

## The Nigerian Child as a Subject of Rights – Dovetailing the Statutory and Shari'a Law Norms in a Diverse State

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### ABSTRACT

Making law to fit diversity has always been a complex undertaking in the midst of the lingering debates on cultural pluralism, cultural relativism, cultural imperialism and postmodernism. These complexities are evident in the lack of contemplation of diversity both in international human rights and municipal law. The Convention on the Rights of the Child appears to bear symptoms of this discrepancy as does the Child Rights Act 2003, which is the Nigerian domestication of the Convention. This article applies the rights perspectives of another law system i.e. the Shari'a to illuminate what are and what ought to be the appropriate scope of the rights of the Nigerian child if the law is truly to grow out of the spirit of the Nigerian people for whom morality continues to be of the essence. The question is whether the law can, in the context of functionalism and enforceability, stand aloof and away from the cultural peculiarities of its subjects.

**Keywords:** The Nigerian Child, Child Rights, Shari'a.

### INTRODUCTION

Children have been the subject of serious forms of abuse<sup>(1)</sup> around the world. These abuses include, amongst others, child labour,<sup>(2)</sup> trafficking in young persons, sexual exploitation, child marriage,<sup>(3)</sup> the phenomenon of child soldiers<sup>(4)</sup> and violation by law enforcement agents. In countries like Nigeria where poverty levels are high, children in particular have been forced into forms of labour and other endeavours that have proved to be exploitative, hazardous and prejudicial to their welfare and development. As a result of this history of abuses, society has increasingly evolved laws designed to put an end to the problems of child abuse. The most prestigious of these laws is the Constitution of the Federal Republic of Nigeria 1999 (as amended). All the rights available to Nigerian citizens under Chapter Four of the Nigerian Constitution are equally available to the child. As such, a child has the right to life, human dignity and freedom from slavery and torture, personal liberty,<sup>(5)</sup> fair hearing, freedom from discrimination on grounds of sex, ethnicity, religious or political persuasion, freedom of thought,

conscience and religion, freedom of expression, freedom of association and of movement and the right to peaceful assembly. In addition, the Constitution directs the Government to ensure that children and young persons are protected against exploitation and moral or material neglect.<sup>(6)</sup>

Some of the other laws having a bearing on children's rights are the Children and Young Persons laws, the Labour Act, the Criminal Code,<sup>(7)</sup> the Penal Code<sup>(8)</sup> and the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act (NAPTIP Act). The latest is the Child Rights Act of 2003.

The Labour Act provides, amongst others, that no young person shall be employed in any work, which is injurious to his health or which is dangerous or immoral<sup>(9)</sup> and prohibits young persons from working for any period longer than four hours in any one day. It also prohibits in its entirety the night employment of young persons.

Under the Criminal Code, failure, amongst others, to provide necessities of life to a young person who is under an adult's care and who is unable by reason of age to withdraw himself or herself from such care, makes the adult responsible for any consequences that may arise from such failure.<sup>(10)</sup> The same responsibility goes for every head of family.<sup>(11)</sup> Under the Penal Code, cruelty to children, amongst others, is also criminalised.<sup>(12)</sup> Maltreatment of children to the extent where it causes

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injury to the child's health attracts imprisonment for up to two years with or without a fine.

The Trafficking in Person (Prohibition) Law Enforcement and Administration Act (NAPTIP Act) was made to combat the immoral but very lucrative trade of human trafficking.<sup>(13)</sup> "Two million *children* are trafficked out of Nigeria annually"<sup>(14)</sup> (emphasis added). The Act defines human trafficking as "all acts and attempted acts involved in the recruitment, transportation within or across Nigerian borders, purchases, sale, transfer, receipt or harbouring of a person involving the use of deception, coercion or debt bondage for the purpose of placing or holding the person whether for or not in voluntary servitude (domestic, sexual or reproductive) in forced or bonded labour, or in slavery-like conditions".<sup>(15)</sup> The practice has been linked to a cultural practice in Nigeria by which children of poor family members are taken to wealthier family members where they serve in domestic capacities in exchange for food and a better standard of living.<sup>(16)</sup> The Act provides stringent penalties ranging from life imprisonment to payment of fines for offences under the Act.

