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## The Nigerian Child Rights Act 2003: Its Strengths and Weaknesses

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### Abstract:

The enactment of the Child's Rights Act 2003 (CRA) is an indication of Nigeria's attempt to fulfil its obligation under the UN Child's Rights Act (CRC)<sup>1</sup> and the African Charter on the Rights and Welfare of the Child (ACRWC)<sup>1</sup> by domesticating these two treaties which specifically protect the rights of children.<sup>1</sup> The paper aims to show the extent of the country's conformity to its obligations under the CRC and the ACRWC. It critically analyses the CRA whether it conforms to the standards contained in these child rights treaties by examining the core provisions in the CRA. It is revealed that some aspects in the Act need to be reviewed to bring it into full compliance with international child rights law standards. On balance, the CRA guarantees and protects in numerous ways the rights of children in Nigeria.

### 1. Introduction

State parties are obliged to: '...undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present convention'<sup>1</sup>

The rights enumerated in the CRC are accessible to children in Nigeria only through incorporation into the constitution or the municipal laws of the state. A treaty that is not incorporated into the municipal law is as good as inconclusive.<sup>2</sup> Nigeria having ratified the UNCRWC,<sup>3</sup> thereby agree to 'respect and ensure' the children's rights set forth therein.<sup>4</sup> Nigeria thereby committed itself to conform its legislation, and administrative practice to the requirement contained in the CRC, the state also obliged itself to report periodically to the Committee on the Right of the Child stating the measures it has adopted to give effect to the rights recognised in the CRC.<sup>5</sup> Article 41 of the CRC points out that when a state party already has higher legal standards which are more conducive to the realisation of the rights of the child than those seen in the Convention, the higher standards always prevail. In other word, where the laws of a particular state protect children better than the articles of the Convention, then those domestic laws must stay in place. At the consideration of report submitted to the Committee of the CRC by Nigeria.<sup>6</sup> The leader of the delegation<sup>7</sup> explained to the committee how the state has mainstreamed the provisions of the CRC into the national legislation and practice with a 2003 law, the Child Rights Act, so that all children in Nigeria can enjoy the right guaranteed in the Convention.

#### Historical Background to the Child's Rights Act

The first attempt to fulfil Nigeria's obligation under the CRC and ACRWC to domesticate the treaty was initiated by the National Commission for Women, (now Ministry of Women's Affairs) in 1992. Working in collaboration with the UNICEF and other experts, a draft children's law was produced principally aimed at enacting the principles enshrined in the CRC and the ACRWC, which conformed to the CRC and the ACRWC.<sup>8</sup> The draft was completed and was awaiting the assent of the military junta General Sani Abacha., but it was not signed into law until after the exit of the military regime. It was only around ten years after, when the National Assembly passed the Bill into law in July 2003. It received the assent of the President of the Federal Republic of Nigeria, Chief Olusegun Obasanjo and was promulgated as the Child Rights Act 2003. Nigeria on 16 July 2003 enacted its national legislation on the rights of the child, entitled, Child's Rights Act 2003. The Child's Right Act 2003 is now the primary Nigerian law which sets forth legal obligations of all duty bearers - the government, parents, and the NGOs - to respect, protect and fulfil the rights of children. It has been hailed as a landmark by virtue of the fact that it is the first example of a comprehensive enactment in Nigeria on rights of the child that sought to consolidate all laws dealing with children in Nigeria. It gives effect to international and regional human rights treatise to which the country is a party, such as the UN CRC, ACRWC and the African

<sup>1</sup> Art 4 CRC & Art 1 ACRWC.

<sup>2</sup> Koh, Harold Hongju 'How is International Human Rights Law Enforced?' (Fall 1999) Indiana Law Journal 74 1397 1413.

<sup>3</sup> Office of the High Commissioner of Human Rights, Status of ratification of the Convention on the Rights of the Child, available at <http://www.ohchr.org/english/law/crc-ratify.htm> (accessed on 12 September 2014).

<sup>4</sup> Art 26 Vienna Convention.

<sup>5</sup> Art 44 CRC.

<sup>6</sup> CRC/C/NGA/CO/3-4 Consideration of Reports submitted by Nigeria at the fifty-fourth session of the Committee on the Rights of the Child the concluding observation was delivered on 11 June 2010.

<sup>7</sup> Mrs Annenih who was then Nigeria's Minister for Women Affairs led the Delegates to the CRC Committee session where the reports were submitted.

