

CHALLENGES OF DOMESTICATING CHILD'S RIGHTS TO EDUCATION IN NIGERIA

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Abstract

The importance of children education in any given society is very critical to the social and economic development of the society, particularly for its future pivotal development. To deny the child his/her right to education is to deny the nation its critical development. The needs of the child ranging from feeding, clothing, accommodation and capacity hang on the shoulders of adults, parents, guardians and the government. Because of their vulnerability, they cannot cater for themselves hence they must be provided guidance, training and care for meaningful contribution in the society. It was in recognition of this, that the right of children education was entrenched in several international and domestic legal instruments. However, there is the problem of implementation and enforcement of these extant laws as there are still so many uneducated, unfed, and tattered children in the streets engaged in hawking, child labour, begging and so on. And the resultant effect of this is that the social and economic landscapes of the future generation in Nigeria cannot be guaranteed. This paper therefore discusses the relevant laws and policies on children's education in Nigeria. It also examines the challenges faced in effective implementation of these laws and concludes that there is a lack of proper mechanism to effectively entrench the provision of the various instruments. Finally, the paper recommends the provision of enforcement machinery that will ensure implementation and the need to address the issue of poverty.

Keywords: Children's Right, Education, Domestication.

Introduction

A look down the memory lane reveals that one of the greatest challenges ever faced on earth and still being faced is the need to safeguard the human factor in development. This means protecting children, giving them a future and thus making development sustainable. Today, half of the world's 2.2 billion children are threatened by poverty, HIV/AIDS and lack of access to education. (UNICEF 2018). About 180 million are engaged in the worst forms of child labour, 120 million children are trafficked every year, and the number of children who died before they were five was 10.6 million (UNICEF, 2018). The number of out-of-school children in Nigeria has risen from 10.5million to 13.2million, the highest in the world (UNICEF, 2018).

According to Akwara, Soyibo and Agbe (2010), law and development must go together, since law is an essential tool for social engineering. Law can prove development and at the same time, it can inhibit it. Thus, development in any community must reflect in its laws. Law must be in harmony with development and must be able to address social problems.

It is pertinent to note that law, being a dynamic tool in development, has been employed at different times to protect children and their rights. As far back as 1919, an industrial minimum age was adopted by the international child labour convention, to regulate children's participation in workplaces. With the birth of the United Nations, the declaration of rights of the child was made in 1959, and on 20th November, 1989, the Convention on the Rights of the Child (CRC) was adopted. It spells out the child's basic rights which range from the right to survival, development, education, protection from harmful influences, exploitation, right to participate fully in family, cultural and social life. Every right spelt out in the convention is inherent in human dignity and harmonious development of the child. The convention gave birth to regional treaties like the African Charter on the Rights and Welfare of the Child, and national laws, like the Child's Right Act 2003 of Nigeria. This paper examines how these laws have impacted on children's education in Nigeria and paves way for the overview of some challenges hindering the recognition, protection and provision of children education and proffers recommendations.

Conceptual Clarifications

Right: According to Rand, (2009) right is a concept that provides a logical transition from the principles guiding an individual's action to the principles guiding his relationship with others. A right, Rand continues is a moral principle defining and sanctioning a man's freedom of action in a social context.

The Child: A precise meaning or definition of the child may prove difficult to arrive at. However, the United Nations Convention on the Rights of the child defines a child as a human being below the age of 18 years, unless under the law applicable to the child (child rights Act, 2003). Biologically, a child is anyone between birth and puberty or in the developmental stage of childhood, between infancy and adulthood (Tombowua, Tyozua, and Wombo, 2014).

Education: According to the National Policy on Education (2004), education is a process which helps to develop the whole man, to enable him function in whatever environment he finds himself. Obanye (1980) in Atteh (2012) defines education as gearing towards an all-round development of an individual which includes intellectual, physical, moral, emotional and social aspects as well as the adoption, acquisition of vocational skills and aesthetics sense. Education can also be defined as a body of knowledge and organized experience to be accommodated by an individual, to make him useful to himself and the society.

