



## Nationwide application of the Nigerian child's rights act, 2003: Constitutional thoughts and possibilities

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### Abstract

The Nigerian Constitution empowers each of the component states of the federation to make laws, i.e., federal government makes laws on all matters in the exclusive lists and shares law-making with the state on the concurrent list. Children's rights are neither listed under the exclusive list nor the concurrent list. Precisely two decades after the National Assembly enactment of the Nigerian Child's rights Act, 2003, not all the 36 states in Nigeria have adopted the Child's rights Act, 2003 into their state legislation. More so, states of the federation that have adopted children's rights do so at their own discretion. This creates a lack of uniformity in terms of the provisions of specific and important children's rights enacted by several states which have adopted the Act in their jurisdictions. The foregoing justifies the assertion that national application of Nigerian Child's Rights Act, 2003 (which domesticated the United Nation Convention on the Rights of Child (UNCRC)) is fundamental to the uniform realisation of children's rights in Nigeria. The basic thesis of this paper is that the nationwide application of Nigerian Child's Rights Act, 2003 is achievable by determining the actual interpretation of the combined provisions of Item 67 and 68 of part I, 2<sup>nd</sup> schedule to the 1999 Constitution of Nigeria which empowers the National Assembly to make law on any matter incidental and supplementary to any matter mentioned elsewhere in the list.

**Keywords:** Nigerian child's, Act, 2003, UNCRC

### Introduction

Nigeria was among the first African countries to ratify the United Nation Convention on the Rights of Child (hereafter UNCRC) in March 1991<sup>[1]</sup>. Nigeria fulfilled its legal and administrative obligation under the convention<sup>[2]</sup> by the National Assembly enactment of the *Nigerian Children's Rights Act, 2003*<sup>[3]</sup> (hereafter CRA). The Nigerian CRA is the domestic manifestation of the UNCRC on the rights of children. CRA mirrors in many respects, the children's rights provisions of the UNCRC<sup>[4]</sup>. These children's rights, among others, include section 10 of the CRA, which outlaws all forms of discrimination against children, and section 11, which highlights the protection of the child against child abuse and torture. Furthermore, section 13 lists the child's various rights to health care and the government's obligations to provide care facilities for the child's health. Section 15 ensures that every child has a right to free, compulsory, and universal primary education and states explicitly that it shall be the duty of the State to provide it. Also, sections 21 to 28 of the Act provide for the protection of children against certain cultural practices and criminal activities including, exposure to use, and trafficking of narcotic drugs and abduction of the child by any person. Furthermore, sections 21 and 22 of the CRA specifically states that children must be protected against "harmful cultural practices" such as early marriage and betrothal. It prohibits the betrothal and marriage of children, specifies that the minimum age of marriage to be 18 years and provides a sanction for its contravention<sup>[5]</sup>.

Summarily, the CRA covers rights for the participation, protection, survival and development of every child in Nigeria<sup>[6]</sup>. Despite the lofty provisions of the CRA as above highlighted, the pledge to promote a uniform children's rights nationally in Nigeria seem a daunting task<sup>[7]</sup>. One of the reasons partly accountable are that Nigeria is a

multicultural state with multiple laws, norms and fora that co-exist to function as her legal system<sup>[8]</sup>. Another reason is that under the Nigeria Constitution, each of the component state in Nigeria is empowered to make laws, for example, the federal government makes laws on all matter in the exclusive lists and share law-making with the State on the concurrent list<sup>[9]</sup>.

In light of the foregoing, the purpose of this contribution, which is to examine and analysed the constitutional provisions with the view of ascertaining probable alternatives interpretations towards the nation-wide application of CRA in Nigeria. Its argues that the actual interpretation of the combined provisions of Item 67 and 68 of part I, 2<sup>nd</sup> schedule to the 1999 Constitution of Nigeria empowers the National Assembly to make law on any matter incidental and supplementary to any matter mentioned elsewhere in the list. Therefore, the Nigerian CRA, 2003 can be said to be within the exclusive preserve of the National Assembly.

