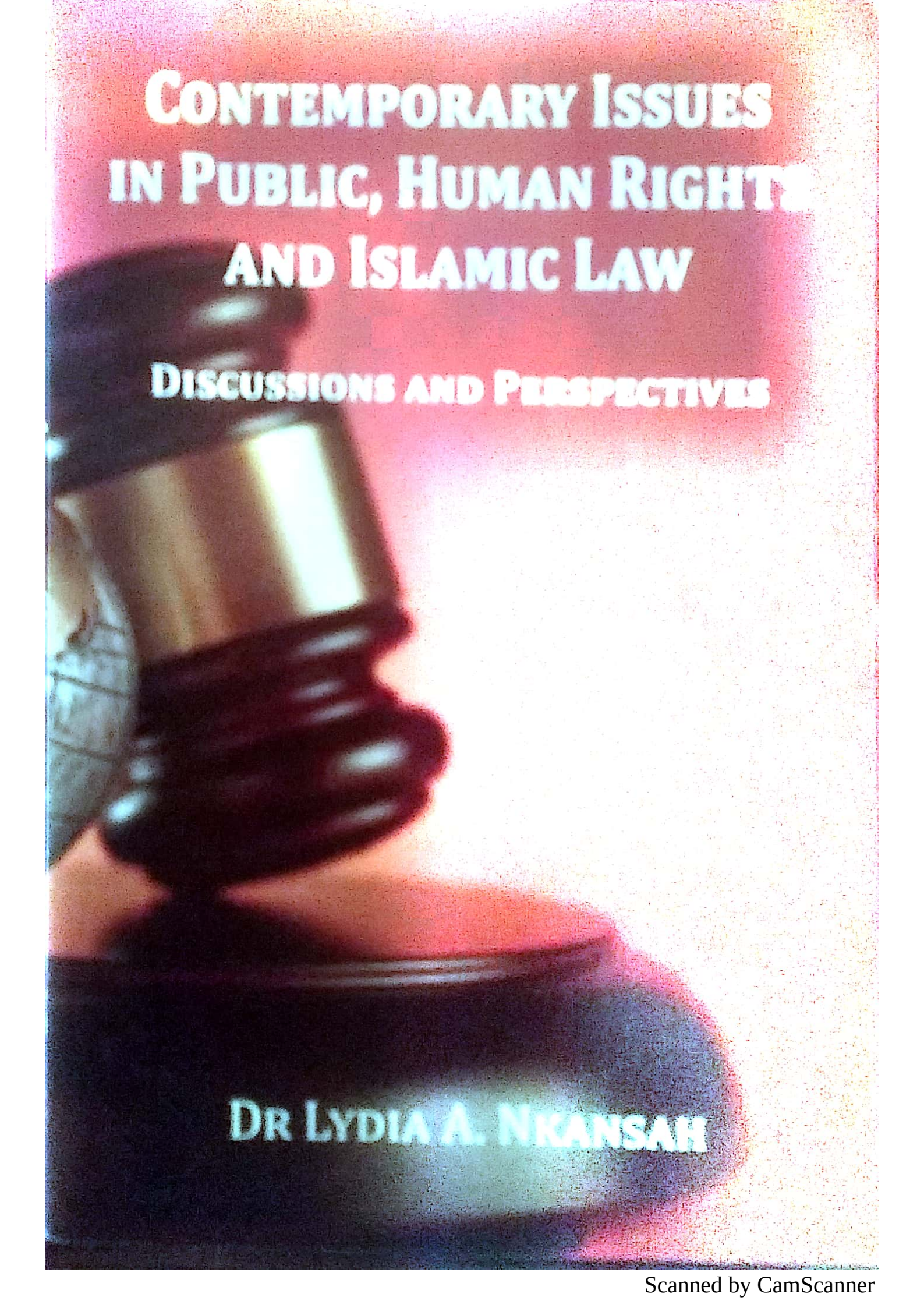




CONTEMPORARY ISSUES IN PUBLIC, HUMAN RIGHTS AND ISLAMIC LAW

DISCUSSIONS AND PERSPECTIVES

DR LYDIA A. NKANSAH

Contemporary Issues in Public, Human Rights and Islamic Law: Discussions and Perspectives

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Summary of the Chapter

This paper examines the right of children to health under the Nigerian law particularly under the child's Right Act. The role of government and the parents towards the implementation of this paramount right are discussed. To achieve this, qualitative method of research is adopted wherein both primary and secondary sources of materials are adequately used. In the final analysis, the study concludes that full implementation of children's right to health under Nigerian law will assist them to develop mentally and physically.

