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RIGHT OF CHILDREN TO LIFE: HINDSIGHTS AND INTERFACE OF SHARIAH AND NIGERIAN CHILD LAW

Abdulraheem Taofeeq Abolaji*
Abdulrazaq O. Abdulkadir**

ABSTRACT

The death of Nigerian children is quite alarming and among the factors responsible for this include lack of proper protection on the side of government as well as the parents. Protection of children's life includes prohibition of various ways that lead to the termination of their lives to wit abortion, Euthanasia and lack of adequate healthcare like malnutrition and other deadly diseases. This research, through doctrinal method investigates the position of the Shari'ah and Nigerian Child Rights Laws on the children's right to life. This paper argues that notwithstanding the importance of right to life of the Nigerian children as encapsulated in the law, Nigerian children are confronted with imminent danger of loss of life. The paper posits that laws relating to children right to life have not been fully implemented in Nigeria and therefore recommends a proactive enforcement paradigm to ensure adequate protection of life for Nigerian children.

KEYWORDS: Right, children, life, *Shariah* and Nigerian law.

INTRODUCTION

Right to life is universally recognised as one of the cardinal rights of every human being. It is provided for under the United Nations Universal Declaration of Human Rights, 1984, Organisation of African Unity now African Union, Constitution of the Federal Republic of Nigeria,[1] the Nigeria Child Right Act 2003 to mention but a few.[2] Right

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[1] See section 33 (1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

to life is guaranteed in all legal systems whether religious, national or international. *Shari'ah* also provides for the right of children to life. It is however worrisome that despite the available provisions of the various law, including the Islamic law, some Nigerian children are still victims of shortened lives and some of the factors responsible include euthanasia, capital punishment, abortion, killing in self-defence and killing in armed conflict. For instance, it is reported that in every single day Nigeria loses about 2,300 under-five year old and 145 women of childbearing.[3] This makes the country the second largest contributor to the child and maternal mortality rate in the world.[4] Therefore, this paper examines children right to life under the *Shari'ah* and Nigerian law with a view to pointing out that this right has not been fully implemented.

CHILDREN'S RIGHT TO LIFE UNDER *SHARI'AH*

No doubt, life is one of the fundamental objectives of *Shari'ah* that must be secured and protected.[5] Children are legal entities and their right to life is guaranteed under the *Shari'ah.* Protection of life is very important and this is why it is placed as the second level among the hierarchy of *maqasid al-shari'ah.*[6] Children are legal entities and their right to life by the *shari'ah.* The rationale behind this is that children are considered as weak[7] and the chances of guiding or protecting themselves against imminent dangers are slim. It is therefore considered a great sin and violation of the *maqasid al-shari'ah* to

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[2] See Section 33 of the Constitution of the Federal Republic of Nigeria (1999) and Section 4 of Nigeria Child Right Act 2003.

[3] Abdulraheem T.A, Folounrunsho & Imam- Tamim M.K. "Protecting the Children's Right to Health and Education in Northern Nigeria: Exploring Institutionalisation of Zakat and Waqf as a viable option. (2015), Vol.1. No. 1 Al-Hikmah Journal of Education.p.251

[4] UNICEF . Maternal and Child health.

[5] Muhammad al Tahir ibn Asuhur,.2006. *Treaties on Maqasid al Shariah.* (The International Institute of Islamic thought. 2006) 107.

[6] Mohammad Akram, 2012. 'The Shariah Objectives (Maqasid) in Contemporary Science'. [2012] *Islamic Finance online.* Nexux.www.amanie_iconnect.com..1

[7] Ibid.

terminate the life of any child intentionally.[8] The punishment for killing or terminating human life is clearly stated in the Holy Quran that:

> And kill not your children for fear of poverty. We shall provide for them as well as you. Surely, the killing of them is a great sin.[9]

Importantly, there are two principles adopted by Islamic legislation to ensure preservation of children's lives. Firstly, the *Shari'ah* prohibits any action that may lead to termination of human life[10] through killing, unlawful abortion etc, because it does not comply with the objective *al- Shari'ah*. Secondly, *Shari'ah* has a set of rules that collectively contributes to preserving and protecting human life. These rules enjoin a person to take care of his body to be strong and to be free from illness.[11]

In addition, right to life as the second objective of the *Maqasid Shari'ah* deals with protection of human life. Everyone including the child has the right to live in this world. Therefore, no one's life is less valuable than another.[12] No child should die from starvation and malnutrition because each child has a basic right to live.[13] It is established that *Maqasid al-Shari'ah* attention to preserving the life

