

RIGHT OF THE CHILD TO LIFE: A REVISIT

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Introduction:

Every human being is entitled to enjoy the right to life. Survival and development are used in place of the right to life in some quarters. The essence of life can be defeated if basic necessities required to live is not provided. A child is considered vulnerable because adults take decisions for them and the survival largely rests in the manner they are handled by adults.

Right to Life

Right to survival can well be used interchangeably with right to life.¹ As a result of advance in medical science, economic resources and human welfare, it is possible to avoid child mortality almost entirely in childhood, except in the most extreme cases or as a result of accident.² It is established that children are at high risk of mortality during the first few months of birth due to their vulnerability to infection and the inability of their immune system to fight some of the infections.³ And for the older ones, many die of cold, disease and hunger.⁴

In order to ensure that the Nigerian child is protected, the Child's Right Act guarantees the Right to Survival and Development to the Nigerian child because the 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.⁵ The Act provides thus "every child has a right of survival and development."⁶

The 1999 Constitution also states that every person has a 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 a criminal offence of which he has been found guilty in Nigeria. In *ESABUNOR v. FAWEYA*⁷ The Court of Appeal re-echoed the provisions of Section 33

¹ www.hrea.org (visited 26/05/2011)

² Hodges, A. [ed.], *Children and Women Right in Nigeria: A Wake Up Call, Situation Assessment and Analysis 2001*, (Abuja: NPC and UNICEF, 2001), p. 245.

³ www.immunizeforgood.com visited 26/5.2011.

⁴ Ojilere, O., *Child Rights @ Nigeria.com: The Misfortune of Rural Children*, (2003), vol. 5, o. 6, CJLI, P 168

⁵ Omaka, C.A., *Right to Life and the Dignity of Human Person* (Section 33 and 34 of the 1999 Constitution), in *Human Rights Law and Practice in Nigeria* (Enugu, Chenglo Limited, 2005), p. 114.

⁶ Section 4 of the Act.

⁷ (2008) 12 NWLR (Pt 1102).

of the Constitution and reaffirmed that any attempt to take the life of an individual outside the provisions of the Constitution is illegal and must be condemned.⁸

According to the Criminal Code “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.”⁹ In *R v. Bangaza*,¹⁰ the then Federal Supreme Court interpreted the Section thus, it was clear from the wording that the relevant age was the age at time of conviction and not that age at the time of commission of the offence. Accordingly, where an offender under that provision was under the age of 17 years when he committed the offence, he will not be sentenced to death except if the verdict was given before he attained the age of 17 years.¹¹

The African Charter on the Rights and Welfare of the Child provides that state parties recognised that every child has the inherent right to life. Parties shall ensure to the maximum extent possible the survival and development of the child.¹² The United Nations Convention on the Right of the Child equally provides that every child has the right to life, survival and development.¹³ However, the Convention did not reduce the right to life simply to the right to life alone. Nor does the state simply have the negative obligation to refrain from taking away the life of the child. Rather it has positive obligation to ensure children’s survival.¹⁴ The right to survival will be meaningless if other rights are not put in place. Without potable water, sanitation or health, the right to life is definitely threatened. In recognition of these factors therefore, the UN Convention states that the right of the child to the enjoyment of highest attainable standard of health and facilitate for the treatment of illness and rehabilitation of health, and requires state parties to “strive to ensure that no child is deprived of his or her right to access to health care services.”¹⁵ To pursue full implementation of this right, Article 24 of the Convention obliges state parties to take a number of specific measures. These include the following, among other things; states should provide necessary medical assistance and health care to all children with emphasis on the development of primary health care. They should combat disease and malnutrition, ensure pre-natal and post-natal care for mothers, ensure access by all segment of the society to basic knowledge of child health, nutrition, environmental sanitation and related survival issues and develop preventive health care, guidance of parents and family planning services. They should also take all effective and appropriate measures to abolish traditional practices prejudicial to the health of the child.¹⁶

⁸ Some communities in Africa still partake in infanticide for example the Lawra district in Ghana kill one of every triplet born to the community. See Ghana News and World of July 2011 p1 also available at www.ghananewsreport.com

⁹ Section 319 (2) of the Criminal Code 1958 CAP C38, LFN 2004.

¹⁰ (1960) 5 F.S.C.

¹¹ Obilade, A. O., *The Nigerian Legal System* (Ibadan, Spectrum Books Ltd, 2003), p 57.

¹² Article 6 (1) of the African Charter on the Rights and Welfare of the Child.

¹³ Article 6 of the UN Convention on the Rights of the Child.