In spite of these legislations, abuses against children have continued unabated. The Child Rights Act is the latest attempt to stem the trend of abuse against our children. This article critically assesses what contributions the Act might make to improving the rights of the Nigerian child. Thus in Section II, the term "child" is defined from the various relevant perspectives. Section III discusses the rights and responsibilities of the child as enshrined in the Act while Section IV turns to the rights and responsibilities of the child under Islamic Law. Although the similarities in the two law concepts are noted, Section V inquires into the deficiencies in the Act and how a resort to Islamic norms of human rights might improve the Act. The article concludes that further reform, including socio-economic re-adjustments and constitutional amendments, are an imperative.

### Who Is A Child?

Under Nigerian laws, there are four (4) different classifications of a person namely an infant,<sup>(17)</sup> a child,<sup>(18)</sup> a young person<sup>(19)</sup> and an adult.<sup>(20)</sup> The Child Rights Act has however sought to harmonise these definitions and, according to it,<sup>(21)</sup> any person who is below the age of eighteen years is a child for the purposes of the Act. This is would appear to be *partially* in line with the

Convention on the Rights of the Child,<sup>(22)</sup> as the further discourse in Section IV of this article.

Under Islamic law, however, majority is set at the age of puberty.<sup>(23)</sup> This has been defined as fifteen (15) lunar years for the male and nine (9) lunar years for the female although Islam recognises that maturity cannot necessarily be precisely defined age(s). Some persons may mature early while others mature late. For this reason, it has been summarised of the invariable age of maturity - "When the child reaches the age of mental maturity, when he can conduct his own affairs, Islam relieves him from his guardianship".<sup>(24)</sup>

### The Rights And Responsibilities Of A Child Under The Child Rights Act 2003

The Act underlines the overriding importance of the child by providing that the best interest of the child shall be the primary or paramount consideration in all actions to be undertaken whether by individuals, public or private bodies, institutions or service, courts of law or administrative or legislative authorities.<sup>(25)</sup> It then makes a wide range of provisions regarding the rights and entitlements of the Nigerian child. In the first place, it provides for freedom from discrimination on the grounds of belonging to a particular community or ethnic group, place of origin, sex, religion and the circumstances of one's birth.<sup>(26)</sup> This provision only underlines the existing provision in the Constitution.<sup>(27)</sup> In the same way, the Act also restates the constitutional requirement<sup>(28)</sup> for respect for the dignity of the child at all times. As such, no Nigerian child shall be subjected to physical, mental or emotional injury, abuse or neglect, maltreatment, torture, inhuman or degrading punishment or attacks on his/her honour or reputation.

Because the development of a child begins from its formative or foetal stages through to infancy, the Act provides that expectant and nursing mothers shall be catered for, and every parent or guardian having legal custody of a child under the age of two years shall ensure the child's immunization against diseases, or face judicial penalties.

The Act further provides that every child shall have a right to free, compulsory and universal basic education up to at least the junior secondary education level.<sup>(29)</sup> The Act places the responsibility on every government in Nigeria to strive to reduce infant mortality rates, provide medical and health care, adequate nutrition and safe drinking water, hygienic and sanitised environments and

combat diseases and malnutrition and develop primary health care for children.

In the area of labour, every Nigerian child is entitled to rest, leisure and enjoyment of the best attainable state of physical, mental and spiritual health. Child abduction<sup>(30)</sup> and forced exploitative labour<sup>(31)</sup> (unless it is of a light nature) or in an industrial undertaking are also made offences. The exceptions to these provisions are where the child is employed by a family member in work that is agricultural or horticultural or domestic in nature, and if such a child is not required to carry or move anything heavy that is likely to adversely affect his or her moral, mental, physical, spiritual or social development. Furthermore, a child shall not be used for the purpose of begging for alms, guiding beggars, hawking of goods, prostitution, domestic or sexual labour or any unlawful or immoral purpose or slavery or trafficking etc.<sup>(32)</sup>

The Act takes the significant precaution to provide for children in need of special protection measures (for example, mentally or physically challenged or street children). These classes of children are to be protected in a manner that would enable them achieve their fullest, possible social integration and moral development.

Finally, the Act provides that making tattoos or marks, and female genital mutilation/cutting, the exposure of children to pornographic materials, trafficking in children, exposure of children to the use of narcotic drugs, or the use of children in any criminal activities, abduction and unlawful removal or transfer of children from lawful custody, and employment of children as domestic helps outside their own home or family environment are punishable offences under it.

