

Child Rights Act in Nigeria: A Hoax or a Fail?

C.S. OCHOLI

Department of Social Sciences and humanities, The Federal Polytechnic, Idah, P.M.B 1037, Idah Kogi State, Nigeria

Abstract- Two decades after the enactment of the Child's Rights Act (CRA) 2003, Nigeria remains a primary theater for child rights violations, ranging from systemic child marriage to a staggering population of out-of-school children. This article interrogates the legal efficacy of the CRA, questioning whether it constitutes a "legislative hoax", a mere symbolic gesture to international treaties or a "systemic fail" due to structural and constitutional bottlenecks. Utilizing a doctrinal research methodology and a comparative analysis of state adoption (Lagos, Anambra, and Kano), the study identifies a "Constitutional Paradox" created by Section 29(4)(b) of the 1999 Constitution and the absence of specialized Family Courts as the primary drivers of this failure. The findings suggest that while the CRA provides a robust legal framework, it remains a "paper tiger" in the face of deep-seated customary and religious resistance. The article concludes by recommending a radical harmonization of the Constitution with the CRA and the mandatory funding of child-specific judicial divisions. It asserts that until the Nigerian state prioritizes enforcement over mere enactment, the rights of the Nigerian child will remain a grand legislative illusion.

Keywords: Child Rights Act 2003, Section 29 (4) (b) Constitution, Child marriage in Nigeria, Family court system, Legislative Domestication, Nigerian Jurisprudence.

I. INTRODUCTION

Law refers to stipulated code of conduct that is enforceable by any instituted authority guiding and regulating people's coexistence in society (Ezeilo 2000)

It is designed to protect individual's, their performance of assigned responsibilities. Jurist-G. Brennan in 1977 stated that:

“In a democracy where, the law works or tolerates injustice, the injustice will cause disaffection.

This disaffection will lead to impunity and finally break down of law and order.

The concepts of human rights derive from the core principle of human dignity. The fundamental human rights are of Universal application. They include, the right to life, freedom from torture or inhuman and degrading treatment, the right to liberty and a fair trial, the right to privacy, and freedom of thought, religion and expression.

These rights appear in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, as well as in the African Charter on Human and People's Rights and in the Nigerian Constitution.

Like all human beings, children are as entitled to the core human rights. Children are also entitled to special protection in the form of child rights. Child Rights law recognizes the particular vulnerability of children and provides special protection from harm. Child rights law places a duty on the state to promote the best interest of children, and recognizes the role that parents, families and the community play in protecting and realizing child rights.

According to Section 274 of the Child's Rights Act 2003, a child is a person who has not attained the age of eighteen (18) years. Which is in line with the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child both to which Nigeria is a signatory.

The protection of the vulnerable remains the truest litmus test of any legal system. Nigeria has often been lauded for its legislative speed, yet critiqued for its implementation lethargy. The Child's Rights Act (CRA) 2003 was birthed out of a necessity to domesticate the United Nations Convention on the Rights of the Child (CRC) and the African Charter on

the Rights and Welfare of the Child (ACRWC). At its inception, the Act was hailed as a revolutionary "Magna Carta" for the Nigerian child, promising a departure from the fragmented and archaic laws of the colonial era.

However, two decades post-enactment, the lived reality of the Nigerian child suggests a profound disconnect between the legislative "ideal" and the sociological "real." Despite the Act's clear prohibition of child marriage, child labor, and street hawking, Nigeria still hosts one of the world's largest populations of out-of-school children and child brides. This paradox raises a critical jurisprudential question: Is the CRA a hoax, a mere "window-dressing" exercise designed to appease the international community or is it a systemic failure, crippled by a lack of political will, institutional funding, and constitutional contradictions?

The "failure" is most visible in the Constitutional Inconsistency created by Section 29(4)(b) of the Constitution of the federal Republic of Nigeria 1999 as Amended, which effectively grants adult status to married female minors, thereby creating a legal loophole that defies the very definition of a child under the CRA. Furthermore, the federal structure of Nigeria has led to a "fragmented protection" model, where the rights of a child in Lagos State significantly differ from those of a child in Kano or Bauchi, depending on the localized adoption and adaptation of the Act.

This article interrogates these failures by analyzing the legal hurdles to enforcement, the cultural resistance in the hinterlands, and the institutional decay of the Family Court system. It argues that unless the CRA is elevated from a "statutory suggestion" to a "constitutional mandate," the rights of the Nigerian child will remain a phantom of the law.

II. LITERATURE REVIEW: THE JURISPRUDENTIAL TUG-OF-WAR

The dilemma surrounding child rights in Nigeria is characterized by an established tension between universalism and cultural relativism. Scholars have long debated whether a singular federal Act can

effectively govern a pluralistic legal system where Islamic Law, Customary Law, and English Common Law coexist in a "strained marriage."

