

CHILD RIGHTS ACT 2003:THE IMPERATIVE OF THE ESTABLISHMENT OF A FAMILY COURT SYSTEM IN EDO STATE BY HON. JUSTICE NOGI IMOUKHUEDE

The Child Rights Act 2003 domesticated the UN Convention on the Rights of the Child which hitherto defined Children's Rights. The UN Convention on the Rights of the Child declares that every Child has a right to life, to be allowed to survive and develop. The Convention also offers protection to the privacy, honour, reputation, health and prevention from indecent and inhuman treatment through sexual exploitation, drug abuse, child labour, torture, maltreatment and neglect. In addition to the Child Rights Act 2003, every child is also entitled to the Fundamental Human Rights guaranteed under Chapter iv of the 1999 Constitution of the Federal Republic of Nigeria (as amended.)

CHILDREN'S RIGHTS:

The Child Rights Act 2003 offers a host of protections to the Nigerian Child. Violence may be defined as a state of injury which may be physical or mental. Therefore while excessive punishment of a child is violence, any state in which the child is subject to any form or mental trauma or abuse may be regarded as a violation of the child's rights.

Please allow me to give you a few examples provisions of the Child Rights Act 2003 which guarantees the protection of children against violence.

Part 1 – under Sections 1 and 2 of the law, guarantees that the best interest of a child is to be of paramount consideration in all actions in every action concerning a child.

Listed hereunder are some of the provisions of the Child Rights Act 2003 that guarantees the child's rights to protection against violence.

Remember violence can be physical and psychological.

S. 4 – Rights to survive and development

S. 5 – Rights to a name ó you will agree with me that having a name is the first indication of humanity. You will agree with me that our names are very important to us, that is why every parent thinks carefully before giving their child names.

That is why we have names like Peace, Joy, Hope, Blessing. We give our children good names because we all believe in the power of words.

S.8- Right to private and family life. You will agree with me that the family is a very important unit of society. It is from our families that we learn social values, personal integrity, religion and socialisation skills. The family unit is very important because that is our root and we are usually very proud of our family name and like to be associated with it. Under the Benin culture that is the first

question that is asked ó whose son/daughter are you? Which family do you come from?

S.10 – Right to freedom from discrimination. You will agree with me that discrimination is a form of mental torture.

S.11 – Right to dignity of the child. As human beings we always fight to preserve our dignity, that is what distinguishes us from animals and other living forms. So the law guarantees respect for the dignity of the child and stipulates that children shall not be subjected to physical, mental or emotional injury, abuse, neglect, sexual abuse, torture, inhuman or degrading treatment or punishment attack on his reputation, slavery or servitude.

S.14 – Right to parental care, protection and maintenance.

Even the unborn child is guaranteed protection against harm or injuries and is entitled to institute legal proceedings to claim damages for such.

Part III creates offences for any breach in the rights of a child. When a law creates offences, this serves as a means to deter infringements because any breach of the right becomes an offence punishable with imprisonment.

Listed hereunder are sections under the Child Rights Act 2003 that punish violations of the rights of the child.

S. 23 – Child betrothal ó 5 years imprisonment or N500,000 fine

S.23 – Tattoos and skin marks ó 1 month imprisonment or N5,000 fine

S.25 – Exposure to use production and trafficking of narcotic drugs – life imprisonment.

S.26 - Use of children in other criminal activities ó 14 years imprisonment.

S.27 – Abduction, removal and transfer from lawful custody- 7-20 years imprisonment.

S.28 – Exploitative labour ó 5 years imprisonment or N50,000 fine.

S.30 – Prohibition of buying, selling, hiring or otherwise dealing in children for purpose of hawking or begging or prostitution ó 10 years imprisonment.

S.31 – Unlawful sexual intercourse with a child ó life imprisonment.

S.32 – Other forms of sexual abuse and exploitation ó 14 years imprisonment.

S.33 – Other forms of exploitation ó 5 years imprisonment or N500,000 fine

S.35 – Importation of harmful publication -3 years imprisonment or N30,000 fine.

S.36 – Harmful publication ó 5 years imprisonment or N50,000 fine.

Part iv of the Child Rights Act creates legal mechanisms for the protection of children's rights, which involves the state government, the court and provides for emergency protection orders and the creation of an Emergency Protection Centre.

Part vi and vii of the Act provides for care and supervision and also about children in need of care and protection.