However, the Nigerian child also has important responsibilities under the Act. Thus, it provides that as far as age, ability and other legal limitations may permit, every child in Nigeria shall work towards the unity of his or her family and community and, as such, respect his or her parents and elders at all times and assist them when they need such assistance. The Nigerian child also has a responsibility to serve the nation by placing his or her physical and intellectual skills and capabilities at the nation's disposal. In addition, he is to contribute to the moral health of the nation; preserve and fortify the independence, harmony, unity, solidarity and integrity of Nigeria as well as the solidarity and achievement of African and World unity, peace, security, freedom, equality and justice for all persons. The Nigerian child shall also relate with other members of the society, with

different cultural values and ideals in the spirit of tolerance, dialogue and consultation.

### **Rights Of The Child Under Islamic Law**

The rights of the child in Islamic Law are set against the background of an era in which male children were valued over female children as result of which the concept of female infanticide became a phenomenon.<sup>(33)</sup> Islam prohibited the killing of women and children and admonished against female infanticide.<sup>(34)</sup> Apart from this, it totally protects the rights of the unborn child. As such, Allah (SWT) states in the Quran, "Kill not your children for fear of want: We shall provide sustenance for them as well as for you. Verily the killing of them is a great sin".<sup>(35)</sup>

The inspiration for this verse included the need to protect the foetus against termination. As a further way of preserving the right to life of the unborn child the Qur'an stipulates:<sup>(36)</sup>

Let the women live (in *'iddat*) in the same style as ye live, according to your means: *annoy them not, so as to restrict them*. And if they are pregnant, then spend (your substance) on them until they deliver their burden: and if they suckle your (offspring), give them their recompense (emphasis added).

These are extraordinary measures in furtherance of the protection of the child in the sense that the man is admonished not to annoy the woman he is in the process of divorcing in case she leaves "restriction" and jeopardises *any* pregnancy she *might* be carrying. In the event that they are actually pregnant, the man is to expend his resources on the woman until she delivers. In passing, it is to be noted that while the punishment for adultery i.e. stoning<sup>(37)</sup> may make the faithless<sup>(38)</sup> cringe, it is precisely this fear that the punishment is meant to instil on the adherents i.e. put the fear of Allah (SWT) in the individual to preserve societal morality<sup>(39)</sup> as a demonstration of one's faith and as a way of preserving the rights of the unborn child.<sup>(40)</sup> The prospect of illegitimate children is invariably the prerequisite for abortion. Many, many foetuses have been saved by these measures. On the other hand, one website<sup>(41)</sup> notes that in the twenty five years since the United States Supreme Court decision in *Roe v. Wade*,<sup>(42)</sup> "more than 35 million unborn children have been slaughtered in the industry's abortion mills". Naturally, in many communities where male-child preference thrives, it is the female foetus that bears the brunt of this large scale

termination.

In order to complete the right as prescribed in the above verse, the provisions transit to the right of the child after delivery in the sense that as long as she “suckles” her child, they are to be rewarded or compensated for this act. This is also to ensure that her attention to her child is undivided and that she has no motivation to abandon the infant.

According to one scholar,<sup>(43)</sup> all the rights available to adults are also available to children. Thus, a child has the right to seek for knowledge even if it is in China; to good morals; to protection against intoxicants; and to protection against recruitment into armies as child soldiers.<sup>(44)</sup>

The right to be suckled is of course not restricted to infants given birth to during ‘*idda*’ period. It is the right of every child:

The mothers shall give suck to their offspring for two whole years, for him who desires to complete the term. But he shall bear the cost of their food and clothing on equitable terms...If they both decide on weaning, by mutual consent, and after due consultation, there is no blame on them.<sup>(45)</sup>

The orphan child is also a particular pre-occupation with Islam:

To orphans restore their property (when they reach their age), nor substitute (your) worthless things for (their) good ones; and devour not their substance (by mixing it up) with your own. For this is indeed a great sin.<sup>(46)</sup>

This great sin is punishable by hellfire.<sup>(47)</sup> Indeed, the injunction of the Qur’an is not to meddle with the property of the orphans except to multiply it. Accordingly, the Quran admonishes Muslims to “come not nigh to the orphan’s property except to improve it”.<sup>(48)</sup>

Children have responsibilities too such as to hold on fast to the rope of Allah by being brothers of their fellow Muslims,<sup>(49)</sup> “render to kindred their due rights”,<sup>(50)</sup> “to those in want” and “to the wayfarer”. Even when there is not the means for them to do what they should for these classes of people, they are to “speak to them words of easy kindness”.<sup>(51)</sup> It is however the responsibility of parents to inculcate these and other Muslim virtues in Muslim children.

