

# The Nigerian Child and the Right to Participation: A Peep through the Window of “The Best Interest” Clause of the Child’s Rights Act

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**How to cite this paper:** AjaNwachuku, M. A. (2017). The Nigerian Child and the Right to Participation: A Peep through the Window of “The Best Interest” Clause of the Child’s Rights Act. *Beijing Law Review*, 8, 159-170.

<https://doi.org/10.4236/blr.2017.82009>

**Received:** March 16, 2017

**Accepted:** June 13, 2017

**Published:** June 16, 2017

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## Abstract

Prior to the Nigerian Child’s Rights Act 2003 (the first holistic enactment on the rights of the child), it was not conceivable (as in several countries of the world before the United Nations Convention on the Rights of the Child) that a child has participatory rights. The Nigerian Child’s Rights Act created participatory rights, but in some of the rights, they did not employ words showing that such rights were participatory, which thereby creating doubts in respect of their enforcement. This paper critically appraises the various sections of the Act on the subject and makes a comparative analysis of the sections on the participatory rights of the child with their equivalent in the *African Charter on the Rights and Welfare of the Child, 1989* and the *United Nations Convention on the Rights of the Child, 1990*. It recommends that although, the Act did not expressly provide for the right of the child to participate in certain rights, these rights must be interpreted to implicitly included participatory rights in view of the omnibus provision of the Act that provides for “the best interest of the child”. The paper concludes that the legislature undoubtedly did not intend to exclude participatory rights of the child because non-participation of children no longer represents the global state of the law on the rights of children.

## Keywords

Nigerian Child, Right to Participation, Omnibus Provisions, Best Interest of the Child, The Act

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## 1. Introduction

The Nigerian Child’s Rights Act<sup>1</sup> contains various provisions on the rights of the

<sup>1</sup>Cap C50, *Laws of the Federation of Nigeria, 2010*. The said enactment shall hereinafter be referred to as “the Act”.

child to participate in matters affecting him.<sup>2</sup> These various provisions have closely been appraised and a discovery was that several of them were omnibus, not conferring specific rights of participation on the child. These provisions in their omnibus state can create doubts as to whether the legislature intended children to have the right to participate, because it may plausibly be argued that if the legislature had so intended, it would have made specific provisions on the child's right to participate. However, since section 1 of Act requires that all things in respect of the child must be done in the best interest of the child, and any doubts concerning the intention of the legislature on the right of the child to participate should readily be resolved in favour of the child's right to participate.

This paper shall in its theoretical framework discuss who a Nigerian child is (within the contemplation of the Act); the various rights of the Nigerian child to participate, and "the best interest" clause of the Act; conclusion; and recommendation.

## 2. Who Is a Nigerian Child?

The concept of the Nigerian child is quite nebulous.<sup>3</sup> This is because Nigeria adopts a plural legal system, comprising of both statutory and customary law<sup>4</sup> rules, with different interpretations of a child, *inter se* and *intra se*. Thus, the concept of childhood in Nigeria is dependent on the content of an enactment or judicial interpretation on one hand, and on the other, the customary law interpretation of the area under consideration.<sup>5</sup>

For instance, under section 30 of the Criminal Code Act,<sup>6</sup> a child, for the purpose of conviction for unlawful carnal knowledge, is a person below the age of 12 as he is declared incapable of having carnal knowledge.<sup>7</sup> Under the same Act, outside the offence of unlawful carnal knowledge, a rebuttable presumption operates to declare any person below the age of 12 years a child, thus, not criminally responsible.<sup>8</sup> Under the Penal Code however,<sup>9</sup> a child is a person below the age of 7, not being criminally responsible. **The Labour Act**<sup>10</sup> deals with civil law

<sup>2</sup>The masculine gender includes the feminine gender.

<sup>3</sup>See generally, M.A. AjaNwachuku (2015d), "The Legal Analysis of the Nebulous Concept of Childhood in Nigeria" *Beijing Law Review*, vol. 7, June 2015, pp. 122-126.

<sup>4</sup>Customary law is comprised of native laws and customs of a people. Customary law and English type of laws exist side-by-side, and operate as such. However, to the extent that the rules of customary law did not fail the validity tests set by English type of laws.