Keywords: *Right, Children, Health, Nigeria, Implementation*

1. Introduction

The legal framework that regulates children's right as far health matters is concerned in Nigeria is the Child Rights Act, 2003. Apart from gaining momentum globally,⁸²⁹ it has been receiving attention from different levels of governance in Nigeria,⁸³⁰ especially from the legislature. Although the adequacy of the attention or legislation is being accorded to the right of children to health in Nigeria is one of the major issues to contend with in this paper. The Child Rights Act is a conglomeration of many International conventions and it seeks to consolidate existing legislations relating to children in terms of their protection and welfare.⁸³¹ The Act is divided into 24 parts, containing 278 sections. The Act makes provision for the protection of children's rights by prohibiting harmful and exploitative practices which include the prohibition of child betrothal⁸³² and marriage,⁸³³ inscription of skin and tattoos marks,⁸³⁴ use of child for criminal activities,⁸³⁵ abduction⁸³⁶ and child labour.⁸³⁷

⁸²⁹ See the provision of Article 12 of the UN Convention on the Rights of the Child (UNCRC). The issue of child's right to health has progressively increased to the child's right to be heard. It also increased right to participate in decisions affecting them. It not in doubt that this has brought recognition in international law with regard to the growing influence of the consumer and of course an increased understanding of children as excellent social actors together prompted the increased acceptance of the importance of participation with children. See generally Ursula Kilkelly and Mary Donnelly "The Child's Right to be Heard in the Healthcare Setting: Perspectives of Children, Parents and Health Professionals", available at Web: www.omc.gov.ie accessed on 1st August 2015.

⁸³⁰ Some states of the federation have adopted and passed laws which regulate children's right e.g. Kwara, Osun, Lagos, to mention but a few.

⁸³¹ Musa UmanAbubakar. n.d.Unravelling some Knotty Areas in the Child's Right Act.n.pl. n.pb.2.

⁸³² Section 22 of the CRA 2003.

⁸³³ Section 21 of the CRA 2003.

⁸³⁴ Section 24 of the CRA 2003.

⁸³⁵ Section 26 of the CRA 2003.

⁸³⁶ Section 27 of the CRA 2003.

⁸³⁷ Section 28 of the CRA 2003.

2. Conceptual Clarification

Who is A Child?

Certainly, everybody is a child of some person but not everybody can rightly be considered as a child. There is the need to know what constitute childhood from the cultural, social and legal perspective. Under the Nigerian socio-cultural background, the meaning of a child differs widely owing to the absence of uniformity in the cultural perceptions. In some cultural sets, a boy remains a child until initiated into an age-grade society or until he is of age to add physically and monetarily to community growth. But in some cultures, childhood ends at puberty. Under the common law, the age of puberty in the case of a boy is fourteen (14) years, while that of a girl is twelve (12) years. This position was laid down in the cause of *Harrod v. Harrod*. However, it is not certain whether the common ages for puberty apply in Nigeria. However, with regards to *Section 2 of the Children and Young Persons Law* of Lagos State (1973), which provides for the welfare of the young and treatment of young offenders, a child is a person under the age of fourteen (14) years while a young person is one who has attained the age of fourteen years but is under the age of seven years. The Nigerian Labor Act (1974) considers a child as a person below fifteen (15) years of age while the National Child Welfare Policy (1989) defines a child as anybody who is twelve years of age and below. This uncertainty sprawling the definition of a child under the Nigeria law was finally laid to rest by *Section 274 of the Childs Rights Act* (2003) which defines a child as a person who has not attained the age of eighteen (18) years. It must be noted that this is in line with the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child both of which Nigeria is a signatory. In any case, it must be borne in mind that children are the most vulnerable members of any community; they are fragile, innocent, and often unaware of danger. They are obviously powerless of enforcing their rights and usually unaware of them. Therefore, the protection of a child from any act likely to cause damage to the child becomes paramount.