As can be seen the Child Rights Act 2003 has offered ample protection for the rights of the Nigerian child.

Happily, the Edo State House of Assembly has domesticated the Child Rights Act in the State with the passing of the Child Rights Law 2007.

WHAT IS THE PRESENT DAY PLIGHT OF THE NIGERIAN CHILD?

You will agree that our Children are our future: they will become the future Presidents, Captains of Industries, scientists and various professionals. Children are precious gifts from God and our duty is to care, protect them against violence and bring them up to be responsible Citizens of Nigeria.

As can be seen, the Child Rights Law 2007 has offered ample protection for the rights of the Nigerian Child. What is the situation on the ground? Every day we all see and hear of the Rights of the Nigerian Child being violated. We see children who are used as hawkers and are prevented from going to school, we see and hear of children being brutalised, defiled, trafficked, married, and murdered through ritual killings. Children in Nigeria are branded as child witches and tortured, or are turned into a hungry army of beggars all in the name of culture or religion.

Children are forced to work in plantations under harsh labour conditions and are subjected to a slave like existence. Our Children are deprived of education, whereas the right to education is one of the fundamental rights of the Child and is one of the Millennium Development Goals (MDGs).

What is the future we are offering these children? A life of poverty, violence, deprivation, slavery and ignorance. The Rights of the Child are being violated in Nigeria daily, whether as domestic servants, apprentice traders, bus conductors, refuse collectors, child brides, child prostitutes etc. Our Children are exposed to ritualists, kidnappers, traffickers, paedophiles and all kinds of dangers.

As a legal practitioner, I initiated legal proceedings in suit No. **OR/ACC/95/2004 – Akpan Vs. Akpan** on behalf of a widow and her two sons who were being disinherited by a brother in law. As a result of which the widow became impoverished and her two sons could not attend school for a whole year. The court gave judgment in favour of our clients and granted administration of the estate to the widow. In that way the widow was able to access her husband's pension entitlement and continue to educate her sons.

I was also involved in a criminal case where a father had started defiling his daughter since the age of 5 years ó **COP Vs. Moses Omini**. I am happy to inform you that the accused is now a prisoner serving seven years imprisonment with hard labour. I also offered my services to the parents of a 2 year old girl who was allegedly defiled by a so called pastor. The case was widely featured in our local television news.

Why am I recounting all these experiences? It is to alert you to the fact that the rights of children in Nigeria are being violated daily.

THE MILLENNIUM DEVELOPMENT GOALS (MDGs):

The UN Millennium Development Goals (MDGs) with its 8 ó point agenda are goals which all Nigerian governments must take seriously and strictly implement in its national, state and local government planning.

- (1) Eradicate extreme poverty and hunger
- (2) Achieve Universal Primary Education.
- (3) Promote Gender Equality and empower women
- (4) Reduce child Mortality
- (5) Improve maternal health
- (6) Combat HIV/AIDs malaria and other diseases
- (7) Ensure environmental sustainability
- (8) Develop a global partnership for development.

Equal access to education and an educated citizenry will enable Nigeria participate in the global economy of the 21st century. As you are all well aware, we are now in the information age. Even the Bible states in Hosea 4:6 that my people are destroyed for lack of knowledge....ø We cannot afford to have an ignorant population, if we really want to become the giant of Africa. The multiplier effect of an educated citizenry leads to an exponential growth in human capital, knowledge, talents, skills, intellectual property and entrepreneurial development, first in the homes, then in the society and nation as is being witnessed in India and China today.

THE ASIAN EXAMPLE:

A World Bank comparative analysis of the growth rates of China, Africa and the Asian Tigers, reveal that Africa has stagnated, the Asian Tigers soared, with China driving the growth. If Nigeria has the same education policy as Asia, the macroeconomic results would be exponential. Denial of education is no longer just a human rights issue but an economic issue, with multiplier effects on the national economy and GDP. There is no gainsaying the fact that improved lives reduce poverty. **ESTABLISHMENT OF FAMILY COURTS IN EDO STATE:**

Section 149 of the Child Rights Law 2007, makes provision for the establishment of the Family Court by the Chief Judge of every State for the purposes of hearing and determining matters relating to Children. Section 150 of the Law states that the Court shall be at two levels- High and Magistrate Court. Section 151 stipulates the general jurisdiction of the Family Court. Section 152(2) and 153(1) of the Child Rights Law 2007 provides that members of the Family Court are to be appointed by the Chief Judge of the State.