<sup>5</sup>Customary law as native laws and customs of a people is comprised of a way of life of a people. Since ways of life differ from people to people, place to place, tribe to tribe and even over time, there is no uniform customary law in Nigeria. It is for this reason that customary law is said to be "organic, dynamic and thriving": *Shuaibu v. Muazu* (2014) 8 NWLR (Pt. 1409) 207 ratio 33.

<sup>6</sup>Cap C38, *Laws of the Federation of Nigeria, 2010*, section 30. The Act is the principal enactment on crime in Southern Nigeria, comprised of the following states: Abia, Akwa-Ibom, Anambra, Bayelsa, Cross River, Delta, Ebonyi, Edo, Ekiti, Enugu, Imo, Lagos, Ogun, Ondo, Osun, Oyo and Rivers.

<sup>7</sup>*Ibid*, section 357.

<sup>8</sup>*Ibid*.

<sup>9</sup>Section 50(a), *Cap 89, Laws of Northern Nigeria, 1963*. The Act is the principal enactment on crime in Northern Nigeria, comprised of the following states: Adamawa, Bauchi, Benue, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Kogi, Kwara, Nasarawa, Niger, Plateau, Sokoto, Taraba, Yobe, Zamfara and Abuja (the Federal Capital Territory).

<sup>10</sup>Cap LI, *Laws of the Federation of Nigeria, 2010*.

unlike the Criminal and Penal Code. Section 59(2) of the Act declares a person a child for the purpose of employment in Nigeria, if he is below the age of 14. Such a person cannot work in any industrial undertaking without supervision. On the other hand, Nigerian customary law as established in the case of *Labinjo v. Abake*<sup>11</sup> declares a person a child, if he has not reached puberty. However, because customary law varies from one community to the other, who is a child largely, depends on the particular custom in question. For instance, a survey of different customary laws in Nigeria shows that in some areas, childhood stops at the age of 19, while in some other areas, it extends to the age of 21.<sup>12</sup>

In spite of the amorphous nature of the concept of childhood in Nigeria<sup>13</sup> as occasioned by the legal pluralism in Nigeria, the Act has synthesized the various norms on which a child in Nigeria is, and proffered a definition on it. The Act has defined a child as a person below the age of 18 years,<sup>14</sup> and appears to have settled the matter of who a child is, when it provided that the definition of the child under section 277 of the Act supersede all enactments relating to children, adoption, fostering, guardianship, approved institutions, remand centers, borstal institutions, and any other matter pertaining to children already provided for in other enactments.<sup>15</sup> However, there are still doubts as to whether the Child's Rights Act has definitively closed chapter on who a Nigerian child is, in view of the fact that the Act expressly excludes enactments on any other matter not specifically mentioned above. If the lawmakers had wanted not to exempt any enactments or matters, they would not have taken the pains of specifically mentioning enactments or matters. The maxim has always been and remains as *expression unius est exclusion alterius*, that is, the express mention of a thing, is an implied exclusion of another.<sup>16</sup>

In spite of the fact that the age of a person considered to be a child seems yet to be settled in Nigeria, one shall for the purpose of this discourse, adopt as a working definition, the provision of section 277 of the Act, that a child is a person below the age of 18 years.

<sup>11</sup>(1924) 5 NLR 33.

<sup>12</sup>O. M. Onibokun (1986), "Child Protection Measures: Review of Policies and Laws Protecting Children from Abuse in Nigeria", in *UNICEF, Child Protection in Nigeria: Summary of Research Findings on Protection and Violation of Children's Rights*, (Lagos: Jeromelaiho & Associates Ltd), p. 47.

<sup>13</sup>This paper shall not go into details of them as the concept of childhood is not the theme and centre point of it. What is more, more reading on the concept of childhood in Nigeria, including the nebulous nature can be made from the publication in footnote 3 of this work, and several other works of the writer, including M.A. AjaNwachuku (2015a), "Determination of Paternity of a Child or Adult in Nigeria: Is There Any Justification for the Distinction?" *Journal of Law, Policy and Globalization* vol. 44, 2015 pp. 115-119; M.A. AjaNwachuku (2015b), "Determination of the Paternity of the Nigerian Child – The Law: Past, Present and Future" *Research on Humanities and Social Sciences* vol. 5 No. 24, 2015 pp. 181-188; "An Examination of Customary and Statutory Legal Meaning of a Child in Nigeria: A Stream of Two Waters that do not Mix" *Journal of Law, Policy and Globalization* vol. 52, 2016 pp. 167-171 and M.A. AjaNwachuku, "A Critical Review on the Legal Framework on the Definition of a Child?" *Abuja Journal of Public and International Law* ISSN: 2251-1431 vols. 2&3, August, 2011 and 2012, pp. 323-334.