<sup>8</sup> Owasanoye., 'The Regulation of Child Custody and Access in Nigeria,' Family Law Quarterly, 39 (2), 405

Charter on Human and People's Rights (ACHPR). It is important that children and their rights are protected by the state, because children are peculiar group of persons for human rights analysis. They need to be safeguarded from abuses and state must create laws that will help parents discharge their responsibilities for the children's wellbeing. Therefore a state's highest commitment to protection of the rights of its children is to legislate laws protecting the rights, such as rights of the child to education, health and shelter and housing, and protecting the child from abuse and exploitations. This will be an affirmation of the state's strong commitment to protection of these rights. Under the 1999 Constitution, there is no reference to children in the constitution. In the Nigerian Constitution, laws on matters pertaining to children are not listed on either the exclusive or the concurrent list, it is therefore in the residual list, which are to be legislated on by the states' legislatures Children are classified for legislation under the residual matter which is legislated by the states.<sup>9</sup> The implication is that the various states can adopt or refuse to adopt any law enacted at the national level on children. Presently since the enactment of the CRA, which is over ten years now, so far 26 states out of the 36 states since 2003 have adopted the Child's Right Act into their state legislation.<sup>10</sup> Laws on matters pertaining to children under the Nigerian constitution fall within the legislative competence of the State House of Assembly.<sup>11</sup> The reason is that there has been opposition from some Northern states where there is a large population of Muslims against the enactment of the Child Rights Act in Nigeria, whereby the majority view the Child's Rights Act as anti-Islam especially the provisions on marriageable age and gender discrimination against girl. In its concluding Observation the Committee of the CRC recommended that the State Party take further steps to coordinate implementation of the UNCRC nationally and locally.<sup>12</sup>

## 2. Provisions of the Child's Right Act (CRA)

The CRA consolidates all previous laws dealing with adoption, guardianship, child justice administration. In addition the Act is novel in that it contains particular provisions such as establishment of family court, registered children's homes and creation of child's rights implementation committee at the national, state and local government levels. The CRA contains 278 sections, only forty of which proclaim the rights of the child for the state to respect and ensure. The remaining sections outline the administration and institutions for protection of children with special needs such as children homes and borstal institutions. The paper highlights some of the substantive provisions in the Act with the aim of analyzing these provisions in the light of international standards on the rights of the child. The provisions of the sections one to forty span the spectrum from civil and political rights such as right to survival and development and freedom of association, to economic, social and cultural rights such as the rights to health and education. It is not possible within the scope of this paper to discuss all the obligations entailed in all the provisions of the Act. However, a selected core rights is examined.

### 2.1. The long title of the Act:

The long title which is intended to provide a summary description of the purpose or scope of the instrument is not descriptive enough. The long title of the Act describes briefly the aim of the Act as: 'An Act to provide and protect the rights of a Nigerian child and other related matters.' This, in my opinion does not adequately describe the purpose of the Act. Here comparative jurisprudence may be instructive with regard to the wordings of the long title. Thus, in the Kenyan Children's Act 2000 long title, the long title of the Kenyan Children's Act describes the purpose of the Act as follows; 'An Act of Parliament to make provision for parental responsibility, fostering, adoption, custody, maintenance, guardianship, care and protection of children; to make provision for the administration of children's institutions; to give effect to the principles of the CRC and the African Charter on the Rights and Welfare of the Child and for connected purposes'. Thus Kenyan Children Act describes in detail the purpose of its Children's Act.

## 3. Definition of a Child

The Act, specifically defines a child as a person below the age of 18 years.<sup>13</sup> In the Act, age is the sole dominant factor for being a child. This definition of the child is perceived and construed around an entity, which is age, as opposed to under the Nigerian traditional setup where the definition of a child is determined by situational factor.<sup>14</sup> This is a considerable advance in Nigerian law due to the fact that prior to the enactment of the Act, different definitions of a child abound much to the detriment of children's rights – for example, under the Children and Young Persons Laws,<sup>15</sup> a child is someone below fourteen years, and under the Marriage Act, any person below twenty one years of age requires written consent of either the parent or guardian before he or she can be married.<sup>16</sup> Without an agreed uniform definition and age limits for Nigerian children, they will continue to suffer

<sup>9</sup> Section 4 and 2<sup>nd</sup> Schedule, Parts I and II.

<sup>10</sup> S.4 (7) Constitution of the Federal Republic of Nigeria.

<sup>11</sup> S. 4 (7) and 2<sup>nd</sup> schedule 1999 Constitution of the Federal Republic of Nigeria. Children matters are within the residual legislative list of the constitution and this is in the sole legislative competence of the states.

<sup>12</sup> CRC/C/NGA/CO/3-4 Consideration of Reports submitted by Nigeria at the fifty-fourth session of the Committee on the Rights of the Child the concluding observation was delivered on 11 June 2010.

<sup>13</sup> S.277 CRA

<sup>14</sup> In Africa traditional settings including Nigeria, the definition of a child is a communal assessment. It is not calculated in terms of age by birth but by role the child can play or plays in the society at any given stage. Once married a child is regarded as an adult who will be responsible for running a family irrespective of the fact that the child might have been married at an early age, (this is pertinent with the female child).

15S.2 Children and Young Persons Law of Nigeria

16S.11, Marriage Act of Nigeria

from inconsistent and ineffective protection under the law, because age is the most objective criterion used for those within the framework of child protection policy.

The foremost provisions of the Act include first, the 'best interests' principle provided for in section one of the Act. The CRA categorically states that the best interest of the child shall remain paramount in all considerations.<sup>17</sup> Although the principle of the 'best interests of the child' has up till now been part of Nigerian family law in matrimonial causes as relates to guardianship and custody issues, the CRA revolutionises the importance of this principle by extending its application to matters relating to children; whether private (involving parents and families) or public (by government, public authorities and courts).