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[8] Masoud Rajabi-Ardeshiri,'The Rights of the Child in the Islamic Context: The Challenges of Local and Globalization'. [2009] *International Journal of Children*. Neitherland.Vol.17. 475

[9] Al-Quran.al-israi. 17:31. Al—Quran.al-Maidah. 4:93

[10] Al- Azhar University, *Children in Islam*. Egypt: (Al- Azhar University 2005).29. See also Donnelly, Jack. "Human rights and human dignity: An analytic critique of non-Western conceptions of human rights."[1982] *American Political Science Review* 76, no. 02 303. See also Atapattu, S, 'Right to a healthy life or the right to die polluted: The emergence of a human right to a healthy environment under international law' [2002] the. *Tul. Envtl. LJ. 16*.

[11] Masoud Rajabi-Ardeshiri, 'The Rights of the Child in the Islamic Context: The Challenges of Local and Globalization'.[2009] *International Journal of Children*. Neitherland.Vol.17.475

[12] Baderin, M. A, International *human rights and Islamic law*. [OUP 2003] 123

[13] Abd Aziz Shamarahayu, "Basic Human Right in Islam." [2012]In *Human Rights Law: International, Malaysian and Islamic Perspective*. edited A.G. Malaysia: Sweet and Maxwell Asia.p.65. See also Attia, G, 'Towards realization of the higher intents of Islamic law: Maqasid al-shariah: A Functional approach.' [2007] *London & Washington: The International Institute of Islamic Thought*.

and health of the child amounts to attending to the strength of the Muslims as a whole.[14] Therefore, a healthy body is not only attributed to the soundness of one's limbs but it also allows individuals to interact with fellow human beings.[15]

Similarly, it is asserted that the protection of child's right to health is not exclusively restricted to prohibition of physically attacking child; it involves all the acts that could threaten the life of the child.[16] The provision of basic necessities of life such as food, shelter, clothing and medical care are essential for the survival of the child.[17] If parents or the government fails to cater for these important necessities of life, the probable outcome is death of the child.[18] The right to life cannot be completely assured unless the children are able to enjoy good health and live in a healthy environment.[19] Both are integral parts of the right to live[20] and it is the duty of parents and government to protect the welfare of the children.[21] This duty is clearly explained in one of the Quran verses:

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[14] Ibrahim Adebayo R, 'The Islamic theory and practice of peace and peaceful co-existence in a pluralistic society, Nigeria. Being a paper presented at the first National conference on Ilorin: History, Culture and Lesson of peaceful co-existence.(Unilorin press 2013) 3.

[15] Zaman, H, 'Islam, well-being and physical activity: Perceptions of Muslim young women.'[1997] In *Researching women and sport*. 50

[16] Al Muhalli & Al Sayuti, *Tafseer Al Jalalayn*. (Dar al Ma'rifah: 1973) 182

[17] Bhuyan Mah. et. al. 'Child Caring and Complementary Feeding Practices among Selected Households in Dhaka' [2011]. *The ORION Medical Journal. Vol. 33. No 1.p.718.* See also Ibrahim, B. H., & Mohd, A. The child's right to maintenance: the extent of the family's responsibilities in Islamic law and according to the family law provisions of Muslim countries. *Arab Law Quarterly, 25*(4), 401

[18] Igbedioh, S. O, 'Under nutrition in Nigeria: dimension, causes and remedies for alleviation in a changing socio-economic environment' [1993] *Nutrition and health, 9*(1), 1

[19] Atapattu S, (2002). 'Right to a healthy life or the right to die polluted: The emergence of a human right to a healthy environment under international law' [2002] *The Tul. Envtl. LJ. 16*

[20] Bhuyan Mah., et. al. 'Child Caring and Complementary Feeding Practices among Selected Households in Dhaka' [2008] *The ORION Medical Journal*. Vol. 33. No 1718.