<sup>14</sup>The Act, section 277.

<sup>15</sup>*Ibid.*, section, 274(1).

<sup>16</sup>*Oloja v. Governor Benue State* (2016) 3 NWLR (Pt. 1499) 217 ratio 217.

### 3. The Right of the Child to Participation and the “Best Interest Clause” under the Nigerian Child’s Rights Act

The contents of the Nigerian Child’s Rights Act were culled from the *African Charter on the Rights and Welfare of the Child 1989* and the *UN Convention on the Rights of the Child 1990*, which were ratified but yet to be domesticated in Nigeria.<sup>17</sup> The Charter and the Convention were not made part of the domestic laws of Nigeria because Nigeria felt that those instruments did not take cognizance of the peculiar needs of Nigeria and make provisions in respect there to in the instruments. For instance, child betrothal; child marriage; buying or selling of children; children begging for alms, guiding beggars; and hawking goods and services on main city streets, brothels or highways are peculiar to Nigeria, yet were not accommodated in the Charter and the Convention. Nigeria therefore preferred to produce an Act that in substance contains the salient provisions of the Charter and the Convention and further contains the provisions that shall take care of the peculiar needs of Nigerians as a people. In satisfaction of this need, when the Act was enacted, it made provisions for the subject matters here in disclosed, in its sections 20 - 23; 30(1); 30(2)(a) and 30(2)(c). Again, Nigeria already has several enactments on the rights of children (including, *Infants Relief Act*,<sup>18</sup> *Children and Young Persons Ordinance*,<sup>19</sup> *Children and Young Persons Laws*,<sup>20</sup> *Compulsory, Free Universal Basic Education Act*,<sup>21</sup> *Matrimonial Causes Act*,<sup>22</sup> *Trafficking in Persons (Prohibition) Law Enforcement and Administration Act*,<sup>23</sup> the *Criminal Code Act*,<sup>24</sup> the *Penal Code Law*,<sup>25</sup> *Labour Act*<sup>26</sup> and even some parts of the *Constitution of the Federal Republic of Nigeria, 1999* e.g. section 17(3)(f) and making the Charter and the Convention part of the domestic laws will increase the enactments by two, when Nigeria needed a single enactment on the rights of the child. It rather refused to make the Charter and the Convention part of the domestic laws of Nigeria but produced the Act wherein all the various laws of Nigeria abovementioned and the salient provisions of the Charter and of the Convention were reflected. It was in realization of this desire of producing a single enactment on the rights of the Nigerian child that the Act expressly stated in its section 274(1)(a) that the contents of the Act “supersede the provisions of all enactments relating to children”. The Act was therefore enacted as a domestic version of the abovementioned international instruments and has the added advantage of taking cognizance of the peculiarities of Nigeria and Nigerians.

<sup>17</sup>By virtue of section 12 of the *1999 constitution of the Federal Republic of Nigeria*, all international obligations to which Nigeria has subscribed must be specifically enacted by the National Assembly to be enforceable in Nigeria.

<sup>18</sup>1874 Statute. A statute of General Application.

<sup>19</sup>1943.

<sup>20</sup>Cap 19, *Laws of Eastern Nigeria, 1963*.

<sup>21</sup>Cap C52, *Laws of the Federation of Nigeria, 2010*.

<sup>22</sup>Cap M7, *Laws of the Federation of Nigeria, 2010*.

<sup>23</sup>Cap T23 *Laws of the Federation of Nigeria, 2010*. Act No. 24, 2003 as amended in 2005.

<sup>24</sup>Cap C38, *Laws of the Federation of Nigeria, 2010*.

<sup>25</sup>Cap 89, *Laws of Northern Nigeria, 1963*.

<sup>26</sup>Cap L1, *Laws of the Federation of Nigeria*.

