

## An Appraisal of Children's Right and Child Domestic Servants under Child Rights Act 2003

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### Abstract

This article explores the issue of domestic child service as specie of the worst forms of exploitative child labour affecting children in the form of physical, mental, psychological and economic trauma, that parents force their children in to, without any legal justification, under the most deplorable conditions to supplement their family income. Domestic child Labour as one of the forms of such exploitation has many negative effects on our children, because many of them are exposed to physical, emotional and sexual exploitations as well as denied full educational opportunities. In Nigeria today issue of domestic child service have become one of the most prominent and prevalent forms of child labour practice among the households, children especially girls aged five, and above and mostly ten and thirteen years are trafficked from rural areas to the urban cities to serve as domestic servants. This practice has become a great problem, because it directly affects and interferes with so many children's rights provided under the law as well as the overall physical, mental and moral development of such children. This paper analyzes this turbulent issue of domestic child labour and focuses on the examination and appraisal of the relevant children's rights provided under Child's Rights Act (2003) which the practice interferes with. In the end the paper will provide solutions based on the findings of this paper, which could particularly enhance the rights of the vulnerable children involved in child domestic service in Nigeria.

**Keywords:** Domestic Servant, Children's Rights, Nigeria, Child Labour, Exploitation

### INTRODUCTION

In traditional Nigerian societies, especially before the arrival of the colonialist, children occupy a very special position in the life of their families and their society in general. Children's rights during the time are the basis or foundation for a solid human rights culture and the basis for securing human rights for future generations. At that time parents must take good care of their children, bring them up properly, and defend their rights and dignity whenever the need arises. At that particular time, there was law and order in our communities in the sense that parents are conscious of their duties that protects the interest of their children at all times. The children, in turn, know their duties and limits in both domestic works and in the farms. Hence, it is a common practice that children always worked under supervision by their families. Thus children in the past were asked by either their parents or guardians to perform a simple household task within a familiar and extended family environment, they work with simple tools and within the safety standard nets of children's work, with no social security problems as set out and prescribed by customary law.

However in contemporary times, due to rapid urbanization and modernization almost all the values of traditional upbringing of Nigerian children have been seriously and gradually eroded. It is very unfortunate that nowadays some parents forced out their little children in to the labour market to work as domestic child servants under extremely exploitative conditions with sole intention of making money without minding what their children would grow up to

become, after which most of them eventually deviate from the original behaviors' and training of their parents to emulate strange characters that have negative effects on their emotional, moral and psychological development.

Domestic child service which constitutes one of the worst forms of child abuse is a kind of practice where children are exploited, overworked and deprived of their rights to education, health and to normal and happy childhood. It is a situation where a child is subjected or exposed to profession quite distinct from its age, with too much responsibility, to supplement its family income. The children are therefore due to either poverty or the ignorance and attitudes of their parents denied fundamental rights to childhood.

The problem of domestic child service in our society is enormous as well as very complex phenomenon that involves the practice whereby children will live with a family to whom they are not related to, to perform domestic services in the household. Child domestic work becomes presently more hazardous in nature than in the past. This is as a result of the changes in the nature, scope and the way in which these children get engaged in the service, before they were engaged through direct contact with parents and employers as such parents will definitely know their children's employers and their characters, whereas in the present time everything has changed as child domestic workers are procured by middlemen from rural areas to urban cities, and since there is no direct link between parents and the employers, parents cannot monitor the welfare and behavior of their children while they are away on the service.

The practice of domestic child service has many negative effects on our children, since many of them starts work at early age devoid of any form of protection and under abusive and exploitative conditions that are detrimental and injurious, which directly interferes with so many of their rights provided under the law, that can definitely impair the overall physical, psychological, social and moral development of such children as a result of which they stands the risk of suffering from frustration and role conflict in the future.

This paper critically analyzes the rights of child domestic servants as provided under the Child Right Act 2003 that the practice interferes with, with a view of providing solutions based on the major findings of the paper for the government to take stringent measures of combating the practice of child domestic service in the country.