[21] Abdulraheem T.A. " An Expository study of right of children to health under the Shari'ah and Nigerian Law" (Phd Thesis, Universiti Sains Islam Malaysia) p.84

> That was why We laid down for the children of Israel that whoever killed a human being, except as a punishment for murder or for Sedition in the earth, should be looked upon as though he had killed a Mankind, and that whoever saved a human life should be regarded as though he has saved all mankind.[22]

Commenting on the above verse, Ibn Abbas posits that the verse indicates preservation of one's life is a necessity, to the extent that a child should not be killed mainly, because of poverty. On the part of the parents,[23] it is said that the above verse is meant to showcase *Shari'ah* values on the issue of human life including children and if termination of life is not checked, that could lead to the destruction of the whole humanity. It is the position of the *Shari'ah*, there is no different between a soul and another hence a person that kills or saves a soul is capable of killing or saving the whole humanity.[24] Therefore, it is incumbent upon the Islamic state to ensure the children's life is jealously protected and preserved.[25] The protection is not available to Muslim alone but any person under the protection of Islamic state.[26]

Furthermore, right to life under the *Shari'ah* also includes the right of foetus and this is done with a view of providing for its independent existence. One may wonder that foetus is still part of his mother that should not ordinarily enjoys special treatment in terms of right, the foetus has an independent legal personality and rights[27] under *Shari'ah*. Therefore, under the *Shari'ah* if a pregnant woman commits homicide or any offence that require the death sentence, the

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[22] Al- Quran. Al Maidah 5:32

[23] Al Muhalli & Al Sayuti, 1973. *Tafseer Al Jalalayn*.(Dar al Ma'rifah 1973) 182.

[24] Ahmad Shakir, *Udamatu al- Tafsir an Hafiz ibn Kathir*. (Al-mansuratu Ar Elwafa 2005) 22

[25] El Azayem, G. A., & Hedayat-Diba, Z., 'The psychological aspects of Islam: Basic principles of Islam and their psychological corollary'.[1994] *The International Journal for the Psychology of Religion*, *4*(1), 41

[26] Ibrahim ibn Musa ibn Muhammad al-satibi.1997. *Muwafiqat*. npl. Dar ibn Affan.p.20

[27] Berween, ,. 'The Fundamental Human Rights: An Islamic Perspective'. [2002]*The International Journal of Human Rights*, *6*(1). 61

judgment is to be delayed till she delivers or after she finishes nursing the child.[28] The rationale behind it under the *shari'ah* is to protect the foetus from being killed with the mother, hence the foetus' right has to be protected.

In support of the above supposition, Prophet Muhammad PBUH said:

> "If a pregnant woman intentionally kills a soul death sentence on her should be delayed till she delivers..."[29]

Furthermore, the foetus' right to life is an absolute value, even if the foetus is an illegitimate.[30] This principle of *Shari'ah* is encapsulated in the episode narrated by Buraida Al- Ghamdish who came to Prophet Muhammad (PBUH) saying:

> Oh Messenger of Allah, I have committed adultery, so purify me. The Prophet (PBUH), instructed her to go until she has given birth. When she gave birth, he told to her to feed him until he weaned. When she completed weaning him, she came to Prophet (PBUH) with the boy holding a crumb of bread. The Prophet (PBUH) gave the boy to a man and commanded people to stone her to death. Then he performed prayer on her and she was buried.

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[28] Abdulrahman al-Sabuni, *Nisam -l- Usrat wa hal Muskilatuha fi daoue-l Islam.* (DarulFikr 2001) 71. It is also reported by Al- Bukhari, Muslim, Al Trimidh, An Nisae and Ibn Majah on the authority of Abu Hurairah that two women from Hazil were fighting, one threw a stone at the other which killed her and feotus. People sought counsel from the Prophet S.A.W.who gave the verdict that for the killed feotus the killer should releases a male or a female slave, as a ransom and that the blood money (Diyah) for the woman killed was to be paid by the guardian of the killer, her heirs and her offspring. Then the guardian (Al Nabigah Al- Hazly) said Oh Messenger of Allah, how could I be fined for that who did not drink, eat, speak or initiate a life? Such a case be denied. The Prophet S.A.W. said "This man is a brother of the soothsayer, for the rhymes as they do."