Under the African Charter on the Right and Welfare of the Child, 1989 and the UN Convention on the Rights of the Child, provisions were made for the right of a child<sup>27</sup> to participation.<sup>28</sup> The Act has such provisions having been culled from the two instruments. The rights of a Nigerian child to participation under the Act are set out in the various provisions therein. For instance, the right to freedom of movement<sup>29</sup> ensures to the child and authorizes him to move about freely. It is undoubtedly participatory for not only is the right available to the child, but the child is allowed by law to take individual positive steps to enjoy it. The right is not dormant and is not to be executed by some other person, group or body, for the enjoyment of the child. The movement shall however be restricted if it shall be harmful to the child or if it is in the interest of the education, safety and welfare of the child. These exceptions are undoubtedly in the best interest of the child, in agreement with section 1 of the Act, that “in every action concerning a child...the best interest of the child shall be the primary consideration”.

The right to rest, leisure, engage in play, sports, recreational activities, participate fully in cultural and artistic activities are yet another participatory rights of the Nigerian child under the Act.<sup>30</sup> These rights have been made available for the child to be exploited and enjoyed by the child. The rights are not subject to control or restriction by any person or group of persons, not even the government. Rather, every government, person, institution, service, agency, organization and body responsible for the care and welfare of the child is under obligation to ensure that at all times, adequate opportunities are available for the child to enjoy the participatory rights. It is not in doubt that it is in the best interest of the child to partake of and participate in these rights because the enjoyment of the rights make them healthy.

A child has the participatory right to be taken care of, by his parents and has the further right to enforce the right in a Family Court.<sup>31</sup> Again, a child has the right to insist on not being separated from his parents unless the separation is for his education and welfare or pursuant to court pronouncement, in the best interest of the child.<sup>32</sup> The phrase “in the best interest of the child” was properly omitted if the derogation from the right is for the education and welfare of the

<sup>27</sup>Respectively described as “every human being below the age of 18 years” and “every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier” in Article II of the Charter and Article I of the Convention.

<sup>28</sup>Under the Convention, the right not to be separated from the parents “against their will” (Article IX); the right to enter their own country (Article X (2)); the right to express their views in matters concerning them (Article XII); the right to freedom of expression (Article XIII (1)); the right to associate and of peaceful assembly (Article XV); the right to rest and leisure (Article XXXI (1)); the right to participate in cultural and artistic life (Article XXXI (2)). Under the Charter, the right to express views (Article IV (2) and Article VII); the right to free association and peaceful assembly (Article VIII); the right to education (Article XI (1)); the right to rest, leisure, play and recreational activities (Article XII (1)); the right to participate in cultural and artistic life (Article XII (2)); the right not to be separated from their parents against their will (Article XIV).

<sup>29</sup>Note 1, *Op. cit.*, section 9.

<sup>30</sup>*Ibid.*, section 12.

<sup>31</sup>Note 1, *Op. cit.*, section 14(2).

<sup>32</sup>Note 1, *Op. cit.*, section 14(1).

child, because it is obviously in the best interest of the child, for a child to be separated from the parents to enable receive education and for their welfare. To employ the phrase would in effect have amounted to stating the obvious and wasting legislative ink.

A child has the participatory right to attain at least junior secondary school education and if such child is not sent to school for senior secondary school education, shall have the right to participate in the learning of an appropriate trade from an employer who is bound to provide the necessities for learning the trade.<sup>33</sup> Where the child is a female and was pregnant while in school, she has the participatory right to continue with her education after childbirth.<sup>34</sup> The provision on the right to at least junior secondary education has no “best interest” clause in it because the clause will serve no practical purpose. The right is intrinsically in the best interest of the child.

Sometimes, the paternity or maternity of the child becomes an issue for determination.<sup>35</sup> The Act has provided for the means of determination of same, by stating that a court of law may make an order that recourse be had to “scientific tests including blood tests and Deoxyribonucleic Acid tests”.<sup>36</sup> This may involve the taking of blood or other samples from the child (whose paternity or maternity is to be determined), or any other person alleged to be the father or mother of such child.<sup>37</sup> The right to determine the paternity or maternity of a child in Nigeria is participatory in two respects. First, the child (those who are still below eighteen years but grown enough to understand the purpose of determination of paternity e.g. teenagers) must be part of the decision to determine his paternity, for a child cannot be coerced into having his paternity determined as that could interfere with his right of privacy.<sup>38</sup> Second and related to the first, the child must accept that the determination be made and consent to giving his sample with which the scientific test shall be run. The Act has provided for this consent,<sup>39</sup> more so when it is certain that without the consent, there would be no

<sup>33</sup>Note 1, *Op. cit.*, section 15(2) (3) (4).