Chapter IV of the Nigerian Constitution containing the Bill of Rights<sup>18</sup> that provides for fundamental rights and freedoms of the individual is deemed to apply equally to children,<sup>19</sup> hence provisions such as protection against cruel, inhuman or degrading treatment or punishment and protection of the right to life which are enshrined in the Constitution are applicable too. In general, the fundamental rights listed in the constitution apply both to children and adults. In addition, Sections 4-11 of the CRA also set out bill of rights specifically for the child, which is seen as a welcome development. It is true that children technically possess the same rights as adults, but the protection those supposed rights afford differs from those enjoyed by adults. A child may possess a constitutional right of lesser magnitude than an adult possess. Houlgate explains that what is meant by the phrase "right of a lesser magnitude" is that the scope of the right may be smaller for the child than for adults.<sup>20</sup> For example, children's right to privacy and liberty requires parental supervision.<sup>21</sup> In other words, a child can have a constitutional right, but he is at the same time regarded as a subject to the custody and control of his parents and the state.<sup>22</sup> Depending on the circumstance, there might be the need to postpone a child's exercising some of his constitutional rights when it is thought that there is a substantial risk by his exercising of those rights. For example the freedom of movement places a limit on places the child can go unaccompanied by an adult due to risk on the child's safety, as this might prevent him from ever exercising them again. In sum, children are persons, though they have the same set of constitutional rights as adults they are still under the custody and control of their parents. The full enjoyment of a child's constitutional rights is usually postponed. Most of the rights protected in the constitution can only be enjoyed by the child as the child gets older, such as the right to vote or the right to acquire and own immovable property. Repeating almost verbatim the rights already applicable to children in the constitution again in the CRA, will give greater legal protection to children.

#### 4. Section 5: Right to Name

This section protects the right to identity for the child. The Nigerian Child Right Act Section five stipulates the right to name and compulsory birth registration. This provision is broader than in the Children's Act laws of some other countries. For example, Article 11 of Kenya's Children's Act obligates the right of the child to name and nationality but is silent on registration of birth. Likewise, Children's Act Laws of Ghana, Article four, obligates the right to name but is silent on registration of birth. Registration of birth is very important for the following reasons: First, without registration of birth, children might not be eligible to essential facilities like health services and education. Secondly, non-registration of birth affects the state budget allocation because the government is not able to know the number of children in the country and this will hamper the resource allocation on meeting the child right goals. Thirdly, if children are not registered properly, their ages could be assessed incorrectly and this will affect the child adversely. For example, when assessing the child age as regards the position of the death penalty or age of marriage, the child's age might be raised to deny the child of the benefits to enjoy under the CRA. Where exact birth dates are not known, such children could be deprived of their rights simply because their ages are not certain. Birth registration should be imperative immediately after the birth of a child. There is not enough education in most African countries including Nigeria about the importance of birth registration and its advantages. Birth registration is not a common practice in Nigeria, so it is necessary to make it a right of every child immediately after birth. Most of the women in the rural areas do not go to deliver their babies in health centers due to cost implications. They go to the untrained midwives or to religious maternity homes in churches and mosques. In most cases, these births were never recorded or registered, as a result, there is no record of these births. The State has the responsibility of ensuring the registration of births especially in the rural settlements. This can be through establishing registration of birth centers in all the states and employing people who will carry out this duty in the rural areas if necessary with incentives such as giving out of mosquito nets to babies whose parents come out to register their birth. NGOs should have outreaches in rural areas to educate the community about the importance of birth registration. Registration of birth has several advantages, such as in national planning in budget allocation and education statistics. So it is necessary that state must ensure the implementation of this right. The right to a name is dependent on the registration of birth of a child. Birth registration is a vital civil right of a child and should be enforced by the state.

The Act conspicuously omits the right to freedom of expression. This right is not included in the rights listed as applicable to a child in SS 3-18 of the CRA. This exclusion is worth mentioning, because culturally children are regarded as meant to be seen and not to be heard, but under the CRC and the ACRWC to which Nigeria is a party, a child has a right of expression.<sup>23</sup> Children's

<sup>17</sup>S.1 CRA

<sup>18</sup>SS.33-46, 1999 Constitution of the Federal Republic of Nigeria

<sup>19</sup>S.3 CRA

<sup>20</sup>Houlgate, Laurence, 'Three Concepts of children's Constitutional Rights: Reflection on the Enjoyment Theory', 2 U.Pa.J.Const.L.77 (1999-2000), 81.