3. An Overview of The Child's Right Act

The Child Right Act makes provisions for both the obligations of the government and parents in relation to the protection of children.⁸³⁸ The Act declares that the best interest of the child remains the primary and paramount consideration in all actions to be taken in respect of a child.⁸³⁹ The Act provides that the provisions of Chapter IV of the Constitution of Federal Republic of Nigeria, 1999 should apply as if they are expressly stated in the Act.⁸⁴⁰ There is no doubt that CRA is the major instrument that contains all the provisions relating to the protection of Nigerian children. However, each state is also encouraged to have its own child's right law. For instance, Kwara state has enacted its Child's Rights Law in 2007 and the provisions are similar to that of CRA. The need for separate child's right law by each state of the Federation is underscored by the legislative power sharing between the federation and the states under the Nigerian Constitution. By virtue of Section 4 of the Constitution of the Federal Republic of Nigeria 1999, the federal government has the power to legislate with respect to matters contained in the exclusive legislative list while both the federal and the state legislatures have the power to enact laws in respect of concurrent legislative matters.⁸⁴¹ However, there is a third category referred to as the residual list but which is not mentioned in the Constitution. The residual list covers matters that are not mentioned in both exclusive and concurrent lists.⁸⁴² The protection of children is neither contained in the exclusive nor the concurrent legislative list;

⁸³⁸ Ladun M.T. 2007. The child's Rights Act 2003 and the Challenges of its Adoption by the Government in the Northern States. "A Paper presented at a one day interactive forum for Sokoto State House of Assembly Legislature on 23rd July 2007.

⁸³⁹ Section 1 of the CRA 2003.

⁸⁴⁰ Section 3 of the CRA 2003.

⁸⁴¹ See Mowoe, Kehinde M, *Constitutional Law in Nigeria*. (Malthouse Press, 2008) 57.

⁸⁴² 'Residual Legislative List' was defined by the Supreme Court in the case of *A. G. Lagos State v A. G. Federation & 36 Ors.* vol. 3 CLC 66 at p. 102, as "what was left after the matters in the Exclusive and Concurrent Legislative Lists and those matters which the Constitution expressly empowered the Federation and the States to legislate upon had been subtracted from the totality of the inherent and unlimited powers of a sovereign legislature. The Federation has no power to make laws on residual matters".

thus classified under the third category, which is the residual list. Hence, the need for the states to specially enact their separate child's rights laws.

With the enactment of the Child's Rights Act, the welfare and responsibilities of children as well as those of government and institutions towards children became more defined. In addition, the Act makes provision for the enforcement of these rights by imposing strict penalties for abuses, creation of the Family Court, and bringing of Nigeria's child's rights law to global standard. These rights can be classified into survival rights, development rights, participation rights and protection rights. Under survival rights, children have the right life; survival and development; health and health services; dignity of the child; and freedom from discrimination. Under development rights, they have the right to leisure, recreation and cultural activities; to freedom of thought, conscience and religion; to free, compulsory and universal primary education; to parental care, protection and maintenance. Under participation right, they have the right to freedom of association and peaceful assembly; freedom of expression; freedom of movement; right to personal liberty; and under protection right, there is the right of the child in need of special protection; right of the unborn child to protection against harm; and contractual right of a child.

4. Right Of Children To Health Under The Cra

The Child Rights Act incorporates some of the provisions relating to right of children under the Child Rights Convention⁸⁴³ and ACWRC⁸⁴⁴ to ensure the protection of Nigerian children against illness and to live in healthy conditions like their counterpart around the world. Specifically, the relevant provisions relating to health are section 13, 14, and 17 of the Act. Section 13 of the CRA deals extensively with the right of children and spells out the responsibility of the government to the realization of the protection of children's right to health. Health has been described as a state of being sound mind, body or soul. The

⁸⁴³ See Article 6 & 24 of CRC.

⁸⁴⁴ See Article 21 of ACRWC.

state of being healthy may either be freedom from pain or sickness.⁸⁴⁵ Healthy can therefore be described as a state of comprehensive mental, physical or social well-being. But a state of being healthy does not merely mean absence of disease or infirmity. Therefore, the enjoyment of the highest reasonable standard of health is one of the fundamental rights of every human being without any discrimination.⁸⁴⁶ The World Health Organization re-echoes that the government has the responsibility of ensuring good health of their people which can be attained only by the provision of adequate health and social measures.⁸⁴⁷

A good health condition is best achieved by given adequate consideration to a number of care which focus on improved health outcomes. These considerations include health promotion, early intervention prevention access to proper and affordable services. The term 'right to health' is widely understood to cover access to a wide range of conditions necessary for the attainment of health such as food, housing, safe water, sanitation, healthy working conditions and a healthy environment.⁸⁴⁸ Children's right to health as contained in the Nigerian law can be found in the Constitution and the Child's Rights Act. Nigerian constitution consists of certain rights which are listed as fundamental rights,⁸⁴⁹ and the provision relating to health is excluded. However, the Constitution in Chapter II places health among the fundamental objectives and directive principles of the state policy. For the avoidance of doubt, Section 17 (3) (c), (d) and (f) of the 1999 Constitution of the Federal Republic of Nigeria provides thus:

⁸⁴⁵ Garner A.G, *Black Law Dictionary* (Thomson West, 2004) 737.