<sup>34</sup>Note 1, *Op. cit.*, section 15(5).

<sup>35</sup>For more reading on determination of paternity see the following: M.A. AjaNwachuku (2015a), “Determination of Paternity of a Child or Adult in Nigeria: Is There Any Justification for the Distinction?” *Loc. cit.*; M.A. AjaNwachuku (2015b), “Determination of the Paternity of the Nigerian Child – The Law: Past, Present and Future” *Loc. cit.*; M.A. AjaNwachuku (2015c), “Legal Framework on the Determination of Paternity of a Nigerian Child: An Eagle that cannot Fly?” *Ebonyi State University Law Journal, Faculty of Law EBSU* ISSN: 0794-926-X vol. 6 no.1 2015, pp. 1-9 and M.A. AjaNwachuku & Nwogbo-Egwu, C.C. (2015) “Scientific Ascertainment of the Parents of a Nigerian Child: Has the Supreme Court come to Terms with it?” *Ebonyi State University Law Journal, Faculty of Law, EBSU* ISSN: 0794-926-X vol. 6 no. 2, 2015 pp. 1-8.

<sup>36</sup>Note 1, *Op. cit.*, section 63(1)(a).

<sup>37</sup>Note 1, *Op. cit.*, section 63(1)(b).

<sup>38</sup>Note 1, *Op. cit.*, section 8. Also, section 37 of the [Constitution of the Federal Republic of Nigeria, 1999](#).

<sup>39</sup>A child who has attained the age of 16 years can himself consent, while for those below, the consent shall be given on behalf of the child by an adult who has the care and control of the child. Where the child has attained the age of 16 years but is unable to do so for reason of mental disorder, depriving him of the ability to understand the nature and purpose of the scientific test, an adult who has care and control may consent for the child, subject however to a certification from the medical practitioner taking care of the child, that the taking of the scientific sample shall not prejudice the proper care and treatment of such child: Note 8, *Op. cit.*, section 64.



sample, no test and no determination. What is more, to get sample without the consent of the child shall constitute an actionable wrong of trespass to the person of the child.<sup>40</sup>

The Act did not provide for the best interest of the child on the issue of determination of paternity or maternity of a child. This writer is of the firm view that it shall translate to a waste of legislative ink to expressly state the obvious: that it is in the best interest of the child for the paternity or maternity to be determined. By sheer common sense, it is in the best interest of the child for such query whenever raised, to be determined. The Act has foreseen that it is possible for a child to be abandoned or deserted by the parent and with or without the consent of such parent be brought up by another at that other's expense. Consequent upon this foresight, the Act in its wisdom made provision for a return of such child to the parent on the application of such parent provided that the court is satisfied that the parent is fit to assume custody, having regard to the welfare of the child.<sup>41</sup> This right of a child to be reunited with the parent is participatory, because the Act expressly provides that in considering the application of the applicant parent, the child has the right to "his own free choice"<sup>42</sup> of accepting or refusing to reunite with the parent.

Under the Act,<sup>43</sup> where a residence order (i.e. an order setting out the arrangements to be made as to the person with whom a child is to live) has been made in respect to a child in favour of a parent or a guardian of the child who died while the order was in force, or where a residence order has been made in respect to a child who has no parent with parental responsibility for him, a person may apply to be the guardian of such child. The Act did not make the provision for the child to participate in the decision of whether or not the court should make an order in favour of the application. Again, where the application succeeds and the applicant becomes the guardian, such guardian may by deed, appoint another person to be the guardian of the child in event of his death.<sup>44</sup> While the intention of ensuring a gap in the guardianship has been closed by this provision of the Act, it has the defect of the child not participating in determining his right of movement, whether to go to the person approved under the deed or not. However, where a person has successfully applied to court to be and has been made the guardian of the child, the child has the right to apply to the court for the revocation of the appointment. This is a provision of the Act<sup>45</sup> that firmly entrenches that the right of a child to continue to have as a guardian, a person appointed by the court is participatory. It is however opined that in making an application for guardianship, the opinion of the child should be sought, so much

<sup>40</sup>This actionable wrong is comprised of the crime of assault under section 351 of the Criminal Code Act, *Cap C38 Laws of the Federation of Nigeria, 2010*, section 262 of the Penal Code Law, *Cap 89 Laws of Northern Nigeria, 1963*; and the civil wrong of tort of battery, which may also include the civil wrong of assault. For more reading on the civil wrong of battery and assault, see *Joseph W. Glannon (2005), The Law of Torts* Third Edition (New York: Aspen Publishers, 2005), pp. 3-41.

