S RIGHTS ISSUES AND ULTIMATELY CHANGE OF BEHAVIOR TOWARD CHILDREN?

It is rightly posited that the "ambition" of legal regulation is to change behaviour.¹³¹ Viewed from this perspective, in order to determine the "success" of every law we need to evaluate how far it has gone on changing or igniting a societal behavioral change. We assume thereby that the underlying aim of legislations is to bring about behavioral change in the society towards the subject of the legislation. On this basis, our "safe ground" supposition is that the aim of the Child's Rights Act is to drive up public awareness issues bothering on children being entitled to rights and therefore change societal attitude towards this issue. Along this line studies have suggested that in Ogun State in Nigeria, violations of child's rights is tied to low or lack of awareness of the existence Child's Rights Law.¹³² In other words, high awareness of the existence and provisions of

¹³⁰Child's Rights Act, section 83 (6)

¹³¹Bilz & Nadler, "Law, Moral Attitudes and Behavioral Change" Eyal Zamir & Doron Teichman (Eds.) *The Oxford Handbook of Behavioral Economics and the Law* (2014) <www.law.northwestern.edu/Bilz-Nadler-LawMoralAttitudesPageProof> (accessed 21/3/2020)

¹³²Ojebiyi et al (n 102)

the Child's Rights Act could have translated to observance and respect for child's rights. Also, low level awareness of the existence of Child's Rights Law in Niger State has been identified as one of the factors hindering the protection of Child's Rights in Niger State.¹³³ Another study¹³⁴ attributes low level of education and marital status as influencing awareness of the Act and knowledge of the contents of the Act. A 2008 work¹³⁵, however, suggests on the contrary that there is a greater awareness of the rights of children due to enactment of the Child's Rights Act and "the controversies it generated" In a particular Local Government Area¹³⁶ in Akwa Ibom State South South of Nigeria acceptance was apparently not in issue rather the perception that the provisions of the Act infringed entrenched cultural beliefs and practices¹³⁷

¹³³ P.A. Adama, "An Appraisal of the Protection of the Rights of the Child in Niger State" <kubanni.abu.edu.ng/bitstream/123456789/8318/1/AN_APPRAISAL_OF_THE_PROTECTION_OF_THE_RIGHTS_OF_THE_CHILD_IN_NIGER_STATE.pdf> pp. 1- 144 at 134 (accessed 25/3/2020)

¹³⁴ Uzoma Okoye, "Knowledge and Awareness of the Child's Rights Act among Residents of a University town in Enugu State, Nigeria" https://www.researchgate.net/publication/259078077_Knowledge_and_awareness_of_the_child's_act_among_residents_of_a_university_town_in_Enugu_State_Nigeria

¹³⁵ James Abiola, "Societal Perception of Child's Rights: A Case Study of Minna Town" <www.nials.nigeria.org/projects/SOCIETAL_PERCEPTION_PROJECT.pdf> (accessed 25/3/2020)

¹³⁶Uruan Local Government Area

¹³⁷Modish Project "Child's Rights Act and Challenges of its Implementation among Secondary School Students in Uruan Local Government Area of Akwa Ibom State"<<http://www.modishproject.com/child-rights-acts-and-challenges-of-its-implementation-among-secondary-school-students->

6.0 CONCLUSION

Our work reveal that before the Child's Rights Act, there were legislations that had provisions in virtually all area of life as it affected the rights of children in Nigeria. Despite these legislations, the idea of children having rights that can be enforced was alien to the perception of majority of the public. The Child's Right Act was enacted by the National Assembly and signed into law by then the President, Olusegun Obasanjo on 31st July 2003. Many States subsequently enacted Child's Rights Laws in their various States. Some studies observed that despite these there is not much awareness of child rights issues at least in parts of Nigeria while in some parts there appears to be increased awareness about child rights issues linked to the Child's Rights and other legislations.

We further observed that the Pre-31st July 2003 position on child's rights in Nigeria suffered from a number of hindrances. First, the inability to conceptualise children issues in terms of rights rather than privileges and secondly, some "gaps" in the provisions of existing legislation which needs to be improved to bring Nigerian children in line with global trends. The Child Rights Act and other subsequent Post -31st July 2003 legislations tried to remedy these issues. The success of this trial appears to be equivocal. First, the anticipated greater awareness Child's Rights Act was supposed to create turned out not to be overwhelming with some reports suggesting greater awareness while others suggest otherwise.¹³⁸ Second, although the Act and subsequent legislations appear to show

in-uruan-local-government-area-of-akwa-ibom-state/ (accessed 4/1/2021)

¹³⁸See the findings of Ojebiyi et al note 102, P.A. Adama note 139 and James Abiola, *ibid*.

“improvements” in some areas, in some others the Act, and subsequent similar legislations, merely reaffirmed the Pre-31st July 2003 position¹³⁹ and in other areas the Act even created “gaps” too that needs to be filled.¹⁴⁰

It is posited that moral attitudes, to a particular thing, can be changed by regulation in a number of ways other than through information campaign. Example linking a behavior, which a regulation views as bad, to that which the public find offensive or re-characterising a behavior, thought to be harmless, to that which is costly to the society. Alternatively, the regulation might tax or subsidize with the hope of changing attitudes either by demonizing or normalizing a behavior.¹⁴¹ We can apply any of these to Child’s Rights legislations rather than merely hoping that legislations *ipso facto* will generate awareness of the public and consequently bring a change in behavior from generally anti or ambivalent attitude to child’s rights to a positive one. For instance, there could be a deliberate attempt to link failure to appreciate the rights of children with being equivalent to promoting certain practices which are universally viewed as offensive in Nigeria such as infanticide and brutality to children. It could be emphasized that the reason these offensive actions persist is because of the low level of appreciation of child’s rights. Also the cost implication of illiteracy to the individual

¹³⁹For instance, the Act did not improve on the provisions of Labour Act on children but rather incorporated them into its provisions.

¹⁴⁰ For instance, Act legislated on “best interest of the child” as the template for evaluating every action, both by government officials and non-government officials, towards children. However, apparently following international pattern, no attempt was made to streamline the meaning of this phrase.

¹⁴¹ Bilz & Nadler (note 138)

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and society could be hyper –highlighted to drive home the need for education of children as a right. Further, incentives could be deliberately offered to promote the respect of rights of children, and ultimately awareness and taxes could be employed to discourage the disrespect for the rights of children.

Deliberate attempts should be made to pepper the “gaps” noticed in these Post – 31st July legislations to bring them in line with contemporary realities. For instance, there is increasing indication that the provisions in the Act and other similar legislations on child labour may need to be reviewed in line with current realities. There is, therefore, a need to amend these provisions to tackle emerging issues such as high number of out-of-school children in Nigeria¹⁴² with most of these children engaged in child labour of different varieties.

¹⁴²Estimated to be between 10.5 million to 13.2 million.