[29] Abu Abdullah Muhammad, Ibn Yazid al-Qazwiny, *Sunnah Ibn Majah.* (Dar al-fkr) 898

[30] Ibrahim Abdul Hamid Al Sayyad, *Islamic Approach to Medicine.* 33

Thus, *Shari'ah* guarantees the right of children to life and in order to get the best interest for their development, the law permits some individual to use disciplinary corrective measures over the child.[31] However, this was never intended to serve as licence for abuse of cruelty over them. Where this corrective measure is excessively used and thereby resulting in injury or death of the child, the person responsible will be fully accountable.[32]

CHILDREN RIGHT TO LIFE UNDER THE NIGERIAN CHILD'S LAW

The importance of right to life under the *shari'ah* has been discussed above, the Nigerian Child Rights Act 2003 equally provides for the right of child to life. Assuring the right to life is undoubtedly the pivotal point in the concept of protection of human rights.[33] For instance, the Act provides for the right to survival and development of the children.[34] Right to life is at the core of all human rights and the most important right as the benefit of all other rights are predicated on being alive.[35] The 1999 Constitution also states that every person has the right to life and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of criminal offence of which he has been found guilty in Nigeria.[36] In *Esabunor v. Faweya,*[37] the Court of Appeal re-echoed the provisions of Section 33 of the Constitution and reaffirmed that an attempt to take the life of

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[31] Lee J, 'Underlying Legal Theory to Support a Well-Defined Human Right to a Healthy Environment as a Principle of Customary International Law' [2000] *The Colum. J. Envtl. L. 25*, 283.

[32] Haruna H. A. & Usman N. 2003. 'Safe Guarding the Rights of Women and Juvenile under the Sharia and Criminal Justice System." [2003] in *Human Rights Protection and Administration of Sharia Justice System.* edited by Ezeilo J. Kaduna : WACOL. 176

[33] Ogunniran, I, 'Child Rights Act versus Sharia Law in Nigeria: Issues, Challenges & a Way Forward' [2010] *The.Child. Legal Rts. J., 30*, 62.

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

[35] Omaka, C.A., 2005. *Right to life and the Dignity of Human person (Section 33and 34 of the 1999 Constitution' Human Right Law and Practice in Nigeria.* Enugu: Chenglo Limited. p.114

[36] Section 33 (1), Constitution of Federal Republic of Nigeria (As amended).

[37] [2008] 12 NWLR (pt. 1102).

an individual outside the provisions of the Constitution is illegal and must be condemned.[38]

Similarly, in *Kalu v. State,*[39] the Supreme Court of Nigeria states that the right to life is not absolute but qualified. While commenting on the right to life, Ajomo[40] argues vis-a-vis the provision of Section 33 of the 1999 Constitution of the Federal Republic of Nigeria and states:

> Life is sacrosanct and deliberate killing is abhorred in all societies the world over. What this provision means is that everyone is entitled to respect for his or her life and safety.

The purport of the above provision is that, sanctity is accorded human life and must not be taken except in accordance with the extant law[41] In the same token, the sanctity of life is not absolute where such a particular person has committed offence(s) to warrant taken of his life except if the offender is underage. The Criminal Code provides:

> Where an offender who in the opinion of the court has not attained the age of seventeen years has been found guilty of murder, such offender shall not be sentenced to death but shall be ordered to be detained.[42]

Based on the above provision of the Criminal Code, the question is what is the relevant age by which a court of law can pronounce a child guilty of a murder case against him/her? The relevant age for the determination of the case is the age of the child at the time of commission of the offence. The decision of the court in the case of R *v.*

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[38] Ebeku, K. S, 'Constitutional right to a healthy environment and human rights approaches to environmental protection in Nigeria: Gbemre v. Shell revisited'. [2007] *Review of European Community & International Environmental Law, 16*(3), 312

[39] [1998]13 NWLR P.583.

[40] Ajomo, M.A. n.d. "Perspective of Human Right". 80

[41] Egede, E, 'Human Rights and the Environment: Is There a Legally Enforceable Right of a Clean and Healthy Environment for the Peoples of the Niger Delta under the Framework of the 1999 Constitution of the Federal Republic of Nigeria.' [2007] *Sri Lanka J. Int'l L. 19*

[42] Section 319 (2) of the Criminal Code 1958 CAP C38, LFN 2004. See also Obilade A.O, *The Nigerian Legal System.* (Spectrum Book Limited 2003) 57.

Bangaza, [43] where the Supreme Court, held that it was clear from the wording that the relevant age was the age at the time of conviction and not the age at the time of commission of the offence, appeared to have changed. For example, the Criminal Justice (Miscellaneous Provisions) Decree, No.84 of 1966, Lagos, Criminal procedure Law (Amendment) Edict, No.22 of 1972 (E.CS now Anambra and Imo states, Section 272(1) Criminal Procedure Code, among others prohibited pronouncement of death sentence on a person that is less than 17 years of age at the time of the commission of the offence.[44] Section 272(1) Criminal Procedure Code provides:

> Where a person is convicted of an offence punishable with death and it appears to the court by which he is convicted that he was under the age of seventeen years when he committed the offence the court shall order that he be detained during the Governor's pleasure, and if the court so orders, he shall be detained in accordance with the provisions of section 303, notwithstanding to the contrary in any written law.