### **Deficits In and Unenforceability Of The Child Rights Act And How Islamic Rights Norms Might Help It**

The natural law idea that there exists universal reason

may appear to be borne out by the many similarities in the provisions of the law systems regarding the rights of the child. For instance, under common law, the unborn child is entitled to inherit his deceased father if it is born alive.<sup>(52)</sup> In Islamic Law, an unborn child, if conceived during the lifetime of the father, is entitled to inherit him provided he or she is born alive.<sup>(53)</sup> The same is true for the unborn child in relation to his or her mother if he or she survives the mother.<sup>(54)</sup>

There are, however, serious dissimilarities and anomalies in the Child Rights Act that would invite a second look. One main difference between the two lies in the clearly demonstrated desire to instill morality under the Shari’a when it comes to the rights of the child. For instance, on the right to a name as a matter of identity, the requirement of the Act is to give the child a name as *dictated by the culture of his or her parents or guardian*.<sup>(55)</sup> Under the Shari’a, however, the child is not only entitled to a name but a *good* name. According to the Prophet Muhammad (SAW), “You’ll be called on the Day of Resurrection by your names and your father’s names, so choose *good* names for yourselves” (emphasis added).<sup>(56)</sup>

The Child Rights Act appears to be more attuned to the unguarded freedom of the contemporary world part of which entails that parents are entitled to name their children after Judas Iscariot, Adolf Hitler, or such cursed personalities as Abu Lahab.<sup>(57)</sup> This no doubt portends nothing positive for the moral development of the child who may in fact be negatively inspired. Having said this, the provision of the Act in this regard is at least accommodating enough to permit Muslims to give good names to their children.

One of the most important anomalies is in the definition of “child”, which the Act states to be eighteen years.<sup>(58)</sup> This definition would appear arbitrary, insensitive and also contrary to Article 1 of the Convention on the Rights of the Child.<sup>(59)</sup> The said article, which appears to take into cognisance the cultural plurality and diversity of the world defines a child as a person under the age of eighteen (18) “unless under the law applicable to the child, majority is attained earlier”. This is recognition that in many states, the personal laws governing children would differ. One would expect that the domestication of this definition by a State such as Nigeria with a multicultural, multi-religious and multiethnic population such as Nigeria would follow the example laid down by the Convention and not enact a

narrow definition that excludes the contemplation of substantial groups. In Islam, for instance, the transition from childhood to adulthood is determined by pubertal age and accompanying maturity.<sup>(60)</sup> The narrow definition of the Act in this regard, in a jurisdiction in which laws must be all-inclusive in order to command compliance, is indicative as to why many provisions of the Act are unenforceable.

By extension, perhaps the most contentious aspect of the rights of the child in Islamic law is the issue of child marriage. This is against the Act's stipulation of eighteen (18) years as the minimum marriageable age as discussed in the paragraph immediately preceding this paragraph. While it is true that substantial abuse has been occasioned by the marriage of children, the blanket nullification (and criminalisation)<sup>(61)</sup> of all betrothals<sup>(62)</sup> and also nullification of child marriages<sup>(63)</sup> would appear arbitrary. The age of marriage varies from place to place and is dependent on the law system in operation in particular places.<sup>(64)</sup> For instance, the age of customary marriage in predominantly Christian Eastern Nigeria is governed by the Age of Marriage Law 1956, which lays down sixteen (16) as the minimum age of marriage and voids marriages below that age.<sup>(65)</sup> In four (4) Native Authority areas in three (3) of the northern states of Nigeria, the age of marriage is fixed by the various Declaration of Native Marriage Law and Customs Orders made in respect of these areas.<sup>(66)</sup> In predominantly Muslim Biu, Borno State and Borgu, Kwara State, it is set at fourteen (14) and thirteen (13) years respectively; while in predominantly Christian Idoma, it is set at twelve (12) years. In predominantly Tiv, it is set at the age of puberty. The age differentials between these systems and western stipulations are not too far apart. Under the Marriage Act<sup>(67)</sup> operative in Nigeria in respect of statutory marriages, the father's consent or, if he is not alive, the mother's consent is required for the marriage of a party who is below the age of twenty-one (21) years.<sup>(68)</sup> It is submitted that parental consent at the relatively old age of twenty-one (21) in this regard is more a contemplation for and recognition of the conservative customary practices of the Nigerian people than any pretensions of combating early marriages.