### **An Examination of the Nature, Causes and Effects of Domestic Child Labour in Nigeria.** ***Nature of Domestic Child Labour***

As the name connotes domestic child labour is one of the most prevalent forms of child labour in Nigeria, to the extent that it is sometimes very difficult to distinguish between illegal and criminal activities of child domestic labour and the legitimate domestic child work. Domestic child labour is a form of service whereby children will live with a family to whom they are not related to, to perform domestic services in the household. Customarily this type of service did not constitute wage employment, until very recently when it becomes more hazardous in nature, scope and the way in which the children are engaged in the service. In the past the children were engaged through direct contact with the parents and the employers whereas in the present time everything has been changed as child domestic workers are procured by middle men from rural areas to urban cities. It is a common practice nowadays, in this country that some parents give their little female children out to serve as housemaids for financial gains without minding the type of employers they are living with as well as the kind of people

they will turn out to be in future when they grow up, and since there is no direct link between the parents and the employers, parents cannot monitor the welfare and behavior of their children while they are away on the service, as a result of which most of these children eventually emulate strange behaviours which negatively impacts in their emotional, moral and psychological development.

### ***Causes of Domestic Child Labour in Nigeria***

Several factors have been identified as the causes of domestic child labour in the country but the most major as well as principal one is primarily rooted in poverty created by social or economic inequality as well as insufficient educational facilities. Poverty and poor national economy has contributed greatly to domestic child labour in Nigeria. If the economy of the country is strong and well managed, government can be able to make adequate provisions for its citizens in its annual budget that can enhance the financial ability of the parents of such children for them to take proper care of their children without sending them away to far places to serve as domestic servants to supplement their family income.

Unemployment is also one of the causes of domestic child labour in Nigeria. Many people in this country, because they do not have any source of income are forced out of necessity, to give their female children out to traffickers (middlemen) for the service, to supplement their income and then become the victims of various form of abuses and exploitation. Social and cultural factors also plays role in motivating domestic child labour in the country. There are several cultural as well as social traditions of our people which regard children's work as a good process for character and skill development. Children are expected here, at a very early age to learn, practice and acquire the skills by following the footsteps of their parents in a particular profession. High level of illiteracy and lack of modern education also contributes to the problem of domestic child labour. Many people in Nigeria did not perceive education as viable alternative to the work of their children and is seen by many as irrelevant to local needs and conditions as a result of which they remain illiterate throughout their lives for them to train and bring up their children as modern slaves to their employers to earn money for the use of their family.

### ***Effects of Domestic Child Labour***

Domestic child labour has negative effects on the physical, emotional, social and psychological feelings and development of the children involved in it. It constitute a threat to health and safety, as the children involved are always exposed to harsh and hazardous conditions such as social hazards, education, family, relaxation and leisure, that are quite distinct from its age. Children engaged in domestic child labour are frequently victims of physical, mental and sexual abuses which can be devastating especially in the area of emotional and psychological well being of the children.

Domestic child servants have no or less educational opportunities than the children who are not engage in the service. Even with the little ones that attends school, work is not programmed to allow them to attend their classes regularly as such they are either forced to drop out of school or attend irregularly and even if they attend regularly, the quality of their education is poor, because they pay little or no attention due to exhaustion or sleeplessness at night. Domestic child labour has demoralizing effects on the children involved because they are exposed to certain social vices such as rape and other forms of sexual abuses which will definitely impair the total development of the child, as a result of which they stand the risk of suffering from frustration and role conflict in the future.

## **An Overview of the Relevant Laws Protecting Children against Exploitative Child Labour in Nigeria.**

Before 2003, there are in Nigeria, both international and municipal legislations prohibiting various exploitative child labour practices among which domestic child service is prohibited. Nigerian government have since stood for international, constitutional as well as other statutory measures required to protect the rights of its children and safeguard them from abuse, neglect and exploitation.