It is submitted that the current position of the Criminal code on the protection of child is in tandem with the spirit of the 2003 CRA on protecting the right of children to life. There has been a lot of debate at the international level as to the concept of 'personhood' or 'human being'. Many philosophers argue that the point in time when human life begins is quite distinct from and less relevant than when a human comes into existence.[45] The Act recognises the right of the child to bring an action for any harm done to him before his birth. It states that:

> 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.[46]

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[43] [1960] 5 F.S.C.

[44] Okonkwo and Naish, *Criminal Law in Nigeria,* (Spectrum Law Publishing 1980) 122.

[45] Fortin, J.E.S, 'Legal Protection for the Unborn Child.'[1988] *Modern law Review* 56.

[46] Section 17(1) of the CRA.

The implication of this provision is that legal action can be taken against any person who terminates the pregnancy of a child through any means. The Penal Code applicable to the northern state in Nigeria clearly penalises abortion or aiding miscarriage on a foetus a punishable offence.[47] Therefore, the parents should abstain from any form of act that can cause injury on the foetus such as drug abuse, poor nutrition and engaging in physical combat.[48] The literature reveals that conditions in the womb can permanently alter a baby's metabolism.[49] However, it is established that for a mother to take care of her body by eating a balanced diet, maintaining a healthy weight, and managing any health problems before and during pregnancy are important for both a healthy delivery and for her baby's long-term health.[50] In *C.O.P v. Modebe,*[51] the court held that aiding miscarriage amounts to an offence, although the doctor in the case was only convicted for negligence because the woman approached him after taking drugs aimed at aborting the foetus.

A careful study of the authorities above supports the claim that child's right to survival commences even before his birth because terminating a pregnancy amounts to interference with the child's right to life and the child can bring an action for any harm done to him 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.[52]

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[47] Section 232-236 of the Penal Code.

[48] Azikiwe Nnamdi., 'Essentials for Nigeria Survival.' [1965] *Foreign Affairs.* Vol. 43 No.3. 447

[49] W. Allan Walker, *Health Eating During Pregnancy.*(Harvard Medical School Guide) 31.

[50] Koletzko Berthold, Irene Cetin & J. Thomas Brenna, 'Dietary Fat Intakes for Pregnant and Lactating Women.' *British Journal of Nutrition.* Vol. 98. No. 5. 873

[51] [1980] 1NCR 367.

[52] Section 17 (1) of CRA 2003.

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 the child"[53] The developmental psychology literatures confirm that all children follow the same developmental process and pass the same milestone or important points along the way.[54] 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.[55]

The stages of child development can be divided into three. The first stage is between 0-5 years, the second stage is between 5-11 years and then 11-18 years. The first stage is a period of fast physical growth and development of the brain to almost its full size.[56] 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.[57] 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 serve as a foundation for his adult life.[58]

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

[54] Hodges A, 2001. *Children's and Women's Right in Nigeria: A wake up call.* (NPC and UNICEF 2001).34. See Chowdhury, Q. H., Islam, R., & Hossain, K. 'Socio-economic determinants of neonatal, post neonatal, infant and child mortality'. [2010] *International Journal of Sociology and Anthropology*, *2*(6). 118. Mullick, M. S. I., & Goodman, R. 'The prevalence of psychiatric disorders among 5–10 year olds in rural, urban and slum areas in Bangladesh.'[2005] *Social psychiatry and psychiatric epidemiology*, *40*(8). 663

558 Koletzko Berthold, Irene Cetin & J. Thomas Brenna. 'Dietary Fat Intakes for Pregnant and Lactating Women.'[2005] *British Journal of Nutrition*. Vol. 98. No. 5. 873

[56] Femi Kayode et.al. 'Appearance of Good Craftsmanship Education Development of Nigerian Children.'[2010] *International Journal of Vocational Technical Education*. Vol. 2.No.1.1

[57] Nwoke et.al. 2013. 'Impact of Television Viewing Habit on Development of Basic Arithmetic Skills among Primary School Children in Nsukka Urban, Nigeria.' [2013] *Indian Journal of Research*. Vol. 2.NO.1. 53

[58] Lia. C.K. Fernald et. al. *Examining Early Child Development in Low-Income Countries.*(International Bank for Reconstruction and Development 2009) 15.