In order to achieve the objectives of this contribution, it is divided into four sections; The first section is the introductory part; the second section examined the applicability of the Nigerian Child's Rights Act, 2003; the third section analysed the fulcrum of the contribution which is the authors Constitutional thoughts and possibilities on the nation-wide applicability of the CRA; the final section is the concluding part.

### The applications of the Nigerian child's rights act 2003

As already pointed out, the Nigeria Child's Rights Act, 2003 is the domestic manifestation of the Nigeria obligation under the UNCRC to domesticate law on the rights of children. This is pursuant to section 12(1) of the 1999 Constitution (As amended), which requires all treaties to be domesticated before they can create domestic legal

obligations in Nigeria <sup>[10]</sup>. Furthermore, the CRA was enacted by the National Assembly pursuant to its legislative plenary powers <sup>[11]</sup>.

It has been argued severally that the applications of the CRA is limited to the federal capital territory Abuja <sup>[12]</sup>. One major reason for this argument is the pluralist nature of Nigeria with many laws, norms and fora that co-exist to function as her legal system <sup>[13]</sup>. Giving the cultural diversity and legal pluralistic nature in Nigeria, versions of state legislation on child rights serves as a reflection of cultural, religion and economic prevalence of each state <sup>[14]</sup>.

Another reason is that under the Nigerian Constitution, each of the component state in Nigeria is empowered to make laws, i.e. federal government makes laws on all matter in the exclusive lists and share law-making with the State on the concurrent list <sup>[15]</sup>, while the third list recognised by Nigerian constitutional law theory is known as the residual list which is considered as consequential list <sup>[16]</sup>.

What is clear in the Nigerian Constitution, as mentioned earlier is that children are not explicitly listed in either the exclusive or the concurrent list <sup>[17]</sup>. The exclusion of children from the exclusive and concurrent lists suggests that the nationwide Implementation of the *Nigerian Children's Rights Act, 2003*, which domesticated the UNCRC is very debatable. However, in Nigeria, the practice is that since children are not included in the exclusive and concurrent list, they fall inside the purview of the state's government legislative power. This practice is based on the widely held Nigerian constitutional law theory, to the effect that what is not contained in either the exclusive or concurrent legislative list in the constitution falls within the residual list which is within the preserve of the state government. According to Nwazuoke and Okpalaobi:

Nigeria operates a federal system of government in which each of the thirty-six states of the federation is autonomous and equal to others. Each state has its legislative system as stated by the constitution. Until the child's right is enacted into law in each of these legislative systems, it is not binding on the states. Hence, no court can prosecute violation of the Child Right Act in states that have not enacted it <sup>[18]</sup>.

In light of the foregoing, the quest to promote a uniform child's right nationally in Nigeria remains a daunting task <sup>[19]</sup>. Each state in Nigeria may adopt or refuse any provisions about children that were enacted at the national level <sup>[20]</sup>. This explains why, even where the nationally enacted Nigerian Children's Rights Act, 2003 gives recognition to specific children's rights <sup>[21]</sup>, by adherence to customary laws and values at the state level, cultural practices contrary to established children's rights often deprived the children of these rights <sup>[22]</sup>. Besides, many Northern states in Nigeria recently adopted or enacted a Child's rights law into their state legislation which is over a decade the National Assembly enactment of CRA <sup>[23]</sup>. More so, states in Nigeria that have enacted Children's right law does so at their own discretion.

In light of the foregoing, the need therefore exists to examine and analyse probable alternative interpretations towards the nationwide application of CRA in Nigeria. Perhaps, taking a second, more critical look at the constitution's legislative powers and advocating for a more progressive interpretation of those provisions for the benefits of Nigeria children as a whole. This is discussed in the section that follows.

### Thoughts and possibilities

In light of the discussion so far, it is clear that the legislative protection of children in Nigeria is entirely statutory. For emphasis, the constitution did not explicitly mentioned children in the exclusive or the concurrent list. However, the Constitutional law theory of the residual list lay credence that not listing children in the exclusive and concurrent legislative list make children's rights law, the preserve of the states. Put differently what is not contained in either the exclusive or concurrent legislative list in the constitution falls within the residual list which is within the preserve of the state government. This idea of a residual list raises significant concerns.