The United Nations Convention on the Rights of the Child is among one of the International instruments that Nigeria ratifies in the year 1991 to protect its children from economic exploitation by preventing them from performing any work that is likely to be hazardous, harmful to their health, as well as interfere with their educational, physical, mental, spiritual, moral and social development. The Convention enjoins all state parties to it, to provide for minimum age for admission to employment, for appropriate regulation of the hours and conditions of employment as well as to provide for appropriate penalties to ensure effective enforcement of the provisions of the Article.

In addition to the above Convention Nigeria also becomes a party as well as a signatory to both the International Labour Organization (ILO's) Conventions No.138 and No.182 in December, 2001 and it also signed a Memorandum of Understanding (MOU) with International Programme on the Elimination of Child Labour (ILO-IPEC) in the year 2000, all in an effort to prohibit and eliminate the worst forms of child labour practices in its domain.

At the regional level, Nigeria being a country in the African continent is a party to the A U Charter on the rights and welfare of the Child. The Charter provides a basis for the promotion and protection of the rights of the African Child against worst child exploitative labour. Article 15 (1) (xv (i)) of the Charter specifically provides for the prohibition of economic exploitation of children as well as performing any work that is likely to be hazardous or interfere with their physical, mental, spiritual, moral or social development. In emphasizing this form of protection the Charter enjoins its parties to provide minimum age for admission of children to work, regulate duration and other conditions of the work and to provide penalties for failure to comply with those conditions.

Similarly, Constitution of the Federal Republic of Nigeria provides:

*"The state shall direct its policy towards ensuring that children, young persons, and the aged are protected against any exploitation whatsoever and against any moral and material neglect"*

Here the section guarantees rights of children, young persons and old persons against any form of exploitation and neglect. Furthermore, it would be of much importance, if I mention Chapter IV of the Constitution of the Federal Republic of Nigeria of 1999. This chapter is exclusively devoted to the protection of fundamental human rights of the citizens of Nigeria, and any person may, (as provided by the provision of such Constitution) sue and seek redress in court for the violation of any of these rights either by the government or private individuals. Children as human beings and citizens of Nigeria can also enjoy all the rights enshrined in the chapter. Another provision of the Nigerian Constitution which specifically promotes and protects the rights of Nigerians against any form of abuse and exploitation is the provision of section 34 of the 1999 constitution. The section prohibits and outlawed slavery and forced labour in general.

Children and Young Persons Act is another Nigerian Legislation which was enacted with the sole aim of specifically protecting children from physical and mental injury and also to restrict and prohibits exploitative labour and employment of children below the age of 14 years.

In the same vein Nigerian Labour Act prohibits the work and employment of children and young person's below the age of 18 years. The Act in its various provisions (i.e. section 58-64) protects children from being employed under exploitative circumstances that may be injurious to their health. A child is allowed under the Act to do work of a light nature it prohibits the employment of a person under the age 16 years to work under ground, on machine work or in any employment which is dangerous or immoral.

Another legislation which prohibits worst and hazardous exploitative child labour in Nigeria is criminal code which is applicable in southern Nigeria. Section 223-225 of the same code provides sanction against whoever trades in prostitutions, facilitates the transport of human beings within or outside Nigeria for commercial sexual exploitation. Similarly, section 278-280 of the penal code cap 89 Laws of the Northern Nigeria of 1963 are another statutory provisions that prohibit and punish bringing and selling of minors for immoral purposes and unlawful compulsory labour.

To sum up, as a result of various concerted efforts made by concerned international organizations, interest groups as well as civil societies in general to eliminate exploitative and hazardous child labour practice in Nigerian society, Nigerian government enacted and signed into law in 2003 Child Rights Act. The Act harmonizes all laws regarding protection of children in Nigeria. The Act prohibit and prescribe penalties for involvement of children in forced exploitative labour and trafficking of children by middlemen to urban cities or abroad for exploitative child labour practice.