Additionally, the third stage is referred to as the age of adolescence. It begins with puberty until adulthood (11-18 years). Physical growth and related physical and psycho-social changes associated with the development of sexual functions in addition to being a period of further formal education.[59] This is a period of relative physical and psychological stress during which an individual adjusts to the various challenges in the body and the development of new emotions and desire to acquire more advanced skills to meet the challenges of sexual relationship and entry into the world of adulthood and work.[60]

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.[61] The literature shows that, child survival in Nigeria is threatened by nutritional deficiencies, Malnutrition which currently reported that over 2.5 children are suffering for diseases[62] and illnesses particularly malaria, diarrheal diseases, acute respiratory infection and vaccine preventable diseases which account for the majority of morbidity and mortality.[63]

Essentially, the right to life and survival of children in Nigeria are not respected and or given the desired attention.[64] This is shown in the

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[59] Engle, P. L., Castle, S., & Menon, P, 'Child development: vulnerability and resilience' [1996] *Social science & medicine*. Vol *43*(5). 621

[60] National Institute of Child Health and Human Development Early Child Care Research Network, "The relation of child care to cognitive and language development."[2000] *Child Development*. 960

[61] *Child Survival in Nigeria: situation Response and Prospect*.(2002) 2, Cleland John G. & Jerome K. Ginne Ken. 'Maternal Education and Child Survival for Development Counties the Search for Pathway of Influence.' [1988] *Social Science and Medicine*. Vol. 27. No.12. 1357 and Peller David & Edward A. Frongillo, 'Changes in Survival are strongly associated with Changes in Malnutrition in Developing Countries.' [2003] *The Journal of Nutrition*. Vol. 133. No.1107

[62] See The Vanguard Newspaper. 26 July 2016. "Nigeria has 2.5 million severely malnourished children."

[63] Wallander Jan L & James W. Varni, 'Effects of pediatric chronic physical disorders on child and family adjustment'. [1998] *Journal of Child Psychology and Psychiatry*. Vol.39. No.1 29

[64] Egede, E, 'Human Rights and the Environment: Is There a Legally Enforceable Right of a Clean and Healthy Environment for the Peoples of the Niger Delta under the

recent Boko Haram[65] killings involving innocent children.[66] It shows that Boko Haram have killed so many people in the northern part of Nigeria such as Kano, Maiduguri, Yobe, Bauchi, Gombe, Plateau and Abuja among others.[67] Innocent children have been killed and those that are alive are suffering aftermath of bomb attacks which adversely affect their health. Since the Nigeria government has yet to find a concrete solution to protect the life of its citizens particularly children,

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Framework of the 1999 Constitution of the Federal Republic of Nigeria'.[2008] *Sri Lanka J. Int'l L.* Vol. *19*. 51.

[65] 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 Accessed on 10th August 2015. Boko Haram is a group of militant people in Nigeria they are killing people in the name of religion. They are killing 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 bombs 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 western form of education. The organisation has claimed responsibility for many bombings of government and private facilities in recent times in Nigeria.

[66] CBS/Wire Services, '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' [2014] 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.

[67] Bagaji, A. S. Y., Etila, M. S., & Ogbadu, E. E, ' Boko Haram and the Recurring Bomb Attacks in Nigeria: Attempt to Impose Religious Ideology through Terrorism?/BOKO HARAM ET LES ATTENTATS A LA BOMBE AU NIGERIA: TENTER D'IMPOSER LES IDEOLOGIES RELIGIEUSE A TRAVERS LE TERRORISME?' .[2012] *Cross-Cultural Communication*, *8*(1). 33. See also Adesoji, A, 'The Boko Haram Uprising and Islamic Revivalism in Nigeria/Die Boko-Haram-Unruhen und die Wiederbelebung des Islam in Nigeria' [2010]. *Africa Spectrum*, 95-108 and Onuoha, F. C. (2012). The audacity of the Boko Haram: Background, analysis and emerging trend. *Security Journal*, *25*(2), 134

it is therefore suggested for the government to allow for free medical health care for the children affected by the activities of the group or engage in amnesty with the so called militant group to protect the life of children.[68]