Overview of Children's Right to Education in the Nigerian Law

The supreme law of the land is the constitution. It is otherwise known as the ground norm (Constitution of the Federal Republic of Nigeria) (CFRN), 1999). All along, bills on rights have always been incorporated in the Nigerian Constitution, whereby certain rights are listed as fundamental rights, excluding the right to education, (Folourisho, Imam-Tamin and Abdulraheem, 2014). Those rights contained there are by the authority of the constitution and the positioning therein guaranteed and enforceable rights. As far as education as a human right in Nigeria is concerned, the first legal instrument to be considered is the constitution, since other rights enjoy constitutional guarantee and protection. From the independence constitution, of 1960 to the 1999 Constitution of the Federal Republic of Nigeria (CFRN), the fate of education as a human right remains the same. As far as the 1999 constitution is concerned, there are two fundamental issues provided for therein (i) the fundamental human right and (ii) the fundamental objectives and directive principles of the state policy (CFRN,

1999). Though both are referred to as fundamental in the language of the constitution, they share differences in their respective legal implications, in the sense that the former is an inviolable and justifiable right while the latter is not. The latter is in fact, and in law guiding principles to the accomplishment of the vision adumbrated in the preamble to the constitution. The area of concern of the Nigerian constitution that is most relevant to educational provision is contained in section 18 of chapter 11 which provides thus:

(1) Government shall direct its policy towards ensuring that there are equal and adequate educational opportunities at all levels (2) Government shall promote science and technology (3) Government shall strive to end and eradicate illiteracy; and to this end government shall as and when practicable provide; (a) free, compulsory and universal primary education; (b) free, secondary education; (c) free, university education; and (d) free, adult literacy programme.

Issues referred to as rights which are even fundamental are enumerated in a special chapter of the constitution i.e. chapter IV from section 33 to 46. Issues contained in this chapter are treated sacredly and the issue of education is not included (Folorunsho, Imam-Tamim and Abdulkareem, 2014). It is rather provided for under chapter II and ambiguously named fundamental objectives and directive principles of state policy and not "right", whether fundamental or otherwise (Ayua & Okagbue 1996; Nasir, 2014).

child rights Act and other Relevant Legislations Relating to Education in Nigeria

Though the Nigerian constitution neither guarantees nor protects the right to education, the Child Rights Act (CRA) in conformity with the United Nations' child rights Convention (CRC) considered some issues relating to and/or affecting the well-being of the Nigerian child as rights worthy to be protected (Folorunsho, Imam-Tamin and Abdulkareem, 2014; Tombowua, Tyozua & Wombo, 2014; Ikpe, 2016). The Act generally guaranteed the overall protection as duties of all and sundry, or any person or bodies upon whom legal obligation is placed to do so. Unlike CFRN, the CRA in its wordings considered education as the absolute right of every child especially at the primary and secondary school levels. Having provided for education as the right of a child, the Act places corresponding duties on the Government to provide education for the child. The Act further provides for supervisory duty on parents and guardians in the preservation and protection of the said rights (Cottrijse, 2000; Nasir, 2004).

Challenges with Implementation and Domestication of Child Rights Act in Nigeria

The convention on the Rights of the Child enjoins the member states to undertake to disseminate the convention's principle and take all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present convention. Against this background, a draft child's rights bill aimed at principally enacting into law in Nigeria the principles enshrined in the convention on the rights of the child and the AU Charter on the Right and Welfare of the Child was prepared in the early 90s. But till date, the domestication of the Child Rights Act in all and sundry of the Nigerian society remains seemingly impossible (UNICEF, 2007). Although Nigeria ratified the convention of the Child Rights Act in 1990 and passed a bill to adopt the Act into Nigerian law in the year 2013, there is still an enormous problem with the domestication of the Child Rights Act. UNICEF (2007) conveyed the information that although the Child Rights Act was passed into law at the Federal level in Nigeria, it will only be effective if state assemblies also enact it. To date, only 26 of Nigeria's 36 states have passed the Act. Intense advocacy continues for other 10 states to pass it. According to Ajibo, Igwe and Agbawodikeizu (2015) the law has a little true effect on Child Rights across Nigeria, due to lack of implementation among other states, which have their own government and judiciary. Implementation has been made a

challenge, as Nigerian states and local governments represent a diverse range of ethnic groups and customs.

Ladan (2013) equally opined that the ratification of the Convention on the Child Rights Act did not take cognizance of the dichotomy between the Child Rights Act and the cultural traditions of the Nigerian people. Other challenges that arose as a result of the Child Rights Act are as follow: the Act did not recognize local peculiarities of the Nigerian people, such as culture, customary and religious beliefs. For example, in the northern part of Nigeria, where there are a lot of children “Almajiri” on the streets, begging or hawking for survival, since this practice is their source of sustenance nobody considers this a violation of the Child Rights Act which prohibits this practice in its totality (Ladan, 2007).