Also, under the European Convention of Human Rights,<sup>(69)</sup> the right to marry and found a family according to national laws is accorded "men and women of marriageable age". In England and Wales, the minimum age is sixteen (16) although parental consent is required

for a party who is between sixteen (16) and eighteen (18) years of age.<sup>(70)</sup> Under the provision, all marriages under sixteen (16) are void. In Scotland, however, marriage can be conducted for a sixteen (16) year old without parental consent.<sup>(71)</sup> From the foregoing details, it would appear well-nigh impossible to set down a minimum marriageable age.

To outlaw the above detailed differing practices that may number in their hundreds by mere fiat and with little or no consultation would appear unreasonable as evidenced by a recent incident in Nigeria which underlined the sensitivity associated with the age of marriage controversy. During the recent constitutional amendment process of the National Assembly, an attempt was made to remove the provision,<sup>(72)</sup> which deems a married person to be a person of full age for the purpose of renouncing his or her citizenship.<sup>(73)</sup> Senator Ahmed Sani Yerima opposed this measure insisting that in Islam, once a girl reached the age of puberty and she is matured, she was of full age.<sup>(74)</sup> The correct position in Islamic Law seems to be that age is not a requirement before marriage can be contracted in Islam<sup>(75)</sup> although "where the bride is a minor, Islam prescribes protective solemnisation of marriage *without consummation*" (emphasis added) until she attains puberty,<sup>(76)</sup> at which point she is entitled to repudiate the marriage "if she does not like her spouse".<sup>(77)</sup> This would put a lie to the usual charges that early marriages have deprived Muslim women the benefit of education. This purported result is not true of Islamic law. Early marriage is generally a problem under customary practices in Nigeria. There is a tendency to mistake these cultural practices for Islamic practices.

The Islamic practice of it comes with a certain variation. As Muslims are mandated to be guided by the *sunna* of the Prophet Muhammad (SAW), it is necessary to substantiate the Islamic position with perhaps the foremost *sunna* of the Prophet Muhammad (SAW) on the subject - the marriage of Aisha (RA) to the Prophet (SAW). She was a child of eight (8) years when the Prophet Muhammad (SAW) married her although there was no sexual relation between them. To further give credence to the All-Knowing attribute of Allah (SWT), this pre-ordained marriage made it possible for Aisha (RA) to live in the household of the Prophet Muhammad (SAW), record the *sunna* i.e. the sayings and deeds of the Prophet (SAW) and become a major source of Islamic jurisprudence.<sup>(78)</sup> Her young

marriage did nothing to hinder her education. Instead, she became the most enlightened Muslim woman in Islamic history. This *sunna* on the important place of the education of Muslim females is commended to every Muslim, indeed practitioners of other faiths and customary orientations.

The rights of the unborn child as laid down in the Act<sup>(79)</sup> also appear inadequate. This is in fact the gravamen of the disparity in these rights as granted by the law systems. Section 17(1) affirms the right of the child to bring an action for damages against any person for harm or injury caused to the child wilfully, recklessly, negligently or through neglect before, during or after his or her birth. The attitude of the provision appears to be that the right of the unborn can only be enforced if the foetus transits to an infant. In other words, the foetus which is terminated at whatever stage has no rights. This would appear to be more or less the position of radical western feminists who insist on a woman's absolute right to abortion. The right to life is thus seriously impaired by the tenor of this provision. The position of Islamic Law in this regard, and a good number of African customary practices, would appear to be against the Act's philosophy in this regard.

The other substantive problem however is the anomaly in that the Act grants inheritance rights to the unborn child<sup>(80)</sup> while it is entirely silent on the child. Here, it is suggested that the idea of law making should be inspired by a need to adopt best practices from other law systems and in this regard, perhaps more consideration should have been accorded the Shari'a where children, male and female, automatically inherit their parents and their share cannot be willed away by the parent.<sup>(81)</sup> The Act appears to have arbitrarily proceeded from the English law principle under which a parent can freely exercise their right to will their estate without regard for their children. The implication is that while other law systems, including the supposedly civilised law systems of the west, do not consider it a right that a child should inherit his father even today, this right has been in existence under the Shari'a for over one thousand four hundred (1,400) years.

