

**A LEGAL PROGNOSIS OF CHILD LABOUR UNDER
 THE CHILD RIGHTS ACT ***

A. Introduction

The right of every individual to respect for the dignity of his person is protected under section 34 of the Constitution of the Federal Republic of Nigeria, 1999.

According to that section:

Every individual is entitled to respect for the dignity of his person and accordingly - ... (c) no person shall be required to perform forced or compulsory labour¹

The “person” contemplated by the above provision of the constitution may be a man, a woman or a child. Whereas a measure of labour may be lawfully permissible when reasonably necessary², there is no work that should be so labourious to the point of imposing an obligation that is akin to “making bricks without straw”³.

Children are particularly to be protected against exposure to involvement in tasks that may translate to unlawful labour.

The implication when they are so exposed and the problems that have been encountered against the backdrop of child labour will be examined as the

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¹ “Forced” or compulsory labour as used in section 34(1) (C) above does not include any of the exemptions recognized under section 34(2)(1)(a) – (e) of the constitution.

² For example it may be necessary to engage in labour in the event of any emergency or calamity threatening the life or well being of the community or if it forms part of normal communal or other civil obligation for the well being of the community. See Section 34(2)(d) and (e) of the 1999 constitution.

³ This expression is traceable to the account at Exodus chapter 5 verses 6 – 18 where pharaoh king of ancient Egypt ordered that Israelites who were then his slaves no longer be provided straw to make bricks in order to add to their burden.

pith of this paper. The way forward at least in the foreseeable future will be discussed within the context of the new world order, universal practice and basic human norms to stress the appropriateness of keeping the child labour free, while making the most of his potentialities to grow and assume responsibility for the future of making “bricks with straw”.

B. Who is a child?

A child is generally recognized as any person that is not yet an adult. Postulations as to the nature of the ‘child’ have been advanced in specific enactments.

According to the United Nations Convention on the Rights of the Child⁴ a child is:

Every human being below the age of 18 years unless under the law applicable majority is attained earlier.

Article 2 of the African Charter on the Rights and Welfare of the Child states that a child is:

Every human being below the age of 18 years.

The Child’s Right Act⁵ adds that a child is:

A person under the age of eighteen years.

The consensus as it appears is that anyone that is yet to attain the age of 18 is universally considered to be a child. A though child is not necessarily delineated by a fixed age. Children’s abilities and maturities are said to vary so much that defining a child’s maturity by calendar age can be misleading⁶.

Accordingly, the age of majority may⁷ be attained earlier as clearly stated in Article 1 of the UN Convention on the Rights of the Child.⁸ Nevertheless, the definition that will be relied upon in this paper is that a child is a boy or a girl that is so called on account of falling within every age category that is before 18.

⁴ See Article 1 of the United Nation’s Convention on the Rights of the Child 1989.

⁵ See Section 277.

⁶ See Boyden and Ling “what works for working children” Stockholm Radda Barnen and Unicef 1988, pp 9-30.

⁷ “Majority” Signifies adulthood.

⁸ Under the Children and Young Persons Act, a child is anyone under the age of 14. while anyone above 14 but less than 18 is a Young Person.

Everything about the laws to which reference has been made suggests that a child is by nature a “disempowered” person that must be catered for mostly by the family. Rearing, training and nurturing must be in the forefront of every affair concerning the child.⁹ His specific right to education¹⁰, to survival and development¹¹, freedom of Association and Peaceful Assembly¹² of thought, conscience and religion¹³, privacy¹⁴, movement subject to parent control¹⁵ etc have been entrenched to dignify and empower the child even if under aged. This is because as the African Network for the Prevention and Protection Against child abuse and Neglect puts it:

*A child is a human, a person made up of mind and soul*¹⁶.

Sad to say, the “human and the “person” in children have been assailed through years of crass exploitation and the phenomenon of child labour. The extent to which the child has been subjugated and abused through such labour will now be examined in some details.