The act’s prohibition of child marriage does not favour Muslims as the Islamic religion supports child marriage. As a result of this contradiction, there is not much compliance with the Child Rights Act by the Muslims in Nigeria (Ladan, 2007). To further give credence to the above point, Hirsch (2013) opined that a Nigerian human rights group’s claim that Senator Ahmed Yerima’s child bride undermines protection for the legal status of children in Nigeria was countered when the Senate voted to keep a law that equates married girls to adults, even if they are less than 18 years, and gives them the right to renounce their citizenship. Critics say that the law could be used to support child marriage (Hirsch, 2013). It is pertinent to note that this factor, most especially the Islamic religion, undermines the domestication of the Child Rights Act in Nigeria. There exists a dichotomy between the Child Act’s provision on adoption of children adopted, and the Islamic prohibition of child adoption, which poses an enormous challenge to the domestication of the Child Rights Act in Nigeria. The Child Rights Act made adoption lawful and permissible; on the contrary, one of the consequences and/or effect of adoption under the act is stated in section 14 (1) (a). It provides: all rights, duties, obligations and liabilities, including others under the personal law applicable to the parents of the child or any other person in relation to the future custody, maintenance, supervision and education of the child...? On the contrary, the above provision of the Act on child adaption contravenes the express provision of the Holy Qur’an and Sunnah of the Holy prophet on adoption of children. Islam, on the contrary prohibits adoption outrightly, especially because of the consequences of such an adoption. The authority for the prohibition of adaption under Islamic law is the Quranic injunction in chapter 33:4-5 following the incidence that happened between the Holy Prophet and his erstwhile “adopted” child, Zayd Ibn Harith. The holy Qur’an states that adopted children are not real offspring of the adopters; they must be related to their true procreator, when known and knowable, otherwise they are to be brethren in faith and clients of their fellow Muslims (Ajibo, Igwe and Agbawodikeizu, 2015).

In addition to all the controversies as a result of the Child Rights Act, according to Abubakar (2005), some people called for its outright rejection, describing it as the western imposition of a universal culture on the rest of the world, which must be resisted at all cost. The passage of the Child Rights Act (herein referred to as the Act) on 31st may 2003 and its subsequent coming into force on 31st July, that same year, polarized the Nigerian public into camps. Abubakar (2005) further reiterated that the Child Rights Act (2003) is still unpopular in Nigeria, judging from the lack of enthusiasm to implement it. He further opined that the Act appears to adopt a monolithic approach without regard to the multicultural and multi-religious nature of the country.

Challenges of Children’s Right to Education in Nigeria

There is no doubt that Nigeria has enough laws that should safeguard the right of children to education. However there are some factors that seem to handicap the effective implementation of these laws. These factors are categorized as educational, political and religious, socio-economic, communal and environmental factors. It has been observed that even where legal machineries are in place for enforcement, if these militating factors are not

tackled, the efforts of the government, civil societies and international bodies will be highly undermined.

Educational Factors

Some factors have been identified as educational factors impeding the advancement of children's right to education in Nigeria. According to Ikpe (2016), the factors include:

- i. Laxity on the part of policy makers as well as administrative obstacles. Without a sense of urgency on the part of the government, policy makers are not motivated to be prompt and innovative in proffering the needed changes in education policy, and also when these policies are finally drafted, they go through a lot of administrative approval which most often than not hampers speedy implementation.
- ii. There is the problem of non-involvement of teachers in curriculum innovation and changes.
- iii. There is also the problem of not having adequate and qualified personnel to effect the changes proffered by policy makers.
- iv. Another concern is the fact that large numbers of textbooks are still outdated, irrelevant and inaccurate, and cannot reflect the changes that have been made.
- v. Finally, the articulation of policy guidelines on standards, procedures, strategies and coordination of roles to ensure and sustain the delivery of qualitative education in Nigeria, has often received impetus from various succeeding governments since independence in 1960, but the problem which has remained perennial is the fact that policies are not retained and followed to logical conclusion by succeeding governments thereby leading to what has been termed as the case of abandonment or neglect of national development plans and policies, particularly as it affects the education of children (Anaamoah-Mensah & Obeleau, 2006).