The fact that the constitution did not specifically provide for a residual list may be argued to defeat the purpose of the residual list. One of the fundamental constructs of the 1999 Nigerian constitution (as amended) is its declaration in section 1(1) that '[t]his constitution is supreme and its provisions shall have binding force on authorities and persons throughout the Federal Republic of Nigeria'. Furthermore, section 1(3) provides that '[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'. In fact, Nigerian courts have interpreted this provisions literarily in a number of cases <sup>[24]</sup> and have invalidated state and federal legislations that do not comply with the country's constitution. Furthermore, due to the constitution's supremacy, the general sprits of its provisions governs all statutes, including all constitutional theories. Therefore, it is difficult to critically accept that the non-specific mention of children in both the exclusive or concurrent legislative lists justifies children's rights within the preserve of the state government. A residual list that was not specifically mentioned in the constitution.

Assuming without conceding that it was legislative intentions that children were not specifically included in the exclusive or concurrent lists, it is not enough to establish that they are within the exclusive preserves of the states. One of the fundamental canons of constitutional interpretation is inference from other provisions of the constitution or a combined reading of its provisions. In this context, it is crucial to take a closer look at some of the provisions of Part 1 of the Second Schedule to the 1999 Nigerian Constitution that outlines the power-sharing arrangements between the state and federal government of Nigeria. The combined listed Item 67 and 68 of part I second schedule on the exclusive legislative list of the National Assembly is to the effect that:

Item 67: Any other matter with respect to which the National Assembly has power to make laws in accordance with the provisions of this Constitution;

Item 68: Any matter incidental or supplementary to any matter mentioned elsewhere in this list.

In light of the above Item 68, 'citizenship' is an item listed as number 10 on the exclusive legislative list. Therefore, it follows that Children's rights are "matters incidental or supplementary" to their rights as citizen of Nigeria. What is more, in light of Item 67 above, 'citizenship' falls within "any other matter with respect to which the National Assembly has power to make laws in accordance with the provisions of this Constitution." In fact, section 25(1) in Chapter 3 of the Constitution provides that:

The following persons are citizens of Nigeria by birth, namely (a) every person born in Nigeria before the date of independence, either of whose parents or any of whose grandparents belongs or belonged to a community indigenous to Nigeria: Provided that a person shall not become a citizen of Nigeria by virtue of this section if neither of his parents nor any of his grandparents was born in Nigeria; (b) every person born in Nigeria after the date of independence either of whose parents or any of whose grandparents is a citizen of Nigeria; and (c) every person born outside Nigeria either of whose parents is a citizen of Nigeria.

The above constitutional definition of who are citizens of Nigeria clearly justifies that children are citizens if they meet the citizenship requirements of the constitution. Since the National Assembly has exclusive preserve to legislate on matter of Nigerian citizens. Children's rights can thus be argued to be within the exclusive legislative power of the National Assembly. Contrary arguments that children rights are not within the exclusive preserve list of the National Assembly going by item 67 and 68 of part I, 2<sup>nd</sup> schedule to the 1999 Nigeria Constitution would be against established rules of constitutional interpretation and pander to technicalities of states preserves theorist. As the Nigerian Supreme Court has consistently stressed, constitutional interpretation should strive to do away with technicalities [25]. More specifically, when issue at hand touches on fundamental citizen's rights. Children's rights and access to their rights are critical, fundamental issues of human rights. In light of the foregoing, it is posited that there is sufficient constitutional basis to conclude that Children's rights are within the exclusive legislative rights of the National Assembly in Nigeria. Therefore, the provisions of Nigerian Childs Rights Act, 2003 can and should be made applicable in states that have or have not enacted Child rights legislation in Nigeria based on the arguments canvassed in this contribution.

### Conclusion

The importance of a nation-wide application of CRA in Nigeria cannot be overstated, given the widespread discrepancy in the state in terms of their Children's rights law and the non-existent of children rights law in some state. The need thus exists to seek alternatives means of interpretation promoting the nation-wide application of the CRA, 2003.