<sup>41</sup>Note 1, *Op. cit.*, sections 72 and 73.

<sup>42</sup>Note 1, *Op. cit.*, section 75.

<sup>43</sup>Note 1, *Op. cit.*, section 84(1).

<sup>44</sup>Note 1, *Op. cit.*, section 84(3).

<sup>45</sup>Note 1, *Op. cit.*, section 86(b).

so, when a guardian has appointed another person, as the child's guardian upon his death. This is to bring it into conformity with the right of the child to participate in his right to choose whether or not to remain with a guardian appointed for him by court. Again, this is so because it shall be in the best interest of the child for his opinion to be sought on whom to stay or not to stay with, as a guardian.

The court may make an order for an applicant to foster a child<sup>46</sup> where the child has been abandoned by his parents; or is an orphan; or has been abused, neglected or ill-treated by the person having care and custody of him; or has a parent or guardian who does not and cannot exercise proper guidance; or is a destitute; or is found wandering, has no home or settled place of abode, or is on the streets, or other public place, or has no visible means of livelihood; or is voluntarily presented by his parents for fostering.<sup>47</sup> Also, the court may make an order for an applicant to foster a child, who has presented himself for fostering.<sup>48</sup> The making of the order creates a special and legal relationship between the successful applicant and the child, but the Act most unfortunately did not make provision for the opinion of the child before the order is made. There is no provision in the Act for the opinion of the child whether or not he is ready for the special and legal relationship that shall exist between him and the applicant, if the application succeeds. The child has the right to freedom of association.<sup>49</sup> It is hoped that the courts while considering the application for fostering shall seek the opinion of the child for it is in his best interest to have "a person" and not "any person" as a foster parent.

A child may by order of court be "adopted" pursuant to the success of the application. The Act has provided that in granting the application, the court must be certain that "the need to safeguard and promote the interest of the child throughout the childhood of that child"<sup>50</sup> shall be satisfied. Additionally, the Act gave the child sought to be adopted, the participatory right of assisting the court in arriving at its decision on such application. It made the right participatory by providing that before a court grants an application for adoption, it must *inter alia* ascertain "as far as practicable, the wishes and feelings of the child" and must give "due consideration to those wishes and feelings".<sup>51</sup>

Matters that concern children must be determined at the Family Court, which has two levels: a division of it at the High Court level and another at the Magistrate Court level.<sup>52</sup> The courts are meant to operate without undue exposure of the person and identity of children that appear before them. To actualize this, the courts do not allow in attendance, the public. The persons that are allowed in these courts during proceedings and sittings are the members and officers of such courts; the parties to the case and their solicitors and counsel; the parents

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<sup>46</sup>Note 1, *Op. cit.*, section 102(1).

<sup>47</sup>Note 1, *Op. cit.*, section 101(a), (b)(i) & (ii), (c), (d), (e), (f) and (g).

<sup>48</sup>Note 1, *Op. cit.*, section 101(b)(iii).

<sup>49</sup>The *Constitution of the Federal Republic of Nigeria*, section 40.

<sup>50</sup>Note 1, *Op. cit.*, section 126(3)(a).

<sup>51</sup>Note 1, *Op. cit.*, section 126(3)(b).

<sup>52</sup>Note 1, *Op. cit.*, sections 149 and 150.



or guardian of the child; and other persons directly concerned in the case.<sup>53</sup> No person is allowed to publish the name, address, school, photograph or anything likely to lead to the identification of a child whose matter is before these courts.<sup>54</sup> A breach of this provision of the Act is a crime punishable on conviction, with a fine of N50,000.00 or 5 years imprisonment.<sup>55</sup> The Act has expressly provided that the proceedings in these courts “shall be conducive to the best interest of the child and shall be conducted in an atmosphere of understanding”.<sup>56</sup> Interestingly, the Act made the right of the child to be part of the proceedings quite participatory, because the proceedings in these courts must have one of the characteristics as “allowing the child to express himself and participate in the proceedings”.<sup>57</sup>