Poor Funding

One of the challenges of children's right to education in Nigeria is the failure and refusal of the government to cater appropriately for the provision of education in Nigeria. This can be deduced from the budgetary policy of the government (Folorunsho, Imam-Iamin Abdabdulraheem, (2014). Financial stability of the sector determines its success. In Nigeria, the educational sector has a very low budgetary allocation and this is a recurrent thing, despite the UNESCO recommendation that all member states that are signatory to the international covenants are legally committed to allocating 26 percent of their total annual budget to the education sector of their respective states, particularly the developing nations. It has been observed that no government in Nigeria has ever allocated a reasonable percentage that can adequately cater for the education sector.

Insecurity and insurgency

Another factor is insecurity. Since independence in 1960, Nigeria has been managing various security challenges. For example Odua Progressive Congress (OPC) from the South-West and the "Bakasi boys" in the South-East snowballed into the "Egbesu boys" in the South-South. Soon after that was subdued, the Niger Delta militants sprang up. When that was conquered by the introduction of amnesty, Boko Haram terrorists emerged, followed by farmers-herders conflict, among others. These security challenges adversely impacted on education. For instance, there are drops in the school children enrolment and attendance as well as destruction of the available physical infrastructure. This has been occasioned by acts like bombing of schools, killing and kidnapping of innocent school children. The famous abduction of over 200 female secondary girls in some states in the North-Eastern part of Nigeria is another instance which led to the slogan "bring back our girls", through which the

majority of the citizens accused the government of either complicity in the abduction and/or negligence. As a result of this challenge and heinous acts of terrorism, parents find it unsafe to send their children to school in the country, particularly in the volatile areas (Folorunsho, Imam-Tamin and Abdulraheem, 2014).

Political and Religious Factors

The first concern here is the inability of the leaders to muster enough political will to implement these laws that have already been ratified and enacted. In fact, it has been argued that this factor is a major issue which will require the government of the day to go beyond ratification to actual implementation (Olahanmi, 2014; Ikpe 2016). Another fact is the issue of bureaucratic bottlenecks that hamper actual implementation in Nigeria. This factor bothers on the fact that after ratification, it is the duty of government through its administrative agencies to proffer policies and guidelines that will incorporate these laws into mainstream policies for easy implementation (Ikpe, 2016). Another concern is the inhibition provided in the constitution which captures the obligation, of government towards education as under chapter II on fundamental objectives and directives, principles of state policy which are essentially not justifiable as provided in section 6(6)(C) of the 1999 constitution (FGN 1999). The aggrieved cannot sue the government for lapses in this area. Similarly, Olakanmi (2014) maintained that the major problem facing the provision of education in Nigeria is that education is not recognized as a right in the Nigerian law. This inadequacy does not give the judiciary the opportunity to protect the people's educational right through court pronouncements. Education is neither recognized, guaranteed nor protected as a right under the Nigerian constitution, the none-inclusion of education as a right under chapter IV constitutes a serious challenge to the educational right. It is not a right, hence no claim could be brought regarding it (Ayua & Okagbue, 1996; FGN, 1999).

For instance, there are agencies such as the Universal Basic Education Commission (UBEC) established by the UBEC Act and other related matters, also established by a national laws, but the problem is that though punitive measures are provided for in the instruments, there are little or no records of actual enforcement, which has made violation of children's right to education very common and unabated (Arinze-Umobi, 2010). Religious belief is also a major concern. Although there is no religion that forbids education, the misinformed always hide under the cloak of religion to deny their wards the right to education, particularly as it relates to the girl-child. Ethno-religious clashes in most parts of the country totally annihilate the development of education in those parts of the country (Graca, 1996).

The prevalence of chronic poverty which has lingered over the years in the country, as most parents in the rural areas and even in the urban areas can't afford three square meals a day for their wards; some have to send their children to the streets to hawk during school hours to make ends meet (Lawal, 2011). Secondly, illiteracy and ignorance have also been identified as serious obstacles as most uninformed and illiterate parents do not know the benefit of education; some prefer training their children in trades at such tender ages, when they should be in primary school. Also lack of adequate grass root sensitization on the rights of the child to education further compounds this fact (Arinze-Umobi, 2010). The third concern is the patriarchal nature of most societies in Nigeria which discriminates against the girl-child. The major worry here is that the boy child is better preferred to the girl child. It is believed that the boy child is there to preserve the family line while the girl child's education will eventually end in her husband's kitchen. The following, according to Arinze-Umobi (2010), are identified as factors that further encumber the position of the girl child:

- ii. Traditionally ingrained negative and obnoxious practices, e.g. female circumcision, early or forced marriage, societal beliefs, cultural influences that discriminate against the girl-child.