⁸⁴⁶ Onyegu R., *Amanuensis on the Right to health in Nigeria :Social Economic Right Initiatives* (2005) 76

⁸⁴⁷ Paragraph 10 of the preamble of to the Constitution of WHO.

⁸⁴⁸ Muhammad Tawfiq Ladan, 'The Nigerian Child's Rights Act 2002: An overview of the Rational Structure and Content' [2001] vol.2. *Nigeria Bar Journal*.240.

⁸⁴⁹ TebohoMojah. 'Nigeria Education Sector Analysis: An analysis of performance and Main issues' being a document produced for the World Bank in January 2000. Available <http://siteresources.worldbank.org/NIGERIAEXTN/resources/ed>. See also section 13-24 of chapter 11 of the CFRN, 1999.

The State shall direct its policy towards ensuring that:

- (c) the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused;
- (d) there are adequate medical and health facilities for all persons;
- (e) there is equal pay for equal work without discrimination on account of sex, or on any other ground whatsoever;
- (f) children, young persons and the age are protected against any exploitation whatsoever, and against moral and material neglect.

There is a major difference in the legal effect of the provisions of Chapter II and IV of the 1999 constitution. The difference in the two provisions is to the effect that while the provision of Chapter IV confers legal rights that are justiciable, chapter II has no such legal binding effect. For instance, in the case of *Uzoukwu v. Ezeonu II*,⁸⁵⁰ it was held that the fundamental objectives and directives principles of state policy in Chapter II of the Constitution are not justiciable. It is saying the obvious that health serves as a bedrock upon which all other rights depend on. The fundamental rights to freedom of movement, expression or assembly become meaningless in the absence of sound health. The Court of Appeal held in *Adamu v. A.G. Bornu State*,⁸⁵¹ that though the provisions relating to fundamental objectives and directive principles under the 1999 Constitution are non-justiciable, it can sometimes give rise to matters that give citizens the right to sue, for example when the issue of discrimination is raised on the enjoyment of those rights.

Right to Life, Survival and Development

The Act provides for the right to survival and development of the children.⁸⁵² Right to life is a basic right on whose other rights are predicated.⁸⁵³ The Constitution protects the right to life of every person

⁸⁵⁰ (1991) 6 NWLR (pt. 200) 708.

⁸⁵¹ (1996) 8 NWLR 203.

⁸⁵² Section 4 of CRA. See also Section 4 of Kwara State Child's Rights Law, 2006.

⁸⁵³ Omaka, C.A, Right to life and the Dignity of Human person (Section 33 and 34 of the 1999 Constitution' Human Right Law and Practice in Nigeria. (Chenglo Limited, 2005) 114

and as such no one should be deprived of this right without a just cause.⁸⁵⁴ The court in the case of *Esabunor v. Faweya*,⁸⁵⁵ held that any attempt to take the life of a person outside the purview of the Constitution is illegal. The basic question here is on the applicability of this provision to children. This particular provision applies to children for two obvious reason. The first reason being that the Child Rights Act itself has made the entire provisions of chapter four of the Constitution applicable. The second reason is that the expression used in section 33 of the Constitution includes children. The Constitution uses the expression "every person" which does not exclude children. The protection of life here is not in a narrow perspective. Its application is not limited to killing as stipulated in the Constitution. It includes any form of act that may likely affect children. This is because the right to life includes the right to survive itself and to live a comfortable life. Therefore, anything that may affect comfortability is violation of the right to life. This is the reason why the Act recognizes the right of the child to bring an action for any harm done to him before his birth. It states: "A child may bring the action for damages against a person for harm or injury caused to the child wilfully, recklessly, negligently or through neglect before, during, and after the birth of the child."⁸⁵⁶ The implication of this provision is that legal action can be taken against any person who cause physical or mental injury to a child as this would affect the right of the child to live a comfortable life. This contention simply supports the claim that child's right to survival commences even before his birth because causing bodily injury to a foetus may affect the right to life of that child upon being born. Thus, the child can bring an action for any harm done to him or her before or after his birth. In order to ensure the survival of the foetus, the CRA empowers the child to bring an action for damages against a person for harm or injury caused to the child wilfully, recklessly, negligently or through neglect before, during or after the birth of that child.⁸⁵⁷ Therefore, the right to life in this context consists of the right to continue to exist as a human being

⁸⁵⁴ Section 33. Constitution of Federal Republic of Nigeria (As amended).