<sup>21</sup>id

<sup>22</sup>id

<sup>23</sup> Article 13 CRC, Articles 4(2) & 7 ACRWC

rights of expression and that of disseminating their opinions are underpinned by Articles 4(2) and 7 of the ACRWC. Modes of expression include expression through language that is orally or in writing or in forms of art, for example in painting. The UNCRC goes further than the ACRWC stating that the views of the child will be given weight in accordance with the age and maturity of the child.<sup>24</sup> According to Van Bueren, "[...] by referring to two criteria: the 'age' and 'maturity' of the child, States do not have an unfettered discretion as to when to consider and ignore the view of the child, that by emphasizing the two factors, the CRC acknowledges that the opinion of young children ought to be considered because they may be matured above their years."<sup>25</sup> The rights of freedom of expression protected in Article 7 of the ACRWC is significant, because considering children in Africa cultural set up, children are seen to be deficient in their decision making capabilities and deserving of protection. Decisions concerning children are often made by the fathers or the male elders, as children and women are perceived as incapable of making decisions even on matters relating to them. There is need for changes in cultural and societal attitudes about children from the traditional belief where children's voices are unheard and children lack autonomy. The Right of freedom of expression is of paramount importance in a child's life. The obstacles in the way of the child's right to freedom of expression in Nigeria are; prevailing traditional, societal and cultural attitude. These pose a real threat to the enforcement of the right of freedom of expression which can be informed of religious dogma and oppressive cultures (for example child marriage, female genital mutilation). To give voice to the children UNICEF recommended Children's Parliament,<sup>26</sup> this was adopted by the Nigeria Government in 2005. The Children's Parliament in Nigeria<sup>27</sup> is to enable children to give their opinions on issues affecting children in Nigeria. It is also a forum for allowing children to have an input on Children's Rights implementation in Nigeria. By failing to include right to freedom of expression in the CRA, this calls into question whether children in fact enjoy this specific right. Freedom of expression is vital for a child's growth and cognitive development. It enables a child to be informed about his or her society, environment, rights and opportunities, to participate effectively and freedom of expression has an impact on the lives and future of the child. Children should be given the right to express themselves because children have no inhibition; their observations are spoken out in truth out of innocence. This is illustrated in Hans Anderson's fairy tale of the 'The emperor's new suit' where the real situation was vividly exposed through a child's innocent comment. Maybe it is time for adults to hear the truth through 'the innocent' - the child.

Section 10 outlaws all forms of discrimination against children and section 10(2) provides that; "No child shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth". This sub-section is a duplication of section 42(2) of the 1999 Constitution, but specifically mentions 'child' whereas in the constitution it says 'person'. According to Nwogugu, the phrase 'disability and deprivation' relates to legal disqualification and being debarred from the enjoyment of some rights.<sup>28</sup> "[It] covers the denial of legal, social, economic and political rights including those connected with marriage, succession, maintenance..."<sup>29</sup> An aftermath from this provision is that children born out of wedlock now enjoy same rights (such as succession to the estate of the parent), as legitimate children.

Section 11 CRA highlights protection of the child against child abuse and torture. The Act prohibits the subjection of children to any form of abuse. It expresses certain main norms with respect to the treatment of children stating that the child is entitled to respect for the dignity of his or her person. It prohibits torture, inhuman or degrading treatment, neglect and maltreatment. Children because of their vulnerability and weakness are not being able to fight back or defend themselves. They are easy subjects of torture and other cruel inhuman or degrading treatment or punishment. Of significance are various reports by Amnesty International and Human Rights Watch on Africa about ill-treatment of children in police custody.<sup>30</sup> Art 16 of the ACRWC requires states to protect the child from all forms of torture and inhuman treatment. Furthermore, the charter states that even when a child is subjected to discipline within school it should be applied with humanity and dignity.<sup>31</sup> Like the ACRWC, the CRA does not specifically outlaw flogging. But O' Neal is of the opinion that even if a child has been stuck in the name of discipline, it is a violation of the ACRWC and international human rights standard.<sup>32</sup> It is my submission that the use of any form of corporal punishment is a violation of a child's inherent dignity and his/her humanity. This has been echoed in various documents of the UN Committee on the Rights of the Child.<sup>33</sup> The Committee on the Rights of the Child (CROC) released

<sup>24</sup> Article 12(1) CRC

<sup>25</sup> Van Bueren, G 'The International Law on the Right of the Child', Martinus Nijhoff, Leiden (1995).

<sup>26</sup> The Children's Parliament was formed in October 1999 <http://www.humanium.org/en/world-childrens-parliament/> The World Children's Parliament is a joint initiative by the French National Assembly President and the UNESCO Director-General.

<sup>27</sup> At the CRC 54<sup>th</sup> Session: Committee on rights of the child examined report of Nigeria on 26- 05-2010 and the Nigerian delegates amongst several things in their report talked about their children's parliament. Accessed on 28-05 -2010, from <http://www.hrea.org>.

<sup>28</sup> Nwogugu, E.I., Family Law in Nigeria, 3<sup>rd</sup> ed, HEBN Publishers, Ibadan, (2014) 308

<sup>29</sup> Salubi v. Nwariaku (1997) 5 Nigerian Weekly Law Report (Part 505) 442

<sup>30</sup> Annual Report 2013; The state of the world's human rights <http://www.amnesty.org/en/region/nigeria/report-2013/> accessed 23-10- 2014.

<sup>31</sup> Article 11(5) ACRWC

<sup>32</sup> O' Neal, N. (2008) 'Corporal Punishment in Public School: A new Reform', African Human Rights Journal, 70.