### Concluding Remarks

In spite of the various laws seeking to protect our children against harm, many of the outlawed practices continue to thrive. Examples of these practices are street hawking, guiding beggars, begging for alms, child labour

etc. It appears that any attempt to resolve these problems solely by a legislative approach would be fruitless. This is because legislative remedies cannot be divorced from the socio-economic conditions of the people. In this respect, the intractable poverty in Nigeria<sup>(82)</sup> will ensure that these practices will go on. This poverty will be aggravated by the relatively recent rise in the price of petrol<sup>(83)</sup> from sixty-five naira (N65) per litre to ninety-seven naira (N97) per litre. This increase, like the previous ones, has resulted in substantial inflation, which is bound to further impoverish the people.<sup>(84)</sup> This is particularly sad given the fact that Nigeria has abundant natural resources including oil wealth.<sup>(85)</sup> The result of this is that the highlighted problems are further removed from any imminent solutions and that the future and fate of the Nigerian child will continue to be uncertain. Secondly, the situation of the Nigerian child is unlikely to improve where the provision by government of necessary social amenities such as potable drinking water, a hygienic environment, adequate medical and health care etc. continues to be largely inadequate. The refusal of successive Nigerian governments, in line with prompting from the international finance organisations,<sup>(86)</sup> to invest in socio-economic initiatives in the health, education and rural development sectors ensures bleak prospects for the realisation of the rights of the African child. It is therefore recommended that government should improve the social conditions under which the citizens live.

In addition, the right under section 15 of the Act for a free and compulsory universal basic education up to at least junior secondary level is a largely ineffectual right given that the right to a free education is not a fundamental right under the Constitution of the Federal Republic.<sup>(87)</sup> As the provision of the Act giving effect to free education is therefore contrary to the Constitution, it is void to the extent of its inconsistency.<sup>(88)</sup> There may therefore be a need to amend the Constitution to make free education a fundamental right in order to give teeth to the provisions of the Act.

Given the discourse in this article, it would also appear that an engagement with other law systems, particularly the Shari'a, is an imperative in light of the multicultural, multiethnic and multi-religious setting of Nigeria. This will in no small measure aid first, the improvement of the rights of the Nigerian child; secondly, a more functional re-enactment of the rights;

and specifically the prospects of enforceability of the enacted rights.

### NOTES

- (1) Refer to Safar, (2004), *Al-Islam wa America wa a Hdath* September, p.14. \*refer to appendix no VI, p.133.
- (2) <http://www.defence.pk/forums/general-images-multimedia/113073-islam-western-media.html>.
- (3) See Zaqzouq, (2008), *Islam and West*, <http://www.isesco.org.ma/english/publications/journalislamtoday/25/P4.php>.
- (4) See Amara (2003), *Fee Fiqh Al-Mwajaha bain Algarb walIslam*, p.185.
- (5) Refer to appendix, p. 33.
- (6) See Amara (2003), *Fee Fiqh Al-Mwajaha bain Algarb wal Islam*, p. 137.
- (7) Refer to al-Banna (2003), *Sina'at al-'Ada` lel Islam*, p111.
- (8) See Ibn Manzour, *Lisan AlArab*, ch, 4, p. 663.
- (9) Sunan of Abu-Dawood, 3/315/3635. Hadith is sound by al-Albani.
- (10) *AlTirmidhi*, 28/15/1924, p. 548. Hadith is sound.
- (11) *Al-Jami' al-Sagheer*, 7964, Hadith is sound, p. 503.
- (12) See Al-Zuhaili, (1991), *Al\_Tafseer Al-Muneer*, p. 145.
- (13) See Ridha, (1999), *Tafseer Al-Manar*, ch, 7, p. 548.
- (14) See Al\_Sibaa'ie (2005), *Civilization of Faith*, translated by, Nasiruddin al-Khattab (1999), p. 123. "These are the principles of religious tolerance in Islam, on which our civilization is based. These principles oblige the Muslims to believe in all the Prophets and Messengers of Allah, to speak of all of them with respect, not to mistreat their followers, to deal with them all in a good and gentle manner, speaking kindly to them, being a good neighbor to them, accepting their hospitality, and marrying from among them so that the families and bloodlines will be mixed. Islam oblige the Muslims state to guard their places of worship and not to interfere in their beliefs or rule against them unfairly; they are to be treated equally with Muslims in term of rights and obligations; their honor, lives and futures are to be protected just as those of the Muslims are to be protected..., this tolerance remained the way of the Islamic civilization from the time its foundations were laid by Muhammad (P.B.U.H) until it began to decline, when these principles were lost and forgotten, and people became ignorant of their religion, and they abandoned this noble religious tolerance.
- (15) Essa and Ali, (2010), *Studies in Islamic Civilization*, p.1.
- (16) See Chaudhry, (1991), *Women's Rights in Islam*, p.14.
- (17) *AlBukhari*, *Kitab AlNikah* /81/5186, p.314.
- (18) See Al-Banna (1997), *AlGharb WalIslam*, p.277.
- (19) It was said that the uninformed readers of the Western media can, at times, be forgiven for confusing the terms "Muslim" and "terrorist." A major factor, which contributes to Islamic stereotyping in the West, is due to the media's ignorance of selecting their words that describe Muslims. Some common names heard or seen in the news about Muslims are "extremist" or "terrorist". These words are misleading in different ways. Another factor was writing affirmation about this religion and its adherents without any proof or by using doubtful references. This affirmation is put in a very direct way so that the reader may not even ask for proof. The problem does not end with the selection of authentic sources but it continues to the point where these sources are also misquoted especially with regard to the Qur'an and Hadith; the truncation if the Qur'an and Hadith are not mentioned as a whole and interpreted by including the necessary contexts, the end result may indicate the opposite of what is really meant. The experts or the "communities of interpretations" play a crucial role here to highlight the most important concepts and realities that lie behind the quotations and texts. [http://www.islamonline.net/en/IOLYouth\\_C/1278407316992/1278406711626/Covering-Islam--Muslims-in-the-Western-Media](http://www.islamonline.net/en/IOLYouth_C/1278407316992/1278406711626/Covering-Islam--Muslims-in-the-Western-Media)
- (20) Refer to Haddad (1997), *Al-Urdun walSiahah: Mushkelat wa Humoum*, p. 57and58.
- (21) In 1966 the UN passed the International Covenant on Civil and Political Rights, expanding its prior statement to address the manifestation of religion or belief. Article 18 of this Covenant includes four paragraphs related to this issue: 1. everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his [her] choice, and freedom either individually or in community with others and in public or private, to manifest his [her] religion or belief in worship, observance, practice and teaching. 2. No one shall be subject to coercion which would impair his [her] freedom to have or to adopt a religion or belief of his [her] choice.3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are