With this development, it means that the coming to force of the Child's Right Law 2007, has removed the jurisdiction to determine matters relating to children from

the erstwhile Juvenile Court established under the Children and Young Persons Law, 1976, applicable to Edo State. The necessity of the establishment of Family Courts is further heightened because there is presently no court that can assume jurisdiction in Edo State over matters relating to children.

RULES OF COURT

Section 158 provides that:

- (1) The Chief Judge of the State may make rules regulating the procedure in the court, the parties entitled to participate in any proceedings, the fees to be charged and the forms to be used in proceedings..
- (2) The provisions of any written law relating to the practice and procedure in Magistrate courts or High Courts, as the case may be, not inconsistent in the court.

ADOPTION

Section 133 ó Subject to rules of the court made under Section 137 of this Law, the court shall have exclusive jurisdiction to deal with an application for an adoption order.

Section 134(1) of the Child Right Law provides:

- (1) The Chief Judge of the state may make rules of court for regulating generally the practice and procedure of the court in respect of the adoption of a child.
- (2) The power to make rules conferred by subsection (1) of this section, shall without prejudice to the generally of that subsection, include power to make provisions for:
 - (a) Application for the adoption orders being heard and determined otherwise than in order court;
 - (b) The admission of documentary evidence of any consent required Under section 128 of this law; and
 - (c) Requiring the child development officer to prepare for the consideration of the Court, on an application for an adoption order, a Report, for the assistance of the court in determining whether the order will be for the welfare and best interest of the child.

FAMILY COURT PROCEDURE RULES

Section 158 of the Child's Right Law 2007 provides that:

(1) The Chief Judge of the State may make rules regulating the procedure in the Court, the parties entitled to participate in any proceedings, the fees to be charged and the forms to be used in proceedings.

(2) The provisions of any written law relating to the practice and procedure in Magistrate Courts or high Courts, as the case may be, not inconsistent in the Court.

For any Court to function properly, there must be rules that guides its practice and procedure. The foregoing sections vest the Chief Judge of Edo State with the powers to make rules relating to practice and procedure in Family Court, fostering and adoption of children in Edo State.

APPOINTMENT OF MEMBERS/ASSESSORS

Sections 149(2) and 150(3), vests the Chief Judge of Edo State with powers to appoint Members/Assessors to sit with the Judges and Magistrates at the respective Court levels. The law also specifies that the members should be 2, one of whom must have the attributes of dealing with children and matters relating to children, preferably in the area of child psychology education. At the Magistrates court level one of Assessors must be a woman while at the High Court level the two Assessors shall be officers not below the rank of Chief Child Development Officers.

From the foregoing, it is clear that Assessors with the background of Child Psychology may be appointed from the Ministry of Women Affairs and Social Development or any other field of equivalent bias.

TENURE OF MEMBERS

The Child's Right Law 2007 did not specify the tenure of Members/Assessors to be appointed by the Chief Judge, it therefore lies at the discretion of the Chief Judge who appoints, to also determine the tenure of office of members.

REMUNERATION FOR MEMBERS

The Child's Right Law 2007 did not also make provisions for how Members/Assessors are to be remunerated. This may however, be as a result of the fact that unlike the erstwhile Children and Young Persons Law, where anybody can be appointed as a member, the new law specifically says that such persons at the High Court Level should be officers not below the rank of Chief Child

Development Officer, one of whom has attributes of dealing with Children, and preferably in the area of Child Psychology education.

At the Magisterial level one of the Assessors must be a woman while the other person shall have the attributes of dealing with children and matters relating to children. Notably at the High Court Level, these officers are Civil Servants under the State Ministry of Women Affairs and Social Development.

CHILDREN CORRECTIONAL CENTRE

The Child's Right Law 2007 has also made provision for the establishment of Children Correctional Centre and Special Children Correctional Centre under section 245 (1) A iv & v the Commissioner for State Ministry of Women Affairs and Social Development.

In order to ensure the protection of our children, who are our future, everyone must join hands with the Edo State Government to ensure that anyone who violates the rights of our children are brought to face the Child Rights Law, through the Family Courts systems in Edo State, when fully established. We must not allow impunity in the violation of our children's rights to continue to prevail.

Nogi Imoukhuede J