### **An Appraisal of the Provisions of Child Rights Act 2003 Protecting Domestic Child Servants against Exploitation**

Child Rights Act as the name connotes is a law promulgated by the Federal Government in Nigeria, in the year 2003, to protect the rights of children against all forms of abuse and specifically spells out the basic rights and responsibilities of the Nigerian child. This is due to the fact that all the laws relating to children in Nigeria are not specific about children's rights and responsibilities. The Act is divided into 24 parts, 11 schedules and contains 278 sections.

Indeed it is universally accepted that child as a human being is a universal phenomenon as there are in every given society children, but one thing which is not universal with the children is how they are because as there are differences in societies in terms of geographical there must also be difference in their beliefs as to the proper way of bringing up their children. Thus what society A due to their culture and of course their religious beliefs may believe and consider to be the right and proper way of bringing up a child, society B may consider and believe it to be detrimental.

The increasing cases of using a child as a domestic servant in Nigeria is rampant, though the practice according to law constitutes a criminal offence and violates a number of provisions of the Child Rights Acts. Certainly there are a lot of specific provisions in the Act which directly or otherwise prohibits, prevents and protects the Nigerian Child against the practices of exploitative domestic child labour. Section 28 (i) (a) (b) (d) and sub-section (3) and section 30

are the direct provisions of the Act that prohibits and prescribe punishment for subjecting children to the practices of exploitative child labour and section 28 says:

"Subjected to this Act no child shall be;

- (a) Subjected to any forced or exploitative labour, or
- (b) Employed to work in any capacity except where he is employed by a member of his family on light work of an agricultural, horticultural or domestic character, or
- (c) Employed as domestic house help outside his home or family environment."

*"Any person who contravenes any provision of sub-section (1) or (2) of this section commits an offence and is liable on conviction to a fine not exceeding fifty thousand naira or imprisonment for a term of five years or liable to both such fine and imprisonment'.*

Going by the contents of the provisions of section 28 (1) (a) (b) (d) and section 30 (2) above, any parent or guardian who gives out and anybody who employs a child to serve as domestic servant outside his family environment commits an offence and will be punished because by so doing a child will definitely be deprived of enjoying various rights, privileges and opportunities conferred on him by the Act to protect and promote his general welfare and upbringing. Such rights, privileges and opportunities are; child will be deprived of parental care and protection, rights to maintenance by parents, rights to rest and leisure, right to attend and remain in school as provided for under UBE Act and a right to necessary protection and care. Consequently parent or guardian of that particular child acts against the provision of section 1 of the act which enjoins them in every action concerning their children to consider their best interest. Section 1 provides:

*"In every action concerning a child, whether undertaken by an individual, public or private body, institutions or service, court of law or administrative or legislative authority, the best interest of the child shall be the primary consideration".*

From the wordings of its provisions there is no doubt that the protection accorded to children by the section is desirable and the most important thing to do for the child if put into practice. This is because our children need a law to protect them as mostly they always rely on adults, in all decisions or actions concerning them, as such protection must be given to them by law to ensure their safety, welfare and best interest in all respect so as to guard them against any form of maltreatment, abuse or evil of the society.

However, the question needs to be necessarily asked at this juncture is what is the 'best interest of the child'? the best interest of the child referred to in section 1 above it's only as good as it sounds for it is couched in a wide and vague language, and the determination of what mankind feels is best left open and undone and by so doing the section appears to allow a room for the abuse of the right protected in its provision, because in actions or taking decisions concerning their children parents might ignorantly and faithfully believe a way to be a proper and legal means of bringing up their children but might turn out in the eyes of law to be illegal and improper way which might be detrimental to their physical, mental and emotional development. However, despite the fact that the findings of so many research conducted in the country shows that parents send their children to serve as domestic servants out of necessity (i.e. due to poverty), still according to the provisions of the law child labour, of any kind and for

any purpose deprives the child of the opportunity of proper upbringing by parents and have very grave consequences to which the child is exposed to, such as overworking the child, physical stress, sexual abuse and psychological trauma. Thus section 14 (1) of the Act ensures and safeguards the rights of the Nigerian child to parental care and protection, right to maintenance, his education and welfare, and the section provides:

*“Every child has the right to parental care and protection and accordingly no child shall be separated from his parents against the wish of the child except;*

- (a) For the purpose on his education, welfare or
- (b) In the exercise of judicial determination in accordance with the provisions of this Act, in the best interest of the child. And sub-section (2) went further to provide that:

*“Every child has the right to maintenance by his parents or guardians in accordance with extent of their means, and the child has the right in appropriate circumstances, to enforce this right in the family court”.*

Additionally, going by the provisions of the above section, in Nigeria parents and guardians are under a legal duty not to give out their children to serve as domestic servant, because once a child becomes a domestic child servant his right to parental care and protection has been jeopardized as he will definitely be deprived of parental love, care and concern. Thus most of the domestic child servants in Nigeria are deprived of their rights to parental care and protection because most of them are separated from their parents at very tender age against their wishes. Though many of the parents are constrained because they cannot be able to maintain and take care of their children as required by the law, still by giving their children out for the service they have infringed their rights as provided under the above section of the Act. The moment such children are employed as domestic servants they ceased to be under the care, welfare and protection of their parents but that of their employers which is against the law as well as best interest of the children involved.

The most essential and important right of children worthy of consideration, which the act of child domestic service interferes with under the Child Rights Act is the right to free, compulsory and universal basic education as provided in section 15 (1-6) and the section says:

*“Every child has the right to free, compulsory and universal basic education and it shall be the duty of the government in Nigeria to provide such education”.*

Section 15 sub-section (1) and (2) most significantly requires government to primarily provide every Nigerian child with free universal basic education for his proper upbringing and development in this sphere by ensuring that their children attend and complete their primary and junior secondary school education. The Act also takes appropriate steps in ensuring parents or guardians of the children did not fail in their duties as spelt out in sub-section (2) of the section by prescribing punishment to any defaulting parent or guardian in section 15 sub-section (6) and it provides:

*“Where a parent, guardian or person who has care and custody of a child falls in the duty imposed on him under sub-section (2) of this section, commits in offence and is liable (a) on first conviction to be reprimanded and ordered to undertake community service; (b) on second conviction to a fine of two thousand naira or imprisonment for a*

*term not exceeding one month or to both such fine and imprisonment; and (c) on any subsequent conviction to a fine not exceeding five thousand naira or imprisonment for a term not exceeding two months or to both such fine and imprisonment”.*

Similarly, access to free universal basic education is a key element of child rights and its development in the Act, but this notwithstanding, a lot of incidences in this country shows that almost all the children that are engaged in domestic service are deprived of this right and opportunity. Because most of the children involved are usually not attending any western school both in their parents and employers houses respectively. Therefore, in the country a far greater effort than in the past will be needed, at the level of basic education system for such children to overcome this situation which deprives many of them of their fundamental rights to basic education, and which consequently becomes a threat and poses a great challenge to the overall development of the children involved and the nation in general.

On the issue of rest and leisure, it is evidently clear that majority of the children involved in child domestic service in Nigeria have no time for rest or leisure, most of them are overworked because they work approximately 13 to 24 hours a day and are not entitled to any work free days. Such practice is against the provisions of section 12 (1) and (3) and the section provides that:

*“Every child is entitled to rest and leisure and to engage in play, sport and recreational activities appropriate to his age”.*

Sub-section (3) went further to provide that:

*“Every government, person, institution, service, agency, organization and body responsible for the care and welfare of a child shall at all times ensure adequate opportunities for the child in the enjoyment of the rights provided for the child in sub section (1) and (2) of this section”.*

Succinctly the above section provide that every Nigerian child is entitled to rest and leisure and parents or guardians must ensure compliance with the provisions of the law, but most of the children that are engaged in domestic service in the country have no time of their own; they start their normal and routine domestic work as early as dawn and will not finish or close till night; as such, they have no time to rest or to play.