What has so far been observed is that several of the rights that ought to be child’s-rights-participation specific were not so stated in the provisions of the Act. These set of rights may remain issues for argument as to whether or not they are participatory rights. The law has long gone beyond the impression that children are mere objects in need of or deserving protection of the law, in contradistinction to adults who are meant to determine their affairs under the law and even influence laws on the matters that affect them. The present state of the law is that all human beings (children and adults) are equal and none is more equal than the other in and under the law. This has graphically been captured in the [Universal Declaration of Human Rights, 1948](#) that “all human beings are born free and equal in dignity and rights”.<sup>58</sup>

The [African Charter on the Rights and Welfare of the Child 1989](#) and the [Convention on the Rights and Welfare of the Child 1990](#) have also lent their instruments to the provision in the [Universal Declaration of Human Rights 1948](#) by creating the rights of participation of children in the execution of the provisions of the laws that affect them. However, as between the Charter, the Convention, and the Nigerian Child’s Rights Act, the former are more guilty in neglecting to specifically provide for the participatory rights of the child<sup>59</sup> than the Act.<sup>60</sup> This attitude is undoubtedly related to the impression that children are persons who are not matured and so are not capable of sound reasoning with which to determine even the affairs that concern them. Correct though this impression seems, there is still need for the views of children to be ascertained in matters concerning them because the adult does not know it all. After all, there is no relationship between the age of Methuselah and the wisdom of Solomon.

<sup>53</sup>Note 1, *Op. cit.*, section 156.

<sup>54</sup>Note 1, *Op. cit.*, section 157(1).

<sup>55</sup>Note 1, *Op. cit.*, section 157(2).

<sup>56</sup>Note 1, *Op. cit.*, section 158.

<sup>57</sup>*Ibid.*

<sup>58</sup>Article I Universal Declaration of Human Rights.

<sup>59</sup>For instance, in the various instances of participatory rights in Note 13, only that in Article IV (2) of the Charter and Article XII of the Convention were child’s rights specifically stated to be participatory. These rights were on the right to children to express their views on matters concerning them.

<sup>60</sup>As many as the rights in sections 14(1); 14(2); 64; 75; 86(b); 101(b)(iii), 126(3)(b) and 158 were specifically stated to be participatory.

There is need for the child to be participatory in the rights that concern them because increased participation of children in issues affecting their lives can have positive and far-reaching effects on them as it is shown that “when children participate in decision, they tend to be more creative, positive and energetic, offering ideas devoid of prejudices and stereotypes”.<sup>61</sup>

#### 4. Conclusion

In spite of the advantages of the practice of making the rights of children participatory as succinctly captured in the immediate preceding paragraph of this paper, some provisions in the Act were not participatory-specific. However, the contents of the Act are not a “write-off” on account of this complaint. The query one may raise is, is there a way out of the rights that are not participatory-specific? The answer is in the affirmative. There is a way out. The way out is as set out in the next and last part of this paper, titled, “Recommendation”.

#### 5. Recommendations

It is herein hereby recommended that the provisions in the Act that are not participatory-specific should be interpreted as such. This is so because the words employed in such provisions though not participatory-specific have such effect or connotation. For instance, under section 12(1) of the Act, the provision is that “every child is entitled to rest and leisure and to engage in play, sports and recreational activities”; while section 12(2) of the Act provides that “every child is entitled to participate fully in the cultural and artistic activities of the Nigerian, African and world communities”. The word “entitled” as used in the provisions has the effect of conferring right on the child, so that the phrase “every child is entitled to” should be interpreted to mean “every child has the right to”.

It is also further recommended that for reason of the global march into child participation as espoused in the Charter and in the Convention from whence the provisions of the Act were culled on participatory rights, and any doubt as to whether or not a participatory right has been created should be resolved in favour of the creation of such right.

Again, since the Act has provided that “in every action concerning a child...the best interest of the child shall be the primary consideration”,<sup>62</sup> it is thus, recommended that a child should be allowed to participate in the decision making process of all matters that concern him, as provided for under the Act, because it invariably is in the “best interest of the child”. To actualize this recommendation, every person, including “an individual, public or private body, institutions or service, court of law, or administrative or legislative authority”<sup>63</sup> having the right to make any decision concerning the child must interpret “best interest of the child” in consonance with the participatory rights of the child.

On a final note and by way of maintaining a balanced, fair and realistic view,

<sup>61</sup>UNICEF Nigeria, “Child rights and participation” available at [http://www.unicef.org/nigeria/children\\_1938.html](http://www.unicef.org/nigeria/children_1938.html) accessed on 04/04/2014.