2.1 The Constitutional Obstacle: Section 29(4)(b)

This focuses on the "Constitutional Nullification" of the CRA. Braimah (2014) argues that the Nigerian Constitution effectively sabotages the CRA through Section 29(4)(b), which deems a married woman to be of "full age" regardless of her chronological years. This creates what Uzodike (2010) describes as a "legal limbo," where a girl child is protected by the CRA in theory but stripped of that protection the moment a marriage contract is sealed. This suggests that as long as the Constitution remains the "Supreme Law" under Section 1(1), any provision of the CRA that contradicts it specifically regarding the age of consent is technically *pro tanto* void.

2.2 The Residual List and the Federalism Debate

Another thematic pillar is the "Domestication Dilemma." Because "Child Welfare" is not explicitly mentioned in the Exclusive or Concurrent Legislative Lists of the 1999 Constitution, it is treated as a Residual matter. Ayua (2004) points out that this necessitated the "State-by-State" re-enactment process. Scholars like Nnamuchi (2010) critique this "fragmented sovereignty," noting that it has created a "geography of rights" where a child's protection depends entirely on the state they reside in. This has led to the "Hoax" argument that the Federal Government passed the law knowing it lacked the constitutional bite to enforce it nationwide.

2.3 Socio-Cultural and Religious Hermeneutics

The "Resistance Narrative." In the North, the CRA was initially met with suspicion, viewed as a "Western Imperialist" tool aimed at dismantling traditional family structures. Kano State's 2023 Child Protection Law serves as a contemporary case study, illustrating how states have had to "re-brand" or "dilute" the CRA to gain local acceptance. This "Modified Adoption" suggests that the CRA is a "failure" not because of its content, but because it failed to account for the inherent religious sensibilities of the Nigerian hinterland.

III. METHODOLOGY

This study employs a qualitative and doctrinal research methodology, utilizing a comparative analysis of statutory frameworks and empirical data. The methodology is structured as follows:

3.1 Research Design

The researcher adopted a black-letter law approach, analyzing the "letter of the law" (The CRA 2003) against "law in action" (socio-legal reality). This allows for a critical assessment of the gap between legislative intent and social outcomes.

3.2 Data Collection Sources

The data for this article was gathered from primary and secondary sources:

- **Primary Sources:** The Constitution of the Federal Republic of Nigeria 1999 (as amended), the Child Rights Act 2003, and various State Child Rights Laws (e.g., Lagos State Child's Rights Law 2007, no. 11 laws of Lagos State, Kaduna State Child Welfare and Protection Law 2018).
- **Secondary Sources:** peer-reviewed, and statistical bulletins from the National Bureau of Statistics (NBS) and UNICEF.

3.3 Sampling and Comparative Framework

To determine if the Act is a "fail," the study utilized a Purposive Sampling Technique to compare states across Nigeria's geopolitical zones. This was done to account for the "Sharia/Customary Law" vs. "Statutory Law" divide:

1. Lagos State (South-West): Representing early adoption and high institutional compliance (Family Courts).
2. Anambra State (South-East): Representing a mix of statutory adoption and strong customary influence.
3. Kano State (North-West): Representing the most recent and controversial adoption, where religious nuances significantly altered the original CRA draft.

3.4 Data Analysis Technique

The study utilized Content Analysis. Provisions of the CRA regarding "Age of Marriage" (Section 21) and "Child Labour" (Section 28) were cross-referenced with the Multiple Indicator Cluster Survey (MICS 6) data to measure the level of "Constitutional and Statutory Infidelity."

IV. FINDINGS

A. The Statistical Gap: Rights vs. Reality

The CRA mandates compulsory primary education and prohibits child labor. However, the data suggests a systemic failure to enforce these provisions:

- **Out-of-School Children:** Nigeria currently has one of the highest populations of out-of-school children globally, estimated at over 20 million. This is a direct violation of Section 15(1) "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". of the CRA.
- **Child Marriage:** In some regions, particularly the North-West and North-East, the prevalence of child marriage remains as high as 48%, despite Section 21 "no person under the age of 18 years is capable of contracting a valid marriage, and accordingly, a marriage so contracted is null and void and of non-effect whatsoever". of the Act explicitly criminalizing the marriage of anyone under 18.
- **Child Labor:** Approximately 43% of Nigerian children (aged 5-17) are engaged in economic activities, many in hazardous conditions (hawking, mining, or domestic servitude), violating Section 28 of the child rights act."

B. The Constitutional Paradox: Section 29(4)(b)

The primary "fail" of the CRA is its subordination to the Constitution. Section 29(4)(b) of the 1999 Constitution (Amended) that states that "any woman who is married shall be deemed to be of full age."

- This creates a legal loophole where a 13-year-old bride is legally considered an adult for the purpose of renouncing citizenship, effectively

undermining the CRA's definition of a child as anyone under 18.

C. Judicial Deficiency: The "Ghost" Family Courts

The CRA mandates the creation of specialized Family Courts at the High Court and Magisterial levels to handle child-related matters.