C. Nature and Scope of Child Labour

The Scourge of child labour has always been with man. It dates back to the time when 17 year old Joseph¹⁷ was sold into slavery by his brothers.¹⁸ It has since become a feature of life in virtually every part. The international Labour organization reports that:

*More than 250 million children are “at work” worldwide in countries at all levels of economic development with the largest concentration in Asia.*¹⁹

A further breakdown shows there are 218million working children aged between 5 and 17years as at 2006. Also, 74million children under 15 are in hazardous

⁹ See Article 18 (1) of the African Charter on the Rights and Welfare of the Child and Article 5 of the UN Convention on the Rights of the Child.

¹⁰ Article 28 of the Convention and Article 11 of the Charter.

¹¹ Article 4 of the Child’s Rights Act

¹² Section 6 of the Child’s Rights Act.

¹³ Section 7 of the Child’s Rights Act

¹⁴ Section 8 of the Child’s Rights Act

¹⁵Section 9 of the Child’s Right Act

¹⁶ See the African Network for the Prevention and Protection Against Child Abuse and Neglect Advocacy Series 2, p. 1.

¹⁷ By today’s Standard, Joseph at 17 was a child.

¹⁸ See Genesis Chapter 37 verses 26-28. Moses and other Jewish’s children were born into slavery and labour early in life. See Exodus chapter 2. Daniel and his companions – Hananiah, Mishael and Azariah who later became Shadrach, Meshach and Abednego also experienced child labour in some ways. See Daniel chapter 2.

¹⁹ See International Labour Organization Office Geneva “Background Document of the Amsterdam Child Labour Conference, 1997, p. s

work, while 8.4million children are in slavery, trafficking, debt bondage and other from of child labour.

Although work is part of life and may be full of its own benefits²⁰, it is particularly disturbing to note the trend above. Now children are forced to work on end sometimes for 16 hours or more as early as the age of 4²¹

The picture presented by the United Nations Children Education Fund (UNICEF) on the matter is that a child victim of labour is known when he:

- i) Starts full time work too early in life and spends too many hours on work outside the family.
- ii) Participates in work that result in excessive physical, social and psychological strain.
- iii) Works and lives on the street
- iv) Has too much responsibilities²²

These among other indicators suggest a sorry state of affairs that is entirely based on exploitation of the child. The effect is that children in this category may experience abuse, molestation, pseudo-education, prostitution and poor physical and mental health at some point in their laboured life.

The situation of children ruthlessly exposed to child labour early in life is like that of a 14 year old mentioned in **R v Macdonald**²³. In that case, the court noted as follows:

The victim was a fourteen year old girl that was living with her father and her step mother. They made her do most of the household duties attending to wants of their two young children, milking goats feeding dogs etc. She was badly fed and poorly clothed even in winter. she died in the most pitiable circumstances...

Many cases of this kind have gone either unnoticed or unreported. Our children have continued to experience a deluge of abuse related labour that are in themselves capable of permanently destroying the worth and dignity of the victim. Lives have been shortened, limbs have been lost, sights have been blurred and

²⁰ When work is light and is geared towards training, vocation and apprenticeship, children can benefit from it.

²¹ See The United States Department of State Bureau of African Affairs "Trafficking in Children – West and Central Africa".

²² See Kofi Annan "Anti-slavery, Transatlantic Slave Trade, 2007.

²³ (1904) St. R Qd 151, 217.

health whether physical or mental have been altered, all consequent upon child labour and abuse everywhere.

D. Causes of Child Labour In Nigeria.

The existence of child labour in Nigeria can be blamed on a number of factors. These, as will be shown, may be economic, cultural, parental, educational, personal and institutional. Specifically, the various causes of child labour in the Nigerian state are:

- i) Parental Neglect:** Although it is naturally the obligation of parents to train, cater for and nurture their children and whereas children have the right to rely on their parents and expect to be catered for²⁴, parents in some cases fail to provide basic necessities namely – food, sustenance and Medicare. The result is that children, who must survive first and foremost, have resorted to working especially menially to make ends meet even when they are least prepared for it physically.
- ii) Poverty:** - The inability to live a decent day to day live as a result of lack of means has brought patent hardship on families of which children are part. Most have now resolved to survive by having “all hands” (including those of children) on deck. Consequently, children are forced to care for themselves by themselves in the difficult world of employment year in and out.
- iii) “Culture”:** - It is obligatory in some parts of Africa to have children work as early as possible in life in order to prepare them for tomorrow.