<sup>33</sup> The protection of children from cruel, inhuman or degrading treatment is found in a number of other instruments, including: Article 5 Universal Declaration of Human Rights; Article 7 of the International Covenant on Civil and Political Rights which has been interpreted by the Human Rights Committee in General Comment No. 20 to include a prohibition of corporal punishment, and Article 37 of the Convention on the Right of the Child.

General Comment No. 8 in 2006. This relates specifically to the right of the child to protection from corporal punishment and other cruel and degrading forms of punishment in all settings. It highlights the obligation of all state parties to move quickly to prohibit and eliminate all corporal punishment. The CROC further recognizes that corporal punishment is invariably degrading as are other forms of punishment which little, humiliates, denigrates, threatens, scares or ridicules children. Corporal punishment has cultural approval, because interestingly, no African state has prohibited corporal punishment by parents, though some states such as...have prohibited it in schools. Corporal punishment can have serious psychological effects in that children feel humiliated and degraded and they become angry and resentful towards those who punish them this way. This leads to repressed anger which can be manifested in hatred towards themselves and others.<sup>34</sup>In addition, corporal punishment undermines the child's self confidence and self-esteem, leaving them feeling helpless and humiliated, and it also undermines trust between the child and the parent.<sup>35</sup>

Sometimes, cruel, inhuman, degrading treatment takes on a dimension of ill treatment or punishment, can be domestic violence where the child suffers ill treatment at the hands of parents or guardians. Children are burnt, tied up, and locked up. This results in a range of injuries to children including fractures, loss of consciousness, burns and permanent disability. For example, in Nigeria,<sup>36</sup> some few years back, certain children who were accused of witch craft by their fathers or step mothers, had their hands burnt and some were starved. This was brought to the attention of the government and legislation was passed in the affected state that anyone who subjects a child to cruel, inhuman, degrading treatment will face ten years' imprisonment. Some of the abusers have been charged to court and have been sentenced. It is the duty of states to afford its children protection through legislation and other measures against acts that are harmful to the child's well-being. This right is obligated in the CRA.

Section 13: Right to health. The provision of child rights to health under the Act is very specific, listing the various rights, and the government's obligations to care facilities for the child's health. However, the word 'endeavour' in S.13 (3) (a) is delimiting implying that the government shall strive or attempt to reduce infant and mortality rate. It is suggested that a more committing phrase such as 'ensure' should be used. The word 'ensure' means to 'secure' or 'guarantee' Sadly in reality, Nigeria has failed to address the health needs of its children with ensuing devastating current consequences. Infant mortality is still respectively very high mainly due to malnutrition and infections. Children are dying from preventable diseases. The main causes of infant and child deaths are pneumonia, diarrhea, malaria and neonatal causes, compounded by under-nutrition and vaccine-preventable diseases.<sup>37</sup>In Nigeria, the health sector has suffered neglect with health policies and programs unimplemented to the disadvantage of the citizens especially the children. The Act obligates immunisation for the child and even stipulates penalty for parents who refuse to immunise their children,<sup>38</sup> this is quite commendable.

Right to education: Section 15 requires ensuring that every child has a right to free, compulsory and universal primary education and stipulates specifically that it shall be the duty of the state to provide it. Although free primary education is guaranteed in the CRA, it is not protected in the constitution of Nigeria. Right to free and compulsory education cannot be enforced or challenged in court, because the Constitution of Nigeria, which is the *grundnorm*, states that 'the government shall when practicable, provide free, compulsory and universal primary education'.<sup>39</sup> Section 1 of the Constitution provides that, '[t]his Constitution is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria [...] [i]f any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void'.<sup>40</sup>Section 18 in the Constitution undermines Section 15 of the CRA in authority; therefore Section 15 of the CRA cannot be implemented or enforced. In addition, the CRA orders that primary education must be compulsory, and stipulates that parents who prevent a child from receiving free education will be sanctioned.<sup>41</sup> However, there have not been any known cases of parents being fined or imprisoned for failing to send their children to school. For a country where poverty is prevalent, it is not possible to make primary education compulsory if it is not free. So in Nigeria primary education is neither free nor compulsory. Presently, the right to free primary and compulsory primary education is guaranteed only in the CRA and not protected in the constitution of Nigeria.

Sections 21-28 provide for the protection of children against harmful cultural practices and criminal activities including, exposure to use, and trafficking of narcotic drugs and abduction of the child by any person. It fails to provide appropriate treatment and rehabilitation for any child victim of such abuses. Sections 21 & 22 obligate that children must be protected from harmful cultural practices such as early marriage and betrothal. It prohibits child marriage and the betrothal of girls and boys, specifying the minimum age of marriage to be 18 years and there is sanction for contravention.<sup>42</sup>In Nigeria two types of marriages are legally

<sup>34</sup>Save the Children Sweden, Ending Corporal Punishment of Children in South Africa, (2005), <http://www.endcorporalpunishment.org/pages/pdfs/EndingCP-SouthAfrica.pdf> accessed 12/11/2014.