⁸⁵⁵ [2008] 12 NWLR (pt. 1102).

⁸⁵⁶ Section 17(1) of the CRA.

⁸⁵⁷ Section 17 (1) of CRA 2003.

and the right to enjoy 'quality of life'. The term quality of life here means protection of children from activities that may endanger their life.⁸⁵⁸

Stages and Developmental Psychology of Children

The development as mentioned under Section 4 of the Act can be described as "the qualitative or quantitative improvement or growth of a thing."⁸⁵⁹ The developmental psychology literatures confirm that all children follow the same developmental process and pass the same milestone or important points along the way.⁸⁶⁰ However, different children travel different parts of the path at different speed. The kinds of changes that take place and bring these differences about are circumscribed by both genetic and environmental factors, particularly the kind of stimulation a child receives during the early formative years.⁸⁶¹

The stages of child development can be divided into three. The first stage is between age 0 to 5 years, the second stage is between 5-11 years and then 11-18 years. The first stage represents a period of fast physical growth and indeed the development of child's brain to almost its full size.⁸⁶² It is equally the period where the cognitive function develops and what is required for the child at this stage is adequate nutrition, health care and others.⁸⁶³ At the second stage, the growth continues but at a slower pace compared to the first stage. At this stage, the child is ready for formal education and training that

⁸⁵⁸ Patrick D. Okonmah, 'Right to Clean Environment: The Case for the People Oil-Producing Communities in the Niger Delta,' [1997] Vol. 41 *Journal of African Law*, 67.

⁸⁵⁹ Nichi S.I., *The Nigerian Law Dictionary*, (Green world, 2008) 167.

⁸⁶⁰ Hodges A. 2001. *Children's and Women's Right in Nigeria: A wake up call*. Abuja: NPC and UNICEF, p.34.

⁸⁶¹ Femi Kayode et.al. 'Appearance of Good Craftsmanship Education Development of Nigerian Children,' [2010] Vol. 2, No. 1 *International Journal of Vocational Technical Education*, 8.

⁸⁶² Nwoke et.al. 'Impact of Television Viewing Habit on Development of Basic Arithmetic Skills among Primary School Children in Nsukka Urban, Nigeria,' [2013] Vol. 2, NO. 1. *Indian Journal of Research*, 56.

serve as a foundation for his adult life.⁸⁶⁴ The stage is referred to as the age of adolescence. It begins with puberty until adulthood (11-18 years). At this stage of child's development, physical growth and other psycho-social changes connected with the development of sexual functions become apparent. Importantly, during this stage, children are bound to witness physical and psychological stress during which they adjust to the various challenges in the body. The development of new emotions and desire to acquire more advanced skills in order to meet the challenges of sexual relationship are crystal clear. Hence, one can conveniently welcome them into the world of adulthood at this stage.⁸⁶⁵

It is worthy of note that Nigerian children are suffering from different types of diseases that need adequate intervention of the government to combat the imminent danger in order to ensure survival of these children as contained in the Act.⁸⁶⁶ The available literature shows that, children in Nigeria are vulnerable to illness owing to nutritional deficiencies especially, diarrheal diseases, acute respiratory infection, malaria and vaccine preventable diseases which are responsible for the high rate of mortality.⁸⁶⁷ Basically, the right to survival of children in Nigeria has not been given the desired attention. This is shown in the recent Boko Haram⁸⁶⁸ killings involving innocent children and those that are alive are suffering aftermath of bomb attacks

⁸⁶⁴ Lia.C.K. Fernald et.al. Examining Early Child Development in Low-Income Countries. (Washington:,2009) 15.