Furthermore, section 11 of the Act protects and safeguards the rights of the Nigerian child to dignity of human person. And the section says:

*“Every child is entitled to respect for the dignity of his person, and accordingly, no child shall be; subjected to physical, mental or emotional injury, abuse, neglect or maltreatment or punishment, including sexual abuse; subjected to torture, in human or degrading treatment or punishment, subjected to attacks upon his honour or reputation; or held in slavery or servitude, while in the care of parent, legal guardian or school authority or any other person or authority having the care of the child”.*

Certainly, section 11 of the Act prohibits subjecting any Nigerian child to any kind to treatment, which will jeopardize his dignity as human person. Domestic child labour being an act which exposes children in most cases to various physical, mental and emotional abuses on the one



hand, while on the other hand taking the form of slavery or servitude, is a kind of labour, which if child is subjected to, his respect to the dignity of human person is jeopardized, such children mostly become the victims of various acts of abuses, neglect and maltreatment by either their employers or their dependants which are degrading to the dignity of their person such as harassment, beating, threat and sexual abuse.

Having discussed in the previous paragraphs the various provisions of the Child Rights Act that protects and safeguards the rights and interest of the Nigerian child against the practice of any form of exploitative labour, another provision worthy of mentioning at this juncture is section 2 (1) and section 19 (1) and (2) respectively. The above two sections aimed at providing the Nigerian child with a kind of protection and care for their well being or welfare; however, its provisions on the other hand appears to be a road block to the realization of the rights and privileges of the child domestic servants enshrined in the various provisions of the Act, section 2 (1) says:

*“A child shall be given such protection and care as is necessary for the well being of the child taking into account the rights and duties of the child’s parents, legal guardians and other individuals, institutions, services, agencies, organization or bodies legally responsible for the child”.*

Section 19 (1) on the other hand provides:

*“Every child has responsibilities towards his family and society and the federal republic of Nigeria and other legally recognized communities, nationally and internationally”.*

Sub-section (2) of section 19 of the Act went further to provide:

*“A child subject to his age and ability and such other limitations as may be contained in this Act and any other law to;*

- (a) Work towards the cohesion of his family and community
- (b) Respect his parents, supervisors and elders at all times and assists them in case of need”.

Going by its provisions some part of the provision of section 2 (1) stand to be in conformity with the Nigerian/African traditional and cultural belief of parental rights and respects where children are enjoined by our religion/culture to respect their parents, guardians or adult members of the society and assist them whenever they are in need of assistance. Thus since child domestic servants have responsibilities towards their families and if they are going to obey and discharge the duties imposed upon them by the provisions of the law and our African traditional and cultural beliefs then they must respect and abide by the decisions of their parents to serve as domestic servants to assist their parents in supplementing their family income towards the cohesion of their family.

### **CONCLUSION**

This paper reviews the concept of domestic child service as one of the forms of exploitative child labour, with focus on Nigeria, whereby parents or guardians due to various factors or out of necessity subjects their children to this form of exploitative practice. Female children in

Nigeria are procured and trafficked from rural areas to the urban cities to work as domestic servants in the houses of economically more advanced people in the metropolis. The conclusion of the paper is that the practice has negative effects on the overall development of the children and that poverty is a principal factor that derives female children into domestic child service in the country. The legal framework governing the practice in Nigeria is provided under the Child Rights Act 2003 by harmonizing all relevant laws regarding protection of children to guard them against any form of abuse and exploitation. The paper particularly recommends for the improvement of implementation and enforcement mechanisms, to focus on the full gamut of issues falling under children's rights protected under the Act; and also for the country to make adequate provisions in its policies that will enhance the ability of its citizens to discharge their legal responsibilities effectively, by taking proper care of their children without sending them away to far places to serve as domestic servants, to be subjected to various forms of exploitations and abuses, for the purposes of the realization of the overall development of the children and the nation in general.