In order to demonstrate the inability of Nigerian children to right to survival, investigation reveals that over 200 girls were abducted in Northern Nigeria by the Boko Haram insurgents. They threatened them and some of them were subjected to illicit sexual rape.[69] Boko Haram is treating them like captives as no quality food and lack of good health care are made available to them while in the custody of that militant group.[70] The Nigerian government has not done enough to rescue these girls. Recently, a few of these girls were released while others are still in detention camp as of the time of this research[71] Therefore, right to life in this context consists of the right to continue to exist as a human being 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.[72]

INTERFACE OF THE RULES OF *SHARI'AH* AND THE NIGERIAN LAW ON THE CHILD'S RIGHT TO LIFE

a. *Right to Life under the 2003 CRA*

Section 4 of the CRA stipulates the right of children to life. The life of every child must be protected by the parents for the survival and the development of the child. The CRA has provided the duty of the parents to protect the inalienable right to life of

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[68] Samuel, Asuquo Ekanreiment, 'Boko Haram and Amnesty: A Philo-Legal Appraisal.' [2012] *International Journal of Humanities and Social Science*.Vol.2.No 4. 225

[69] Adagba Okpaga et.al, 'Activities of Boko Haram and Inscurity in Nigeria.' [2012] *Arabian Journal of Business and Management Review*. Oman. Vol. 1.No. 1. 76

[70] Onapajo, Hakeem, and Ufo Okeke Uzodike, 'Boko Haram terrorism in Nigeria: Man, the state, and the International System.' [2012] *African Security Review* 21, no. 3. 24

[71] Samuel, Asuquo Ekanreiment, 'Boko Haram and Amnesty: A Philo-Legal Appraisal.' [2012] *International Journal of Humanities and Social Science*.Vol.2.No 4. 225 See also Adesoji Abimbola O, 'Beween Maitatsaine and Boko Haram: Islamic Fundamentalism and the Response of Nigeria State.' [2011] *Africa Today*. Vol. 57. No.4. 98

[72] Patrick D. Okonmah. 'Right to Clean Environment: The Case for the People Oil-Producing Communities in the Niger Delta.' [1997] *Journal of African Law*. Vol. 41..43

the child and forbids them from doing anything that could endanger this life. The section provides that every child has right to survival and development.[73] The Act gives the child the right to identity including the right to name at birth. Section 5 of the CRA provides that a child has the right to be given a name at birth or any other time recognized by the culture of the child's parents or guardian, and to have him registered appropriately. In this regards, it is the duty of the parents or guardian of a child to give him good name (as approved by the *Shari'ah*) to the child at birth or a period that is recognized by his/her culture. In Nigeria, the eighth day after the birth of the child has been chosen by most of the cultures of the Nigerian society as the naming day.[74] This is usually marked with celebration and ceremony.

The provision for naming and registration is to give the child an identity. It also consolidates the child's personhood, family status and dignity. The birth certificate continues to remain an identity for him; name and evidence of date of birth.[75] The provision of the Act is in compliance with Article 6 of ACRWC and Article 7 of the CRC. The CRC provides that the child shall be registered immediately after birth and shall have the right from birth to name, the right to acquire a nationality and as far as possible the right to know and be cared for by his parents. This right is essentially to prevent concealment of birth and to alert health authorities to the new child's existence and need of care.[76] Article 8 of the CRC further provides for the preservation of identity, while Article 8(1) provides that the state parties should undertake to respect the right of the child to preserve his identity including nationality, name and family relation as recognized by law without unlawful inference. This point is available by virtue of the provisions of the CRA and the provisions of Birth, Death Compulsory Registration Act, 1992.

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[73] Section 4 of CRA, 2003.

[74] Juwairiya Badamasiuy, 2009.*Obilgations and Rights of the Parents under the Child's Rights Act: A Shari'ah Perspective* (Zakara Communication Limited, 2009).25.

[75] Juwairiya Badamasiuy, 2009.*Obilgations and Rights of the Parents under the Child's Rights Act: A Shari'ah Perspective* (Zakara Communication Limited, 2009).25.