⁸⁶⁵ *Ibid*

⁸⁶⁶ n.a.2002. Child Survival in Nigeria: situation Response and Prospect.n.pb.n.pl. p.2

⁸⁶⁷ *Ibid*

⁸⁶⁸ See Kadir O.R. et.al, "Custodial Torture: A Naked Violation and Degradation Of Human Dignity", available at [http://www.unilorin.edu.ng/publications/imamt/Custodial Torture - A Naked Violation.pdf](http://www.unilorin.edu.ng/publications/imamt/Custodial%20Torture%20-%20A%20Naked%20Violation.pdf) Accessed on 10th August 2015. Boko Haram is a group of militant people in Nigeria they are killing people in the name of religion. The group has killed many people including Muslims. They are sect that believe politics in Northern Nigeria has been seized by a group of corrupt, false Muslims, they want wage war against them and the Federal Republic of Nigeria generally, to create a "pure" Islamic state rule by Shariah. Since August 2011 Boko Haram has planted almost weekly in public places in Nigeria. The group also broads its targets to include schools where innocent children have been killed. The bombing activities of Boko Haram began in Nigeria since 2009 and up till the present times no solution is found yet for the problem. Boko Haram is a supposed Islamic organisation whose ideology is against

which adversely affect their child's developmental progress and health.⁸⁶⁹ Further investigation reveals that over 200 girls were abducted in northern Nigeria by the Boko Haram insurgents. The abducted children were subjected to illicit sexual rape and were not well fed.⁸⁷⁰ This shows that security of a nation is very paramount to the development and survival of children. Recently, a few of these girls were released while others are still in detention camp.⁸⁷¹

Responsibilities of the Government and Parents on the Children's Right to Health

The CRA states in an explicit language the role of the government as well as parents to ensure that Nigerian children are well taken care of due to their vulnerability and their inability to combat health challenges. Section 13 of CRA declares that "Every child is entitled to enjoy the best attainable state of physical, mental, and spiritual health."⁸⁷² The section provides further that "every government, parent, guardian, institution, service agency, organization or body responsible for the care of a child shall endeavour to provide for the child the best attainable state of health." Sub-section 3 of Section 13 provides that:

- a. Every government in Nigeria shall endeavour to reduce infant and child mortality rate;

western form of education. The organisation has claimed responsibility for many bombings of government and private facilities in recent times in Nigeria.

⁸⁶⁹ CBS/Wire Services. 2014, February 25. "Boko Haram Islamic Militants Storm Nigeria Boarding School, Kill 29 Children". <http://www.cbsnews.com/news/boko-haram-islamic-militants-storm-nigeria-boarding-school-kill-29-children/>. Accessed on 8 July, 2015; RT Question More. 2015, March 5. "'68 killed, kids among them': Boko Haram attacks, burns Nigeria village". <http://rt.com/news/238169-boko-haram-attack-kill/>. Accessed on 8 July 2015; RT Question More. 2015, March 24. "Boko Haram kills 50 women & children in Nigerian town, captures up to 500 – report". <http://rt.com/news/243733-boko-haram-captures-women/>. Accessed on 8th July, 2015.

⁸⁷⁰ AdagbaOkpaga et.al. 2012. 'Activities of Boko Haram and Insecurity in Nigeria.' [2012] Vol. 1.No. 1. *Arabian Journal of Business and Management Review*. 99.

⁸⁷¹ Ibid

⁸⁷² Article 14 of the ACRWC made a similar provision.

- b. Ensure the provision of necessary medical assistance and health care services to all children with emphasis on the development of primary health care;
- c. Ensure the provision of adequate nutrition and safe drinking water;
- d. Ensure the provision of good hygiene and environmental sanitation, combat disease and malnutrition within the framework of primary healthcare through the application of appropriate technology;
- e. Ensure appropriate healthcare for expectant and nursing mothers, and support through technical and financial means, the mobility of national and local community resources in the development of primary healthcare for children.

It should be noted that the role of government in the section in the actualization of healthcare delivery is well stated. Also, Nigerian Constitution recognizes the importance of health as it is mentioned under Fundamental Objectives and Directive Principles of State Policy that "it shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform, observe and apply the provisions of this chapter of this constitution."⁹² Though the provision is not justiciable,⁹³ yet the fact remains that right to health is exceedingly important because most of the other rights are dependent on the availability of good health. Similarly, health serves as the bedrock upon all other rights relied on. The fundamental rights to freedom of movement, expression or assembly become meaningless in the absence of sound health. Despite the provision of Section 13 of CRA, Nigerian children are still suffering from diseases because of inadequate health facilities and medical experts to attend to them when sick. It is this that prompted Obiajulu⁹⁴ to argue that child health is one of the problems facing the Nigeria health system. According to the WHO, Nigeria is one of the countries contributing to 50% of the annual global mortality among infants. To this end, children under the age five years with high prevalence of pneumonia, malaria, measles, HIV/AIDS, malnutrition

⁹² Section 13 of the 1999 Constitution.

⁹³ *Euro-chromi v. Abacha* (pt 436) p. 203.