necessary to protect public safety, order, health, morals or the fundamental rights and freedoms of others.<sup>4</sup> The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians, to ensure the religious and moral education of their children in conformity with their own convictions. Also in 1981 adopted without a vote the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. [http:// www1. umn. edu/ humanrts/ edumat/](http://www1.umn.edu/humanrts/edumat/)

[studyguides/ religion. html.](http://www.dccd.dk/dccd/cku.nsf/images/forside1/$file/alreport.pdf)

- (22) [http://www.dccd.dk/dccd/cku.nsf/images/forside1/\\$file/alreport.pdf](http://www.dccd.dk/dccd/cku.nsf/images/forside1/$file/alreport.pdf).
- (23) See Safar, (2004), *AllIslam waAmerica waHdath* september, p.70 and73.
- (24) See Amara, (2003), *Fee Fiqh Al-Mwajaha bain Algarb walIslam*, p.186.
- (25) See Daniel Pipes and Mimi Stillman (2002), <http://www.danielpipes.org/90/the-united-states-government-patron-of-islam>

## REFERENCES

- 'Sanusi Predicts Increase in Nigeria's Poverty Level' accessed at [http:// www. vanguardngr. com/2012/ 02/ sanusi-predicts- increase- in- nigerias- poverty- level/](http://www.vanguardngr.com/2012/02/sanusi-predicts-increase-in-nigerias-poverty-level/) on 17 April 2012.
- 'The Islamic Perspective on Adolescence' accessed at [http:// www. english. bayynat. org. 1b/ World of Youth/themesII- 1.htm](http://www.english.bayynat.org.1b/WorldofYouth/themesII-1.htm) accessed on 30 September 2013.
- 112.5 Million Nigerians Live in Poverty –NBS' accessed at [http:// www. punchng.com/ business/ business-economy/ 112-5-million- nigerians- live- in-poverty-nbs/](http://www.punchng.com/business/business-economy/112-5-million-nigerians-live-in-poverty-nbs/) on 17 April 2012.
- Children's Rights: Islamic Perspective' accessed at [http://www.onislam.net/english/ask-the-scholar/family/ children-a- parenthood/ 175129- childrens-rights-islamic- perspective. html? Parenthood=](http://www.onislam.net/english/ask-the-scholar/family/children-a-parenthood/175129-childrens-rights-islamic-perspective.html?Parenthood=) on 26 September 2013.
- Did Muhammad Marry Women for Sexual Gratification' accessed at [www.onislam.net/ english/ask-about-islam/ faith-and-worship /islamic- creed/ 460828- did- muhammad- marry-women-for- sexual- gratification. html](http://www.onislam.net/english/ask-about-islam/faith-and-worship/islamic-creed/460828-did-muhammad-marry-women-for-sexual-gratification.html) on 5 October 2013.
- Doi, A.I. (1984/1404H) *Shariah the Islamic Law* (London, Ta Ha Publishers).
- Doi, A.I. (year and publisher not indicated) *Women in Shar'ia (Islamic Law)*.
- Garner, B.A. ed. 1999. *Black's Law Dictionary*, 6<sup>th</sup> ed, (St. Paul, Minn.: West Group).
- [http://unilorin.edu.ng/publications/imamt/The%20Rights%20of %20the%20Nigerian%20Child%20Under%20Shariah.pdf](http://unilorin.edu.ng/publications/imamt/The%20Rights%20of%20the%20Nigerian%20Child%20Under%20Shariah.pdf) on 24 September 2013.