According to a commentator²⁵, there is the belief that:

- a) The child is the property of this parents who use the child as they please. What they do with him is nobody’s business.
- b) A child is spoilt and will be no good if not flogged.
- c) Physical punishment is best in dealing with the difficult child.
- d) A child is better brought up when they are sent to other families.
- e) A child who is made to suffer grows in wisdom.

²⁴ See Section 14(c) of the Child Rights Act

²⁵ Peter Ebigho “The problem of child abuse and neglect in Nigeria and strategies” in Daily Times of 16 March, 1988, p. 74.

For these reasons, children are sometimes allowed to become earners early in life, as they have to work in deference to the culture under which they were brought up.

iv) Urbanization: - The quest for *eldorado* and the golden age in cities has brought tremendous pressure on young ones to move to urban areas where they hope to get jobs. Children whose parents are unable to care for them have joined in the job hunt for the time being.

Because of the reality of not having a place to stay, these children work at every conceivable place to keep going. The conditions under which they have had to work have been less than ideal and the privations they suffer while working puts them in the class of laboured children.

v) Wars, conflicts and Displacements.

A basic effect of war or conflict in any part of the world is the displacement of persons fleeing bombardments and attacks. Often, food, water and other supplies cease and survival become that of the fittest. In such situations, children whose parents might have died may have to become circumstantial adults earning a living as it were by working sometimes as “soldiers”²⁶ or domestic servants. Others have had to work in the plantations and even as “service providers”²⁷ to soldiers when they are off battle²⁸.

E. Evaluation of Child Labour Under the Child’s Rights Act.

Overview of Laws governing Child Labour

Given the diverse forms of labour to which children have been subjected in Nigeria²⁹, there can be no doubt that many more categories will emerge if adequate measure of control and regulation are not devised.

As has been shown, the United Nations Convention on the Rights of the child is in the ideal sense an instrument of social safeguard for children anywhere they may be in the world.

²⁶ Many children get conscripted into the Armed Forces during wars.

²⁷ This is a euphemism used to describe the act of prostitution.

²⁸ Children have also been known to engage in laborious work in order to fill the void created by unemployment of their parents or the pursuit of basic education.

²⁹ These include street trading, domestic servitude etc.

It spells out the civil, political, social, economic and cultural rights of children and the responsibility of state parties to enforce these.

In particular, it forbids child labour by providing under Article 32 that:

State parties shall take legislative, administrative, social and educational measures to ensure state parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's healthy or to physical, mental, spiritual, moral or social development...

The provisions of the African Charter on the Rights and Welfare of the Child is similar. According to Article 15(1):

Every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral or social development...

Also, section 59 of the Labour Act³⁰ stipulates that:

No child shall (a) be employed or work in any capacity except where he is employed by a member of his family on light work of an agricultural, horticultural or domestic character approved by the minister or (b) be required in any case to lift, carry or move anything so heavy as to be likely to injure his physical development.

Recently, the Child's Right Act about which this work is essentially concerned was enacted³¹ and its position on child labour³¹ is like the foregoing laws. The relevant provisions are found in sections, 28, 29 and 30. Under section 28(1), no child shall:

(a) Be subjected to any forced or exploitative labour he shall not be employed to work in any capacity except where he is employed by a member of his family on light work of an agricultural, horticultural or domestic character³².

³⁰ Cap L1, Laws of the Federation of Nigeria, 2004.

³¹ The Act was enacted in 2003.