Candidly, the federal government should exert its constitutional power to ensure a nationwide application of the Nigerian Child's Rights Act, 2003. This can be done by lobbying the National Assembly through the process of amending the constitution to include a bill of rights specifically for the rights of children or explicitly make rights of child to be on the exclusive legislative list for the National Assembly, up till now this is not the case.

In the alternative to the foregoing, it is suggested that the office of the Attorney General of the Federation or States or civil society organisation on children's right or any vested and interested individual in Nigeria may seek a judicial intervention. It is the author's candid and considered view that citizenship is an item listed as number 10 on the exclusive legislative list, it follows that Children's rights are matters incidental or supplementary to their rights as citizen of Nigeria. Therefore, Children's rights can be argued to be

within the exclusive legislative power of the National Assembly.

Finally, for the benefits of all Nigerian children, the thesis of this contributions which seeks alternative constitutional interpretations and argument on children's rights are of a progressive nature. Therefore, this important progressive viewpoint required the Supreme Court's judicial interpretation towards the uniformity of children's rights and the applicability of the Nigerian Children's Right Act, 2003 throughout the federation.

### References

1. United Nation Convention on the Rights of the Child adopted and opened for signature, ratification and accession by GA Resolution 44/25 of 20 November 1989, 1577 UNTS 3 Entered into force 2 September 1990. See also Office of the High Commissioner of Human Rights, Status of Ratification of the Convention on the Rights of the Child <https://www.ohchr.org>.
2. Article 4 of the UNCRC.
3. Nigerian Child's Right Act, 2003 Cap C50, LFN 2004.
4. The fundamental objective of the UNCRC established the status of children as rights-bearers and considered their rights as equally important to those of adults when it comes to respect and fulfilment. See Van Bueren Geraldine, *The International Law on the Rights of the Child* (Dordrecht Boston London Martinus Nijhoff Publishers 1995)
5. See s 23 of the Nigerian Children's Rights Act, 2003
6. Oyeyemi KK, La kadri LA, 'Realizing the Rights of Child under the Nigerian Child's Rights Act, 2003: An Exploratory critique' *Unimaid Journal of Private and Property Law* for a detailed analysis of the provisions of the CRA, 2017:(2(1):22-32.
7. Oyeyemi KK, La kadri LA. 'Realizing the Rights of Child under the Nigerian Child's Rights Act, 2003: An Exploratory critique' [2017] (2(1) *Unimaid Journal of Private and Property Law* 22-32; Oba AA, 'Religious and customary laws in Nigeria' [2011] (25/2) *Emory Law Review* 881-895; Ladan T, 'The Nigerian Child Rights Act, 2003: An Overview of the Rationale, Structure and Contents' (2004) (2n19) *Nigerian Bar Journal* 219-230; Olaleye F, 'Cultural Diversity, Child Discipline and the Child's Rights Convention: The Quest for a Universal Child?' (2005) (4) *University of Ibadan Journal of Private and Business Law* 162
8. Durojaiye E, Okeke B, Adebajo A. 'Harmful Cultural Practice and Gender Equality in Nigeria' *Gender & Behaviour*, 2014;12(1):6169-6181.
9. See Section 4 and 2nd Schedule, Parts I and II of the 1999 Constitution of Nigeria (As Amended).
10. See sec 12(1) of the 1999 Constitution. See also the cases of *Registered Trustees of the National Association of Community Health Practitioners of Nigeria & Others v Medical and Health Workers Union of Nigeria* [2008] 2 *NWLR* (Pt 1072) 575; *Fawehinmi v Abacha* [2000] 6 *NWLR* (Pt 660) 228. See also AO Enabulele, 'Implementation of treaties in Nigeria and the status question: Whither Nigerian courts' (2009) (1/7) *African Journal of International and Comparative Law* 326; CA Nwapi, 'International treaties in Nigerian and Canadian courts' (2011) 19 *African journal of*