- Hussain, A, *Islamic Law of Succession* (Riyadh: Darrusalam, 2005) p.256.
- Kamaldeen, I.T.M, 'The Rights of the Nigerian Child Under Shariah' in *Essays in Honour of Chief Wole Olanipekun SAN* accessed at
- Lipede, A. 2007. 'Women Trafficking and Insecurity in West Africa: Character, Trend and Scale in Nigeria' in *Human Trafficking and Economic Crimes across Nigeria's International Borders*, Barkindo, BM and Lipede, A (eds) (Ibadan: Spectrum Books Ltd).
- Nigeria's High Poverty Level', Daily Trust, 27 January 2011 accessed at [http:// www. dailytrust. com.ng/ index. php? option= com\\_content & view=article & id=10864:nigerias- high-poverty-level&catid=17:editorial & Itemid= 9](http://www.dailytrust.com.ng/index.php?option=com_content&view=article&id=10864:nigerias-high-poverty-level&catid=17:editorial&Itemid=9) accessed on 30 January 2011
- Nigerian Islamic Group Backs Under-age Marriage Saying it Doesn't Breach Religious Laws' accessed at [www.nigerianwatch.com/.../2083-nigerian-islamic-group- backs-under-age-](http://www.nigerianwatch.com/.../2083-nigerian-islamic-group-backs-under-age-) accessed on 13 August 2013.
- Olateru-Olagbegi, B, 'State Response to Trafficking in Women and Children in Africa – The Nigerian Experience' in *Gender-based Violence in Africa: Perspectives From the Continent* (Pretoria: Pretoria University Law Press, year not indicated).
- R.B, 'The One About the Little Girl' Conversations, The Guardian Life Magazine, 18 August 2013.
- Rising Poverty Level in Nigeria' accessed at [http:// www. businessdayonline. com/ NG/ index. php/ analysis/ commentary/ 33995- rising- poverty- level- in- nigeria](http://www.businessdayonline.com/NG/index.php/analysis/commentary/33995-rising-poverty-level-in-nigeria) on 17 April 2012.
- The Holy Qur-an: English Translation of the Meanings and Commentary*, ed. by The Presidency of Islamic Researchers, Ifta, Call and Guidance, King Fahd Holy Qur-an Printing Complex
- Wellman, C. 2005 *Medical Law and Moral Rights* (Springer).
- Zubair, A.Q. 1995. 'The Rules of Law in the Shariah' Lagos: IIC Publications).

## قضية حقوق الطفل النيجيري

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### ملخص

قضية الطفل النيجيري من حيث الحقوق كانت دوماً عملية وضع القوانين تعد عملية معقدة في خضم المناقشات العالقة حول الاختلافات الثقافية والامبريالية وإن هذه التعقيدات إنما تدل على ضعف التفكير بهذه الخلافات سواء على الصعيد العالمي لحقوق الإنسان أم على الصعيد المحلي المتمثلة بالقوانين المحلية. ويظهر أن اتفاقية حقوق الطفل تحمل أعراض هذا التناقض. يناقش هذا البحث الحقوق من وجهة نظر الشريعة وما يجب الأخذ به وما لا يجب حيث أن الشريعة قادرة على ملامسة روح الشعب النيجيري التي أساسها الفضيلة والأخلاق. الكلمات الدالة: الطفل النيجيري، حقوق الطفل، الشريعة.

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