³² Section 28(1) (b)

*He shall also not be required in any case to lift, carry or move anything so heavy as to likely to adversely affect his physical, mental, spiritual or social development*³³

Moreover, it is unlawful under the Act to employ a child as a domestic help outside his own home or family environment³⁴. The prohibition extends to not allowing a child to work in an industrial undertaking³⁵ or be used for the purpose of begging for alms, guiding beggars, prostitution and domestic or sexual labour³⁶.

No child shall be used as a slave or for practice similar to slavery such as debt bondage, serfdom or forced or compulsory labour of any kind.³⁷ Consequently, children are not to be found hawking on main city streets, brothels or highways³⁸ Anyone who subjects any child to forced or exploitative labour by requiring such child to lift, carry or move any heavy thing or who employs a child as a domestic help shall be liable to a fine not exceeding ₦50,000 or imprisonment for a term of five years or both such fine and imprisonment.³⁹

It is also an offence to buy, sell or dispose of or obtain possession of or otherwise deal in a child.⁴⁰

It can be deduced that the rights of the child against forced, compulsory and exploitative labour is recognized and duly provided for on the pages of laws applicable both nationally and internationally. What is not certain is the extent to which states are willing to protect and uphold those rights.

Whereas the child is not to be dealt with in any manner suggestive of labourious abuse, a number of observations to that effect have been made about daily reality in the Nigerian State. These have been shown in the following areas:

i) Employment to do light work.

³³ Section 28 (1) (c)

³⁴ Section 28 (1) (d)

³⁵ Section 28 (2)

³⁶ Section 30 (2) (q)

³⁷ Section 30 (2) (b)

³⁸ Section 30 (2) (c)

³⁹ Section 28 (3)

⁴⁰ Section 30 (1)

“Light work” is not defined in the Child’s Rights Act. This is a major omission that can be explored to exploit a child even though he is employed by a member of his family.

Although “light work” is said to be work that enhances a child’s development especially if it includes legitimate apprenticeship opportunities⁴¹, there is no particular way of recognizing it under the Act. Who is there to find out the nature of work a child engaged as an employee by a member of his family is doing? How can one feel whether work is light or not? Who sets the limits? Who draws the line?

It is not unlikely that what is ordinarily conceived as training for the child may turn out to be a recipe for exploitation and labour even if it is indirectly so.

ii) Lifting, Carrying and Moving Anything Heavy.

Regardless of section 28(1)(c) of the Child’s Right Act to that effect, children even those as young as eight engage in work that may in its entirety be based on lifting, carrying or moving heavy things and equipments. For example, many persons under the age of 18 are employed to engage in building at various construction sites where planks, logs, iron rods, bags of cement among others are moved from place to place on a daily basis. Children have laboured right in the glare of everyone by lifting and moving these materials to keep alive.

It is a confirmation of the paper tiger status of the Act and the overall failure of law to come to the aid of the child.

iii) Employment As Domestic Help.

Nothing has come as close to slavery or slave trading as the practice of engaging children and young persons as domestic help or labourers. The situation in the cities and metropolis where every one is a breadwinner has been blamed for the practice. Many wives are as busy as their husbands and only a few agree to remain as house wives. This means only very little can be achieved in the home front in terms of management, chores and procurements.

⁴¹ See Bhalotra and Tzannatos “Child Labour: What have we learnt?” Social Protection discussion paper, 2002.

Many have attempted to solve their problems in this direction by pushing the burden to domestic servants who in most cases are children of financially disabled parents looking for succor.

The children are procured through agents who are “entitled” to every penny due the child.

The child victim is in turn entitled only to the food he eats, the clothes he wears and the mat on which he sleeps. Many of these children work long hours and are not able to go to school. Some of these are brutalized and abused physically and sexually⁴².

The situation has degenerated since the Act was enacted in 2003. The prohibition of domestic subservience appears to be a mere declaration of intent. The Act has joined in identifying a problem that it actually lacks the capacity to solve.

Using Children For Begging or Guiding Beggars.