<sup>35</sup>Gershoff E (2002) 'Corporal Punishment by Parents and Associated Child Behaviors and Experiences: A Meta-Analytic and Theoretical Review'. Columbia University p 542

<sup>36</sup><http://www.telegraph.co.uk/news/worldnews/africa-and-indian-ocean/nigeria/3407882/> accessed 12-04-2014. See also Fakoya, Africa: Child Abuse and Persecution of Children, <http://pointblanknews.com/artopn827.html/> accessed 23-10-2014

<sup>37</sup>Nigeria: Country programme document 2014-2017 [http://www.unicef.org/nigeria/2013-PL7-Nigeria\\_CPD-final\\_approved-English.pdf](http://www.unicef.org/nigeria/2013-PL7-Nigeria_CPD-final_approved-English.pdf) accessed 23-10-2014, see also [www.childinfo.org](http://www.childinfo.org).

<sup>38</sup>S.13(4) CRA

<sup>39</sup>Section 18(3) 1999 Constitution of Nigeria

<sup>40</sup>Section 1(1) & (3) 1999 Constitution of Nigeria

<sup>41</sup>S.15(6) CRA

<sup>42</sup>S.23 CRA

recognized, namely; statutory and customary marriages.<sup>43</sup> Customary marriage includes Islamic Law marriage. There is no prescribed age for contracting customary marriage. This has to a large extent encouraged child marriage and child betrothal. Marriage can take place as soon as the child attains puberty. In a situation where a girl who is under fourteen is married off under customary law, the consummation of the marriage does not violate the sexual offence of having unlawful carnal knowledge of a girl under the Criminal Code,<sup>44</sup> because the parties are regarded husband and wife.<sup>45</sup> With legal pluralism practiced in Nigeria, customary law is a system of law practiced alongside the Statutes and the Received English law under the Nigerian legal system. This as a result stifles the enforcement of the prohibition of child marriage and betrothal of girls as obligated in the CRA. Section 24 of the Act prohibits tattooing. It is argued that parents see tattooing as an exhibition of personal expression of their customs. However, children should know what they are getting into before they take on such a permanent expression or other cultural rites that are likely to negatively affect a child's life, health, social welfare, dignity or physical and psychological development. In most cases, the child may not have had a say in getting tattooed by the parents. A parent can be sent to jail for letting the child get a tattoo according to the CRA.<sup>46</sup>

The CRA does not protect the girl-child against female genital mutilation (FGM). In Nigeria, subjection of girls and women to obscure traditional practices is legendary.<sup>47</sup> FGM is an unhealthy traditional practice inflicted on girls and women which is prevalent in Sub Saharan Africa.<sup>48</sup> FGM is widely recognized as a violation of human rights, which is deeply rooted in cultural beliefs and perceptions over decades and generations.<sup>49</sup> FGM is against the dignity of women.<sup>50</sup> However, there is still considerable support for the practice in areas where it is deeply rooted in local tradition. It has dangerous health implications because of the unsanitary conditions in which it is generally practiced.<sup>51</sup> It is a fundamental violation of human rights because it is carried out at a very young age when there is no possibility of the individual consent. Affected infants, girls and women face irreversible lifelong health risks, among other consequences. Adverse consequences of FGM are shock from pain and hemorrhage, infection, acute urinary retention following such trauma, damage to the urethra or in many cases chronic pelvic infection.<sup>52</sup> Several Nigerian states have enacted laws prohibiting FGM.<sup>53</sup> These states are; Abia, Bayelsa, Cross River, Delta, Edo, Ogun, Osun and Rivers. FGM is one of the harmful social and cultural practices prejudicial to the health or life of the child which should be outlawed by the CRA.

The CRA outlaws child trafficking in all its forms as it is a violation of children's rights.<sup>54</sup> In addition to the CRA provision, there have been efforts made by the Government to address the issue of trafficking such as enactment of legislation specifically on prohibition of trafficking of persons.<sup>55</sup> The CRA should provide provisions for civil remedies, in addition penal sanctions for the child victim. Section 28 provides that every child shall be protected from economic exploitation and any work that is likely to be hazardous or to be harmful to the child's health or physical, mental, spiritual, moral or social development. The CRA does not define the minimum age for child labour. Despite this provision, due to prevalence of poverty, children in Nigeria as young as six years old are seen hawking on the busy streets or employed as bus conductors to the detriment of their health, safety and education. Section 34 prohibits recruitment of a child into the armed forces but fails to protect children against involvement in armed conflict. The Act also does not provide protection, rehabilitation, care, recovery and reintegration into normal social life for any child who may become a victim of insurgent control, armed conflict or natural disaster including children who are internally displaced as a result of insurgence.