<sup>62</sup>Note 1, *Op. cit.*, section 1.

<sup>63</sup>*Ibid.*

it is important to note that the right to participate as discussed above is not available to children who cannot express themselves or take appropriate decisions to enable them to enjoy the right, such as newborn or toddlers. The parents or guardians of these categories of children are saddled with the task of taking decisions in their “best interest”. No wonder the Child’s Right Act provides in section 14(1) that “every child has a right to parental care and protection”.<sup>64</sup>

## References

- AjaNwachuku, M. A., & Nwogbo-Egwu, C. C. (2015). Scientific Ascertainment of the Parents of a Nigerian Child: Has the Supreme Court Come to Terms with It? *Ebonyi State University Law Journal*, 6, 1-8.
- AjaNwachuku, M. A. (2015a). Determination of Paternity of a Child or Adult in Nigeria: Is There Any Justification for the Distinction? *Journal of Law, Policy and Globalization*, 44, 115-119.
- AjaNwachuku, M. A. (2015b). Determination of the Paternity of the Nigerian Child—The Law: Past, Present and Future. *Research on Humanities and Social Sciences*, 5, 181-188.
- AjaNwachuku, M. A. (2015c). Legal Framework on the Determination of Paternity of a Nigerian Child: An Eagle That Cannot Fly? *Ebonyi State University Law Journal*, 6, 1-9.
- AjaNwachuku, M. A. (2015d). The Legal Analysis of the Nebulous Concept of Childhood in Nigeria. *Beijing Law Review*, 7, 122-126.
- Child’s Rights Act, Cap C50, Laws of the Federation of Nigeria, 2010 sections 1; 4(1); 8; 9; 12; 14 (2); 14 (1); 15 (2) (3) (4) (5); 21 to 23; 30(1); 30(2)(a); 30(2)(c); 63 (1)(a); 63(1)(b); 64; 72; 73; 75; 84(1); 84(3); 86(b); 101(a), (b)(i) & (ii), (c), (d), (e), (f) (g); 101(b)(iii); 102(1); 126(3)(a); 126(3)(b); 149; 150; 156; 157(1); 157(2); 158; 274(1); 277.
- Children and Young Persons Laws, Cap 19, Laws of Eastern Nigeria, 1963.
- Children and Young Persons Ordinance, 1943.
- Compulsory Free Universal Basic Education Act, Cap C52, Laws of the Federation of Nigeria, 2010.
- Constitution of the Federal Republic of Nigeria, 1999 sections 12; 17(3)(f); 37; 40.
- Criminal Code Act, Cap C38, Laws of the Federation of Nigeria, 2010 Sections 30; 351 and 357.
- Glannon, J. W. (2005). *The Law of Torts* (3rd ed., pp. 3-41). New York: Aspen Publishers.
- Infants Relief Act 1873, A Statute of General Application.
- Labinjo v. Abake (1924). 5 NLR 33.
- Labour Act, Cap L1, Laws of the Federation of Nigeria, 2010, Section 59(2).
- Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria, 2010.
- Oloja v. Governor Benue State (2016). 3 NWLR (Pt. 1499) 217 Ratio 217.
- Onibokun, O. M. (1986). Child Protection Measures: Review of Policies and Laws Protecting Children from Abuse in Nigeria. In *UNICEF, Child Protection in Nigeria: Summary of Research Findings on Protection and Violation of Children’s Rights* (p. 47). Lagos: Jeromelaiho & Associates Ltd.
- Penal Code Law Cap 89 Laws of Northern Nigeria, 1963 Sections 50(a); 262.
- The Charter (African Charter on the Rights and Welfare of the Child 1989) Articles II; IV (2); VII; VIII; XI(1); XII(1); XII(2); XIV.
- The Convention (United Nations Convention on the Rights of the Child 1990) Articles I;

<sup>64</sup>Note 1, *Op. cit.*

IX; X(2); XII; XIII (1); XV; XXXI (1); XXXI (2).

The Declaration (Universal Declaration of Human Rights 1948) Article I.

Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, No. 24, 2003 as amended in 2005.

UNICEF Nigeria. *Child Rights and Participation*.

[http://www.unicef.org/nigeria/children\\_1938.html](http://www.unicef.org/nigeria/children_1938.html)



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