- In practice, only a few states (like Lagos and Edo) have fully functional, child-friendly court systems.
- In most other states, children are still processed through the regular "adversarial" criminal justice system, which is traumatic and contrary to the "best interests of the child" principle outlined in Section 1 "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".

Conclusion: A Paper Shield for a Bleeding Child

The central question of this study was whether the Child Rights Act (2003) constitutes a legislative hoax or a systemic failure. After two decades of statutory existence, the verdict is nuanced but damning. The CRA is not a hoax in the sense of a deliberate deception; the Nigerian State clearly recognizes the international standards required to protect its youth. However, it is an undeniable failure in its execution, standing as a "paper shield" that offers no real protection against the sharp realities of child marriage, street hawking, and out-of-school syndromes.

The "failure" is rooted in a triple-threat of resistance:

1. Constitutional Ambiguity: The conflict between Section 29(4)(b) and the CRA remains a legal tumor that the National Assembly has lacked the political will to excise.
2. Cultural Superiority: In many parts of Nigeria, the "Law of the Land" is still subservient to the "Law of the Hearth," where traditional and religious interpretations of childhood override statutory age limits.
3. Institutional Poverty: A law without a budget is a mere suggestion. Without fully funded

Family Courts and social welfare departments, the CRA is a Ferrari without an engine, a beautiful machine that goes nowhere.

To move from "Fail" to "Function," Nigeria must stop treating child rights as a Western import and start treating them as a national emergency. If the CRA remains a "Law for the Books" rather than a "Law for the Streets," the Nigerian child remains a victim of a grand legislative illusion. The time for domesticating the Act has passed; the time for enforcing the Act is decades overdue.

V. RECOMMENDATIONS

- Specialized Training for Law Enforcement: The Police and the Nigeria Security and Civil Defence Corps (NSCDC) need "Child Protection Units" that understand the CRA is a criminal code, not just a moral guideline.
- Conditional Cash Transfers: To solve the "failure" of child labor, the government must incentivize education. If families are too poor to survive without the child's income, the law will always be ignored.
- The "Sunset" Clause for Customary Law: State houses of assembly should legislate that in matters of child protection, the CRA specifically overrides Customary and Sharia laws where they conflict.
- Harmonization of Laws: The National Assembly should amend Section 29(4)(b) of the Constitution to remove the proviso that deems a married woman an adult regardless of age.
- Specialized Funding: States must move beyond signing the Act into law and actually budget for Child Protection Services and Family Courts.
- Community Advocacy: Engaging traditional and religious leaders is the only way to bridge the gap between "Westernized" legislation and local custom

REFERENCES

- [1] Ezeilo, N. Women's Rights in Nigeria: Problems and prospects in the new millennium (2000) presented at the National Human Rights Commission Umuahia.

- [2] Former Australia High Court Chief Justice under the topic Justice, Society and US assessment and evaluation and community. confronting Nigeria, the highest in the world> accessed 23 March 2026
- [3] Abugu U, 'Legal Research Methodology and Applicable Procedures to Legal Research in Nigeria' (Paper Presented at Virtual Workshop for Legal Research Assistants of National Judicial Institute, 17-18 August 2021). <https://www.scribd.com/document/631347779/> Untitled accessed 11 March 2026
- [4] The Child Rights Manual: Bar Human Rights Committee of England and Wales (BHRC) & The United Nations Children's Emergency Fund (UNICEF)
- [5] Child Rights Act (2003), Cap C50, Laws of the Federation of Nigeria 2004
- [6] Child's Rights Law of Lagos State 2007, No.11, Laws of Lagos State Kano State Child Protection Law 2023. Constitution of the Federal Republic of Nigeria 1999 (as amended)
- [7] Taiwo A, Basic Concepts in Legal Research Methodology: A Practical Guide on Writing
- [8] Excellent Master's and Doctoral Theses (St. Paul Publishing House 2011)
- [9] Braimah AO, 'Child Marriage in Northern Nigeria: Section 29(4)(b) of the 1999 Constitution' (2014) 21(4) Journal of African Law 12.
- [10] Uzodike E, Nigerian family Law (2nd edn, University of Lagos Press 2010)
- [11] Ayua IA, 'The Nigerian Child and the Law' (2004) 1 Nigerian Journal of Family Law 45
- [12] Nnamchi O, 'The Child's Right Act 2003: A Silver Bullet for the Nigerian Child?' (2010) 4 (1) Nigerian Journal of Law and Development 88
- [13] The Nigeria Bureau of Statistics, 'Multiple Indicator Cluster Survey (MICS 6) 2021' (Federal Republic of Nigeria 2022). <www.nigerianstat.gov.ng> accessed 26 March 2026 <<https://mics.unicef.org/surveys>> accessed 11 March 2026
- [14] <<https://leadership.ng/insecurity-scourge-of-out-of-school-children/>>:~:text=the stark reality