¹⁴ Hodges, A. Op. Cit. p. 34.

¹⁵ Article 24 of the UN Convention on the Rights of the Child.

¹⁶ Hodges A. Op. Cit. p. 34.

It is not clear whether the right to survival (life) under the Child's Right Act covers a baby in the foetus. There has been a lot of debate even at the international level as to the concept of "personhood" or "human being hood" most philosophers are said to have argued that the point in time when human life begins is quite distinction from and less relevant than when a human person comes into existence.¹⁷

The Roman Catholic Church approached the concept of personhood metaphysically and maintained that a human person comes into existence at the moment the ovum is being fertilized.¹⁸ Hence, terminating a pregnancy is tantamount to terminating human life or killing a human being. This approach did not go down well with many philosophers who opined that personhood cannot be divorced from both mental and physical properties like possession of rationality, self-consciousness, capability of action and subject to non-monetary good or interest that is capable of having variety of desires.¹⁹

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 an action for damages against a person for harm or injury caused to the child willfully, recklessly, negligently or through neglect before, during and after the birth of the child."²⁰ 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 clearly makes abortion or aiding miscarriage of the foetus a punishable crime.²¹ In *C.O.P. v. MODEBE*,²² THE Court held that aiding miscarriage amounts to an offence but the doctor in the instant case is only liable for negligence because the women

Approached him after taking drugs aimed at aborting the foetus. A careful study of the authorities above supports the claim that the child right to survival commences even before his birth because terminating 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.

Going hand in hand with the right to survival is the right to development. According to the Nigerian Law Dictionary, development is the qualitative or quantitative improvement or growth of a thing."²³

The development psychology literature confirms that nearly all children follow the same development process and pass the same milestone, or important point along the way.²⁴ However, different children travel different part of the path at different speed. The kinds of the changes that takes place and brings these differences about are

¹⁷ Fortin, J.E.S., Legal Protection for the Unborn Child (1988) 56 Heion on line 51, Modern Law Review cited by Badamasiuy, J., Obligations and Rights of the Parents under the Child's Right Act: A Sharia Perspective, (Kaduna, Zakara Communications Limited, 2009), p 23.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Section 17 (1) of the Act.

²¹ Section 232-236 of the Penal Code.

²² (1980) 1 NCR 367

²³ Nchi, S.I., The Nigerian Law Dictionary (Jos-Nigeria: Green World, 2008), p 167.

²⁴ Hodges, A. Op. Cit, p. 184

circumscribed by both genetic and environmental factors, particularly the kind of stimulation a child receives during the early formative years.²⁵

Generally, the stages of child development can be divided into three,²⁶ The first stage is between 0-5 years, the second stage is between 5-11 years and then 11-18 years.²⁷ The first stage is a period of fast physical growth and development of the brain to almost its full size. It is equally a period where the cognitive function develops and what is required for the child at this stage of life is adequate nutrition, healthcare, etc.²⁸ At the second stage, the growth continues but at a slower phase compared to the first stage.²⁹ At this stage, the child is ready for formal education and training that serves as foundation for his adulthood.³⁰ The third stage is referred to as the age of adolescence. It begins with puberty and until adulthood (11-18 years).³¹ Physical growth and related physical and physical-social changes associated with the development of sexual functions in addition to being a period of further formal education.³² This is the period of relative physical and psychological stress during which the individual adjusts to the various challenges in the body and the development of new emotions and desire to acquire more advanced life skills to meet the challenges of sexual relationships and entry into the world of adulthood and work.

Conclusion

The right to life of a child is guaranteed under the Nigerian Constitution. The Child Right's Act 2003 is principally the most comprehensive law on child protection in Nigeria. The Act has guaranteed the right of the child to life and has added that the development of the child must equally be guaranteed. The Courts have echoed the position of the law that every child must be protected and abortion is a crime that must be punished as it threatens the right of the child to life.

²⁵ Ibid.

²⁶ Ibid.

²⁷ www.childdevelopmentinfo.com/child_development (visited 22/5/2011).

²⁸ Ibid, See also: www.nccp.org/publications/pdf/text_882.pdf (visited 22/5/2011).

²⁹ www.psych.ku.edu/dennisk/cp333/cognitive%20Early.pdf (visited 25/5/2011).

³⁰ Ibid.

³¹ www.visionias.files.wordpress.com/.../part-i-current-affairs-gs-prelim-2011-schemes-programmes-policies-visionias.pdf (visited 22/5/2011).

³² www.thehumanodyssey.com/the_stages_of_life_across_history/ visited 25/2/2011.