- iii. Girls are often pawned and used for unremunerated and invisible jobs.
- iv. Girls are channeled towards informal courses for home keeping, child rearing and bearing.

Girls' training is regarded as bad investment, as they would eventually be married off. Thus a greater number are illiterate, uninformed, vulnerable, disadvantaged in the labour market and invariably poor and underpowered economically (Arinze-Mobi, 2010).

Communal/Environmental Factors

According to UN record by the Internal Displacement Monitoring Center (IDMC), three-quarters of the world's 25 million people internally displaced by conflict are believed to be women and children (Ikpe, 2016). Internally Displaced Persons (IDPs) are persons or groups of persons, who have been forced or obliged to flee or leave their homes or places of habitual residence, in particular, as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights, or natural or human-made disasters, and who have not crossed an internationally recognized state border. Conflict has a physical, emotional and psychological impact in all children. In the turmoil of displacement, family and community structures including schools breakdown while traditional and social norms disintegrate, which places children at greater risk of infringements of their basic rights than other children, particularly others' right to education (Graca, 1996).

Environmental pollution and natural resources management affect the success of government interventions in education; illnesses caused by environmental factors like air and water pollution have an impact on school attendance rates (UNICEF, 2011). Undernourishment, whether due to soil depletion or loss of harvest, will affect children's ability to absorb instruction. Deforestation and lack of safe water close to households may also affect children's attendance rates, as they spend more time collecting firewood and water. These situations can also affect teachers and their attendance rates (Ikpe, 2016). Children who have been displaced because of natural disasters face additional challenges with regard to their education. The impact of extreme climatic events and the increasing scarcity of water, due to climatic change are likely to increase the number of displaced people in Nigeria. Temporary migration can cause children to miss school and can also cause overcrowding in locations that receive many environmental refugees and IDPs (Graca, 1996). The protection of children's right to education is a particular challenge in emergency situations, as children are exposed to greater risk of family separation, sexual exploitation and psycho-social trauma. Disruption of social services particularly affects orphans and vulnerable children in their access to basic services (Ejeilo, 2012).

Conclusion and Suggestions

Education for sustainable development is the process of achieving sustainable development be it economic growth, human development and environmental protection and conservation. One may conclude that there are indeed laws, but the only issue at hand is lack of the machinery for the effective implementation of the provisions of the various instruments which this paper has made an attempt to proffer suggestions, which if implemented, will help to surmount these challenges.

1. Government should provide enforcement machinery that will ensure implementation. For instance, empowering all existing implementation committees under the various Acts and creating new ones as well as empowering the existing law enforcement agencies that should radically ensure actual implementation.
2. Government should endeavor to tackle the issue of poverty, by empowering the rural and urban poor, to enable them withdraw their wards from street hawking and other

- exploitative child labour into classrooms. Government can do this by providing soft loans to these indigent parents in order to empower them financially.
3. Government should set up a sustainable adult literacy programme incorporating, basic literacy and numeracy, dissemination of information, to promote the implementation of children's right to education.
 4. There should be adequate grassroots sensitization on the importance of education, as well as on the rights of children, particularly the right to education. All forms of school fees should also be effectively abolished so as to encourage the rural poor to send their wards to school.
 5. Priority interventions should take the form of concrete and goal-directed attitudinal changes, particularly religious practices, impacting adversely on children's right to education. Strategic programme identifications should take the form of public enlightenment, not only through the media but also through personal contact to parents, guardians, religious leaders.
 6. Religious leaders should be effectively involved in propagating the message of equality of sexes in their various religious gatherings.
 7. There should be a constitutional amendment that will make chapter II of the 1999 constitution of the Federal Republic of Nigeria justifiable and enforceable, especially as it relates to education.
 8. Government should provide adequate resources for education, by meeting the UN standard of 26% of its annual budget. This will be needed to build new schools, train more teachers and provide other basic teaching aids, among others.
 9. Furthermore, there should be a constitutional amendment to automatically incorporate these international treaties and conventions into domestic laws as in the Namibian constitution, without requiring extra domestication. This will place these conventions at par with local legislations and bring them within the judicial powers of the court entrenched under the constitution.
 10. Government should include education on the exclusive legislative list to ensure that all laws relating to education, passed by the National Assembly are directly implemented by the states, without further domestication.

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