##### 5. Child Justice

CRA provides for a Child Justice Administration<sup>56</sup> to replace the Juvenile Justice Administration which had been in existence for several decades in Nigeria. The provision relating to children in conflict with the law is contained in Part XX of the Act (sections 204-259). The provisions prohibit the subjection of any child to the criminal justice process,<sup>57</sup> and guarantees that due process be given to any child subjected to the child justice system, at all stages of investigation, adjudication and disposition of any case

<sup>43</sup>Obiekwe v. Obiekwe (1963) 7 ENLR 196

<sup>44</sup>S.218 Criminal Code Act

<sup>45</sup>'Husband and wife' includes parties to customary law marriage which is a type of marriage recognized under the Nigerian law. See Brett & Mc lean, *Criminal Law and Procedure*, Sweet and Maxwell, London, (1967) 456

<sup>46</sup>S.24 (2) CRA

<sup>47</sup>UNICEF, *Children's and Women's right in Nigeria: A wake up call. Situation Assessment and Analysis. Harmful Traditional Practice (FGM) Abuja NPC and UNICEF Nigeria 2001* pp 195-200

<sup>48</sup>Okeke, Anyaehie & Ezenyeaku, 'An overview of Female Genital Mutilation in Nigeria', (2012) Jan-Jun; 2(1), *Ann Med Health Sci Res*: 70-73

<sup>49</sup>World Health Organization: *Female Genital Mutilation :An overview: WHO 1998*

<sup>50</sup>id

<sup>51</sup>Female genital mutilation. A joint WHO/UNICEF/UNFPA statement. Geneva: World Health Organization; (1997). World Health Organization.

<sup>52</sup>id

<sup>53</sup>United Nations (UN) expert paper authored by the Executive Director of the Inter-African Committee on Traditional Practices Affecting the Health of Women and Children (IAC). UN 21 May 2009, 13; UN Feb. 2010).

<sup>54</sup>S.30 CRA

<sup>55</sup>Trafficking In Persons (Prohibition) Law Enforcement and Administration Act, 2003.

<sup>56</sup>SS.204-238 CRA

<sup>57</sup>S.204 CRA

against such a child.<sup>58</sup> Upon a finding of guilt the Act states a number of ways in dealing with the child, including, placing the child on probation under the supervision of a supervision officer,<sup>59</sup> committing the child to the care of a guardian,<sup>60</sup> or placement of the child in an approved government institution.<sup>61</sup> The Act provides that this shall be a last resort and must not be ordered unless there is no other way of dealing with the child.<sup>62</sup> The 'last resort' principle as applied to sentencing means that deprivation of liberty must not be imposed unless the objectives of the measure — principally rehabilitation in the case of juveniles — could not, in the opinion of the judge, be achieved in a non-custodial setting.<sup>63</sup> It prohibits the use of capital punishment, use of imprisonment and use of corporal punishment for children.<sup>64</sup> These are all novel provisions, as no such prohibition existed under previous legislation on children, the Children and Young Persons Act (CYPA). The Act explicitly states deprivation of liberty should be a measure of last resort.<sup>65</sup> The Act provides that child offender placed in institutions should be given care, protection, education and vocational skills in order to assist the child offender assume productive roles in future.<sup>66</sup> This is a significant development by the Act. However the Act fails to mention the minimum age of criminal liability, leaving the age stipulated under the Criminal Code and the Penal Code to hold sway.<sup>67</sup>

## 6. Children's Responsibilities

The Act also confers responsibilities on children, which include working towards the cohesion of their families, respecting their parents and elders, contributing to the moral well-being of society, and strengthening social and national solidarity. The Act mandates parents, guardians, institutions and authorities in whose care children are placed to provide the necessary guidance, education and training to enable the children to live up to these responsibilities. The CRA is not only a catalogue of rights of the child, in addition it lists a number of duties expected by the child.<sup>68</sup> This is in line with similar provisions in the ACRWC.<sup>69</sup> The ACRWC is the only children's right instrument that elaborates the duties of the child. There is no similar provision in the CRC. This is an innovation in the ACRWC which follows its 'mother' charter, the ACHPR which has a similar provision in Article 27 of the ACHPR. Article 31 of the ACRWC enumerates the duties of the child to the family, community, the nation and to the region. The provision is captioned "Responsibility of the Child" in the CRA. The duties of the child are subject to his/her age and ability.<sup>70</sup> This is a reflection of the Nigerian culture because children participate in certain chores in accordance with their ages. For example, a child between the ages of five to seven can be sent on errands to deliver messages within the community. An eight year old girl is required to assist in looking after the younger siblings and cleaning the house. A boy of similar age oversees small livestock and assists in nurturing agricultural farms in the compound. A teenage boy assumes more responsibilities assisting on the farm and the teenage girl performs duties relevant to the preparation of food and other household chores. This clearly shows that this responsibility of the child in accordance with his or her age protects the child against harmful or hazardous work. The child also has the duty to work towards the cohesion of the family. This is a reinforcement of the extended family structure in a traditional setting. The family includes not only parents and siblings but the extended family such as aunts, uncles and grandparents. The child is under duty to uphold family unity which undertakes the task of bringing up the child so the child must maintain the kinship system. The child's duty to work for the cohesion of the family is merely a moral duty. The child is further under duty to respect his parents, superiors and elders at all times.<sup>71</sup> This particular phrase generated debate and argument, for example Van Buren<sup>72</sup> argues that the responsibility to respect parents and elders at all times is too unquestioning and general. Where family members are abusing or exploiting children, to maintain that children are obliged to respect the abuser is a dangerous precedent. Ncube<sup>73</sup> opines that the duty to respect parents could easily be relied upon to curtail children's rights to freedom of expression, privacy and participation in decision making. Chirwa<sup>74</sup> also remarks that this may undermine the child's right to participate in decision making in matters affecting the child in particular. Sloth Nelson and Mezmur,<sup>75</sup> both see this provision from a different point of view. They point out that the duty to respect parents, elders and superiors, is akin to positive traditions that the African Children's Charter identifies as constituting an asset in the upbringing of African children. They