⁹⁴ Obiajulu-Nnamuchi, 2007. *The right to health in Nigeria*, p1

are suffering and could die due to inadequate immunization coverage in the country.⁸⁷⁸

5. Constituents Of The Right To Health

Access to Drinkable Water and Health of Children

Water is an essential commodity and without it children will not survive.⁸⁷⁹ Water is seen as a basic human right that children should not be deprived of.⁸⁸⁰ The CRA⁸⁸¹ recognizes it as the part of the government's responsibility to provide drinkable water for the development and survival of the children. Human life is connected with water and no one can do without water for drinking, cooking, bathing and other related things. It is also the parents' duty to provide clean water for their children for drinking, bath and other relevant matters. Water cannot be unilaterally provided by the parents but it is also the role of the government to make water accessible to all citizens. Conversely, right of access to clean and safe water being a socio-economic right is not a justiciable right and as such very difficult to enforce against the government. However, in the context of protection of children, it means that the government must protect people's sources or means of accessing water, from being polluted or contaminated.⁸⁸² Therefore, the government at all levels must ensure that its people have access to safe and clean water by ensuring adequate control on the activities likely to affect access to clean and drinkable water.

⁸⁷⁸ WHO "Child and Adolescent Health". Available at <http://www.int/country/np/areas/cah/index.htm>.

⁸⁷⁹ See the United Nation, "World Water Development Report" 2003. Available at: unesdoc.unesco.org/0012/001295/129556e.pdf accessed on 3 March 2015. See also Guy Hutton & Laurence Haller, 2004. "Evaluation of the Cost AND BENEFITS OF Water and Sanitation Improvements of the Global Level." *The World Health Organization* pp.1-20.

⁸⁸⁰ See Article 11 of the International Covenant on Economic, Social, and Cultural Rights, 1996.

⁸⁸¹ Section 13 (3) (c) of CRA, 2003.

⁸⁸² Ajiboye Olatunmbi Emmanuel et al. "Poverty, Oil Exploration and Niger-Delta crisis: Response of the Youth." [2009] Vol.3 *African Journal of Political Science and International Relations*, 17.

Primary HealthCare and Health of Children

The CRA⁸⁸¹ provides that it is the responsibility of the government to ensure the availability of Primary Health Care (PHC) service in the country for treatment of children. The Nigerian government, in an attempt to shelve commitment to quality and accessible public health-care services has established hospitals in urban and rural areas as well as provided preventive and curative services.⁸⁸² PHC is provided by local government authority through health centres and health posts and they are staffed by nurses, midwives, community health extension workers and physicians (doctors). The services to be provided at the PHCs include prevention and treatment of communicable diseases, immunization, maternal and child healthcare service and others.⁸⁸³ However, the objectives of PHC in relation to the treatment of children are not fully implemented. This is because the medical personnel that should oversee the health condition of children are not sufficient in number. Another problem that hinders the realization of the objective is that the Nigerian government unjustly distributes medical facilities. The deterioration in government facilities, low salaries and poor working conditions have resulted in a mass exodus of health professionals.⁸⁸⁴ The issue of transportation is another significant factor in the management of PHC. Immunization outreach services are inadequately conducted. The maintenance culture of existing vehicle is poor while PHC vehicles are used for other purposes other than health related activities. To put succinctly, many of the PHC vehicles donated by the UNICEF are totally non-functional.⁸⁸⁵

⁸⁸¹ Section 13 (2) (b) of CRA 2003.

⁸⁸² Oyibo P.G, 'Health Survey of Primary School Children: Outcome and Implementation for Strengthening School Health Inspection in Abraka, Delta State, Nigeria'. [2012] Vol.6. No 1 *Wilould Journal*. 4

⁸⁸³ *Ibid*

⁸⁸⁴ *Ibid*

⁸⁸⁵ Iyun F. 1988. *In equalities of Healthcare in Ondo State, Nigeria: Health Policy and Planning*.pp.159-163.