- International and Comparative Law 38; A Oyeboade, *International law and politics: An African perspective* (Bolabay Publications (Africa) 2003) 9.
11. See sec 58 of the 1999 Constitution.
  12. ES Nwauche. 'Child marriage in Nigeria: (II) legal and (un)constitutional' *African Human Rights Law Journal*,2015:15:422.
  13. Durojaiye E, Okeke B, Adebajo A. 'Harmful Cultural Practice and Gender Equality in Nigeria' *Gender & Behaviour*,2014:12(1):6169-6181.
  14. Oyeyemi KK, La kadri LA. 'Realizing the Rights of Child under the Nigerian Child's Rights Act, 2003: An Exploratory critique' [2017] (2(1) *Unimaid Journal of Private and Property Law* 22-32 for a detailed analysis of the provisions of the CRA. See also for example *Kwara State Child Rights Law 2005*.
  15. See Section 4 and 2nd Schedule, Parts I and II of the 1999 Constitution of Nigeria.
  16. See ES Nwauche, 'Child marriage in Nigeria: (II) legal and (un)constitutional' (2015) (15) *African Human Rights Law Journal* 422-423. See also *Attorney-General Abia State & 35 Others v Attorney-General of the Federation* (2002) 3 SC 106.
  17. See Section 4 and 1st and 2nd Schedule, Parts I and II of the 1999 Constitution of the Federal Republic of Nigeria (As Amended).
  18. Nwazuo, Okpalaobi. 'Comments on Child's Right Act: 2003' *Journal of Ebonyi State University, Faculty of Law*,2005:1:159-169.  
Keep in mind that the foregoing is purely a constitutional issue that can only be resolved through an in-depth constitutional interpretation. I shall return to this very shortly in the next section.
  19. Oyeyemi KK, La kadri LA. 'Realizing the Rights of Child under the Nigerian Child's Rights Act, 2003: An Exploratory critique' [2017] (2(1) *Unimaid Journal of Private and Property Law* 22-32; Oba AA, 'Religious and customary laws in Nigeria' [2011] (25/2) *Emory Law Review* 881-895; Ladan T, 'The Nigerian Child Rights Act, 2003: An Overview of the Rationale, Structure and Contents' (2004) (2 n19) *Nigerian Bar Journal* 219-230; Olaleye F, 'Cultural Diversity, Child Discipline and the Child's Rights Convention: The Quest for a Universal Child?' (2005) (4) *University of Ibadan Journal of Private and Business Law* 162
  20. The reason lies in the fact that children's rights in Nigeria involves a matter also within the legislative competence of the states, therefore, federal act on children's rights must be ratified or separately enacted by each states' Houses of Assembly before it becomes applicable in the states. See *Oba 2011 Emory Law Review* 893.
  21. Sections 3(1) (2), 6, 7, 8, 13, 19 & 20 are among the sections that provide for specific rights of the child which include the rights and duties of the child in matters that concern them.
  22. Oyeyemi KK, La kadri LA. 'Realizing the Rights of Child under the Nigerian Child's Rights Act, 2003: An Exploratory critique' *Unimaid Journal of Private and Property Law*,2017:2(1):31.
  23. As a matter of fact, Kano States assented to Child's Law in May 2023, Zamfara and Kebbi States assented in August 2022, Yobe State in May 2022, Katsina State in January 2021 and Jigawa State in December 2021.
- See *Child Right Act Tracker*, 'States that have passed Child's Right Law in Nigeria' <http://www.partnersnigeria.org> accessed 25 August, 2023. Furthermore, as at 2017, which is over a decade after the enactment of the Nigerian Childs Rights Act 2003, only more than 26 states out of the 36 states in Nigeria have adopted the Children's Rights Act into their state legislation. See Oyeyemi KK and La-kadri LA, 'Realizing the Rights of Child under the Nigerian Child's Rights Act, 2003: An Exploratory critique' [2017] (2(1) *Unimaid Journal of Private and Property Law* 27-28.
24. See *Attorney- General of Lagos State v Attorney-General of the Federation* (2003) 12 NWLR (Pt 833) 1. See *Inspector-General of Police v All Nigeria Peoples Party & Others* (2007) AHRLR 179 (NgCA 2007).
  25. See *Attorney-General of Bendel State v Attorney-General of the Federation* (1982) 3 NCLR 1; *The State v Gwonto* (1983) 1 SCNLR 142; and *Aliu Bello v Attorney-General of Oyo State* (1986) 12 SC 1.