<sup>58</sup>SS.205-216 CRA

<sup>59</sup> S 223(1)(c)(i) CRA

<sup>60</sup> S 223(1)(c)(ii) CRA

<sup>61</sup> S 223(2) CRA

<sup>62</sup> S 223(2)(a)&(b).CRA

<sup>63</sup> UNICEF, Juvenile Justice, Innocenti Digest3, 12

<sup>64</sup> S 221 CRA

<sup>65</sup> S.223 CRA

<sup>66</sup> S.226 CRA

<sup>67</sup> A child above 12 years is held fully responsible for his acts. S.30 Criminal Code and S.50 Penal Code.

<sup>68</sup> SS.19 &20 CRA

<sup>69</sup> Art 31 ACRWC

<sup>70</sup> S.19(2) CRA

<sup>71</sup> S19(2)(b) CRA

<sup>72</sup> Van Buren, *The International Law on the Rights of the Child*, Leiden: Martinus Nijhoff, (1995), 76.

<sup>73</sup> Ncube, (1997), *Recognition and monitoring children's rights in Africa. Challenges and Prospects* in E. Verhellen (ed.) *Children's Rights*, Belgium, Children's Rights Centre, University of Ghent, 612.

<sup>74</sup> Chirwa, D. (2002), 'The Merits and Demerits of the ACRWC', *International Journal of Children's Rights*, 10:(2), 157-177.

<sup>75</sup> Sloth Nelson and B.D Mezmur, 'A Dutiful Child, the Implication of Article 3 of the African Children Charter', *Journal of African Law*, 52: (2), 177.

elaborate further that it does not entail docility or unquestioning subservience. That the opposite of duty to respect is a license to disrespect and seen this way drives home the point that the intention of the drafters was not to silence children but rather to celebrate the positive aspect of the African child-rearing practices in nurturing a respectful society. I associate with Sloth Nelson and Mezmur. My argument is that the CRA will not contain provisions which will contradict the protection of the rights of the child. Therefore, the inclusion of duties for the child in the CRA is a step in the right direction. The child is also under a duty to serve his or her national community. Children's involvement in the community as a duty could take different forms such as community self-help projects whereby the youth build health centers or community halls in their communities.

### 7. Institutional Framework

A significant development in the Act is the establishment of the National, State and Local Government Child's Rights Implementation Committee. Some of the functions of the committee include; continually keeping under review, the state of implementation of the rights of the child, organise meetings conferences, symposia to enlighten the public on the rights and welfare of the child and also to collect and document information on matters relating to the welfare and the rights of a child. It is noteworthy that the Committee is tasked with the duty of preparing and submitting periodic reports as required under the CRC<sup>76</sup> and the ACRWC<sup>77</sup> on the state of implementation by the government of Nigeria relating to the rights of the child. In compliance with this mandate, the State submitted its fourth and fifth reports on 26 May 2010.<sup>78</sup>

### 8. Conclusion and Recommendations

The enactment of the Nigerian Child's Rights Act is no doubt a significant step in complying with the obligation under the CRC and the ACRWC on the duty of state parties to undertake a comprehensive review of all domestic legislation and policy to ensure compliance with the norms in these treaties. Despite its progressive nature, the Act arguably falls short of pre-existing international law standards on the rights of the child on a number of issues; including omission of provisions which protect the child from certain harmful cultural practices such as FGM, and the failure in the Act to provide for the right of the child to participation and to be accorded the opportunity to express his/ her opinion taking into account the child's age and degree of maturity. However, to ensure better and fuller protection of children's rights in Nigeria, the Act needs to be reviewed to bring it into full compliance with international child rights law standards. Such a review should include the need for provisions providing concurrently for penal sanctions and civil remedies. There should be civil remedies for the violation of children's rights, which may be recoverable as general and special damages especially where a child suffers harm as a consequence of violence. A country-wide based child support scheme which would go a long way in ameliorating the challenge of poverty as a constraint to the realisation of children's rights should be established. In addition, a number of aspects in the Act should also be reviewed. These include the overly lenient penalties for violators of children's rights; the lack of an explicit ban on corporal punishment in homes and schools; the absence of explicit guidance and remedial measures dealing with children in need of care and protection; the need for juvenile justice provisions which acknowledge the place of pre-trial diversions and provide for a higher age of criminal responsibility which complies with the CRC and the ACRWC; among other issues. Other laws such as the Children and Young Person's Laws which is applicable to each state, and which are relevant to child protection (especially the penal and criminal procedure laws) must also be re-examined to ensure a harmonised child rights approach. Finally, the rights guaranteed under the Act need to be insulated from cultural interference by having entrenched specific child protection provisions in the country's constitution.

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<sup>76</sup> Art 44 Convention on the Rights of the Child

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