6. Responsibility of Parents

The parents have a lot of responsibilities in the protection of their children. One of these responsibilities is to ensure that their children are provided with adequate and maximum health treatment. Furthermore, the CRA also places responsibility on the parents to take good care of their children and give them adequate maintenance ranging from food, water, shelter, healthcare and others.⁸⁸⁶ Parents or guardian (as the case may be) equally have the task of ensuring that their children are enjoying all the rights due to them. Parental responsibility does not end at avoiding harm to children but it includes positive strive to allow children to enjoy their rights. This was fortified by the court in the case of *Awudu v. Daniel*,⁸⁸⁷ where the court reaffirmed that children have rights that parents must respect and act towards the realization. Similarly, parents should provide natural environment for the growth and well-being of all their family including children.⁸⁸⁸ Moreover, the Act makes it mandatory as part of the responsibility of the parents or guardian or person(s) having the care and custody of a child under the age of two years to undertake and ensure the child is provided with full immunization.⁸⁸⁹ Any parent who fails to discharge this duty as provided by the Act will be liable to a fine or conviction. Under the Act, the first offender will be liable to a fine not exceeding five thousand Naira and the second offender or any subsequent offence committed by the parents who fail to immunize their children will be liable to imprisonment for a term not exceeding one month.⁸⁹⁰ However, experiences have shown since the promulgation of the Act under consideration, that implementation of the provision of the Act concerning prosecution of defaulting parents appears unrealisable.⁸⁹¹ This is because hundreds of Nigerian children are wallowing on the street

⁸⁸⁶ Section 14(2) of CRA

⁸⁸⁷ [2005]2 NWLR (pt.909) p. 199.

⁸⁸⁸ Onyemachi-ThomesUche., 'Children, Status and the Law in Nigeria' [2010] Vol.4 Issue 3a *An International Multi-Disciplinary Journal*. 398.

⁸⁸⁹ Section 13 (4) of CRA 2003.

⁸⁹⁰ Section 13 (5) of CRA 2003.

⁸⁹¹ S.D. Kawa, Chief Judge of Kwara State High Court of Kwara State (Personal Interview) July 28th 2015

holding small bowls to beg for alms. The questions which readily come to our minds are: whether these children have no parents to be held responsible for failure to fulfil their obligations as envisaged under the Act? Or could government agencies claim ignorance of what is happening?

There is need for government agencies saddled with the responsibility of implementing the provisions of the Act to be proactive. In order to protect children's right to health, the parents should be responsible for the total care of their children and act justly towards attaining the healthcare of their children. This will be exhibited by ensuring that the child is given all the necessary immunization, ensuring adequate check-up and medical attention to children to prevent disability and mortality, giving the children nutritious food and clean water to prevent infection, encouraging family planning for the health of children and mother, exercising care when administering drugs on children, ensuring that only authorized and authentic drugs are given to them, avoiding traditional practices which are harmful to the health of the child e.g. traditional mark, female circumcision, and others, keeping all drugs out of reach of children, buying only drugs prescribed by doctors and forming licensed chemists, ensuring the child is educated on health issues, e.g. genotype, blood group and others and vehemently discouraging abortions.⁸⁹²

However, many parents in Nigeria neglect these responsibilities at the detriment of the children.⁸⁹³ Obviously, the affected children are powerless to institute action against their parents for the realization of this vital right. This is because instituting an action in a court of competent jurisdiction by the children against their parents on the grounds of inadequate health and improper maintenance, may lead to cultural and societal resistance. This is in view of the fact society would frown at any child who takes legal action against his parent in the court of law based on cultural heritage. The traditional belief tilts towards

⁸⁹² Juwayriya Badamasiuy, *Obligations and Rights of the Parents under The Child's Rights Act: A Shari'ah Perspective*. Nigeria: (Zakara Communications, 2009) 33

⁸⁹³ Ibid

viewing such a child as an enemy of the parents.⁸⁹⁴ Thus, there is the need to further educate the public on the CRA and to provide for the development of the children.⁸⁹⁵

7. Conclusion and Recommendation

From the above discussion, it seems that the Nigerian government has made provisions for the right of children to health, which can be found under the 2003 CRA, particularly Section 13 of the CRA. It is found that the CRA obliges the government to put some mechanisms in place to ensure that Nigerian children are in good health. The mechanisms include the provision of drinkable water, conducive environment, provision of health care services with qualified doctors and hospital facilities among others.

Recommendation

- Parents also have the responsibility to ensure that the children are provided for with adequately nourished food and other health precautionary measures to facilitate the activeness of the children in terms of high standard health. However, this right of children has not been fully implemented due to obstacles have been identified earlier in this chapter. Apart from the fact that health facilities are inadequate, parents have abdicated their vital roles of ensuring adequate health care for their children.

⁸⁹⁴ Juwayriya Badamasiuy, *Obligations and Rights of the Parents under The Child Rights Act: A Shari'ah Perspective*, Nigeria : (Zakara Communications, 2009) 53

⁸⁹⁵ Ibid