[76] Ibid

Right to Life under the Shari'ah

Right of children to life has been fully explained under *Shari'ah* above. However, for the purpose of identifying similarity between *Shari'ah* and the provision of CRA with regard to the protection of the life of children, brief explanation will be offered. A child under *Shari'ah* has inalienable right to life and the parents are explicitly warned by Allah not to take the life of their children. The government, authority in charge and the parents are warned to protect the life of children. Specifically, parents are enjoined to protect the life of their children. Allah in the Holy Qur'an says:

> Says: come, I will rehearse what Allah hath (really) prohibited you from Join not anything as equal with Him, be good to your Parents, Kill not your children in plea of want, We provide sustenance for you and for them.[77]

Another verse of the Holy Quran says:

> Kill not your children for fear of want; We shall provide sustenance for them as well as for you. Verily for killing them is a great sin.[78]

It merits mentioning that what informed the afore-quoted verses was the practice of infanticide in Arabia before the advent of Prophet Muhammad (PBUH). The birth of female children was seen as a bad omen.[79] The Arabian society was perpetually at war, therefore, a son was a source of strength while a daughter a source of weakness; thus the female children were buried alive at birth.[80] From the above verses, Islam prohibited this crime against children and sought to protect and preserve their lives. Prophet Muhammad (PBUH) was reported to have been asked:

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[77] Al- Quran.Al- Anaam.6: 51.
[78] Al- Quran. Al- Isra. 17: 31.
[79] Karim. A. M, F, *Misatul-ul- Msabih*. (Lahore 1938) 159.
[80] Masoud Rajabi-Ardeshir. 'The Rights of the Child in the Islamic Context: The Challenges of the Local and Global.' [2009] *International Journal of Children's Rights* Vol.17. 475

> What is the greater sin? He Prophet (S.A.W) replied: to ascribe divinity to someone other than Allah; when He is the one who created you. What next? He replied to kill your child out of fear that it will share your food, and to commit adultery with your neighbour's wife.[81]

The above hadith provisions show that the parents are prohibited from taking the life of their children for whatever reason, but are enjoined to protect them. This right to life of children extends to the foetus in the womb. The mother is not allowed to harm or take the life of foetus. Abortion is therefore strictly prohibited in Islam except for medical reasons.[82] In the same token, the 2003 CRA identifies similar stand with *Shari'ah* on the issue of identity of children. *Shari'ah* enjoins parents to give a child a name at birth. The parents are enjoined to give a good name as this will remain his identity in this life and the hereafter and the child is expected to live by the spirit of his name.[83] This provision of the *Shari'ah* is a step beyond what is provided by the CRA which enjoins the naming of the child. *Shari'ah* recommends a name that will enhance the dignity of the child and discourages names that will cause him harm and inconvenience. Abu al- Darda reported that the Prophet Muhammad (PBUH.) said:

> You will be called on the Day of Judgment by name and your father's name, so chose a nice name".[84]

In another narration which is reported by Abu Hurairah, Prophet Muhammad PBUH was reported to have said:

> There are three rights of the children upon parent (among other). These are giving the child a good name at birth, educating him and getting him married when he attains maturity.[85]

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[81] Bukhari & Muslim.

[82] Yusuf al Qardawi, 1989.*The Lawful and the Unlawful in Islam* (Tawheed Publishing 1989) 56.

[83] Abdullahi Nasih Ulwan, 2000. *Child Education in Islam.* (Dar al-Salam 2000) 41.

[84] Al- Sajastaniy S. A, *Sunan Abu Dawud.Hadith* (1998) No. 4948. p.403.

[85] See Abu al-Qasim al-Asbahani., *Al-Tagheeb wa l-Tarheeb.*(Dar al-hadith 1993) 62

CONCLUSION

It is evidently clear from the analysis of the provisions under the Shari'ah that the life of children must be protected by the government, parents and the authority of the child. *Shari'ah* considers it a criminal offence to terminate the life of children by any means be it killing, war, unlawful abortion and other means. If anybody kills any child he will be severely dealt with under the *Shari'ah* and without avalanche of doubt, the punishment for killing will be capital. *Shari'ah* also makes provision for protection of foetus life and this why *Shari'ah* is a complete law. The glorious Quran exempts woman from fasting in order to protect the life of the foetus. It also considers or encourages pregnant women to eat nutritious food just for the survival of herself and that of the baby. The CRA also provides for the protection of children's life and spells out the responsibilities of parents to ensure their life protected. The Nigerian government should put mechanisms in place to ensure the violators of this right are punished. There is need for government to make provision for quality food in abundant, health services to be accessible and equipped with qualified doctors to ensure full implementation of the children's right to life. Essentially, serious enforcement mechanism is one of the panaceas to ensuring and achieving the intents and purpose of the Child Right Act. It is no doubt that the enforcement stratagem as presently constituted in the CRA is insufficient and will continue to make the Act a lame duck. Where a good enforcement measure is put in place, the aphorism *"children are the future leaders of tomorrow"* will be realised.