It is common to impress children into labour today by sending them out to seek alms and beg for help in any form taking advantage of people’s generosity. Parents have deliberately used some of their children as instruments by means of whom they whip up sentiments while begging. Some are used as guides to beggars who pay them up at the end of the day. The country is replete with a growing number of child labourer beggars, when actually they should have “vanished” if the law had been anywhere near effective.

v) Hawking

Majority of those who hawk on our streets, in motor parks, highways and brothels are children. They are usually goaded into service by parents whose hope is that the child will learn to help himself and his family by “making it” through hawking.

Children therefore are made to hawk without rest and leisure⁴³ leading to ill-health, dizziness and getting knocking down. There is also the reality of rape, ritual murder and untimely death. All of these have been known to occur despite

⁴² Recently, a Nigerian football living in France, was sent to jail for repeatedly raping and mistreating a girl that served his family as domestic help since when she was 13. She was also made to engage in hard and labourious work.

⁴³ Every child has a right to rest and leisure under Section 12 of the Child’s Right Act.

the sensational provisions of Section 30(1)(c) of the Child's Right Act to the contrary.

Content of the Law

A careful perusal of the provisions of the Child's Rights Act reveals on its face that it states nothing new. It is rather a near verbatim reproduction of provisions hitherto made in other enactments.

For example, Section 28(1)(b)(c) of the Act is simply a wholesale re-enactment of Article 32 of the UN Convention on the Rights of the child and Article (15)(1) of the African charter on the Rights and welfare of the child⁴⁴. It also incorporates Section 59 of the Labour Act lock, stock and barrel.

The dynamism which a law like the Child's Rights Act should have brought to bear on the circumstances of the Nigerian child is sadly missing and the difference that it should have made is not about to take shape.

What is more, it seems more appropriate to the framers that we have letters of law but the substance that can cater for the present and future needs of the child.

If there is any signal that the fortune of the Nigerian child is about to change for the better, it is not obvious to this writer.

Conclusion

The malaise of child labour is a reality that cannot be denied. Our profession of love for children has not excluded them from exploitation, subjugation, forced, compulsory and dehumanizing labour. They are still found loaded down everywhere with chores as domestic servants, street traders, guides to beggars casual labourers, and "return making"⁴⁵ sex workers.

⁴⁴ Article 15 (1) of the charter itself is a complete reproduction of Article 32 of the UN Convention on the Rights of the Child.

⁴⁵ The expression return making sex worker is used to describe the practice through which prostitutes are expected to part with some of what they earn for the day to an overall boss who might be responsible for their accommodation, contract and contacts.

What we have are children shorn completely of dignity and prospects. Physical injuries, machine related accidents, mutilations and deformities of all kind have been the lot of children kept in the industries and plantations to work.

The situation is palpably serious. We need to realize that:

*The plight of many millions of children working under conditions harmful to their development cries out for action*⁴⁶

Our consensus should be that the exploitation of child labour can and must end.⁴⁷ when the will to give to the child what we promised namely- love, care, support, protection and nurture is upheld as a matter of policy, very little problems will be encountered.

There should be measures taken to ensure that children are compulsorily educated to the university level instead of being allowed to hawk or trade on streets and the highways.

Diligent prosecution of those who lend any form of support to child labour should also begin in earnest. Parents are particularly to be punished for putting their children in situations where labourious work becomes a must.

Happily several organizations are beginning to assume responsibility for the care of children. Their role as guards and leaders cannot be quantified. In them are groups that have rescued children from exploitation of prostitution, street trading, hawking and other forms of abuse. They are joined by women organizations and human rights groups to “watch” over children in labour.

If the effort that has been put forth is complemented by the contributions of each one of us to see that the child is not allowed to bear the burden of labourious work

⁴⁶ A. Admassie “Exploring the High Incidence of Child Labour in Sub-Saharan Africa” 14 African Development Review, 2002, pp. 251-275.

⁴⁷ Ibid.

in whatever guise, then our children will feel the effect of law as truly and really protecting their best interests now and for all time.⁴⁸

⁴⁸ See Section 1 of the Child's Rights Act.