

ADVERTISEMENT AND THE PROTECTION OF CHILDREN'S RIGHTS IN NIGERIA

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ABSTRACT

Children are naturally incapable of enforcing their rights and usually oblivious of them. For many centuries, the rights of children, just like those of women, have been taken for granted. However, the overwhelming incidence of abuse and the increased knowledge about children's rights prompted action from the international and regional communities, and many nations of the world. The intent of this Paper is to narrow the discussions on advertisements and children's rights to the limits of the Nigerian context. The use of children as models in radio, television and print media has brought to the fore the practice of taking for granted the right to the dignity of the child. This Paper therefore examines the rights of the child as contained in International/Regional Conventions and the Nigerian legislations and also focuses on the advertising industry in Nigeria and its role in promoting and protecting the rights of child models.

INTRODUCTION

The acceptance and adoption of the 1948 Universal Declaration of Human Rights (UDHR)¹ set a common universal standard on human rights. The UDHR document therefore represents the modern international human rights framework created by governments, for governments.² Ever since, the United Nations has adopted many legally binding international human rights Treaties/Conventions/ Agreements. These Treaties are used as a framework for discussing and applying the human rights of every person including children's human rights. Through these instruments, the principles and rights they outline become legal obligations on those States who have chosen to be bound by them. The framework also establishes legal and other mechanisms to hold governments accountable for human rights violations.³

The survival and continuity of the human society depends upon the nurturing, protection, preservation and development of the child.⁴ Although human rights apply to all human beings irrespective of age, sex, colour or religion, children need special care and protection that adults do not need. However, for many years, most of the world's societies did not appreciate the rights of children perhaps because of their vulnerability, immaturity, seeming 'voicelessness', naivety, innocence, dependence for upkeep and nurturing, among others. But children have the same general human rights as adults. The rights of the child are contained in both international, regional and national legislations.

The non-involvement of children in the society's scheme of things prompted world leaders to agree in 1989 that children were entitled to protection from abuse. This decision gave birth to the 1989 International Convention on the Rights of the Child (CRC), the first legally binding international instrument that incorporates the full range of rights including civil, cultural, economic, political and social rights.⁵ The near-universal ratification of the CRC reflects the

¹ Adopted and proclaimed by the General Assembly Resolution 217 A (111) of 10th December 1948

² The U.N. Guiding Principles on Business and Human Rights: Analysis and Implementation, (2012) A report from The Kenan Institute For Ethics at Duke University

³ J. Donnelly, 'The Relative Universality of Human Rights' (2007) 29 (2) *Human Rights Quarterly*, 282

⁴ P. Oshio, *The Legal Rights of the Child* Available at www.nigerianlawguru.com/.../human%20rights%20law/THE%20LEGAL accessed 02 February 2016

⁵ UNICEF *Overview of the Convention on the Rights of the Child* Available at http://www.unicef.org/ceecis/overview_1583.html accessed 02 February 2016

usefulness and relevance of the Convention in the lives of children. As at date, nearly all the countries of the world, including Nigeria,⁶ have ratified the CRC.

In addition, Nigeria has ratified other Regional instruments such as the African Charter on the Rights and Welfare of the Child (CRWC) and the African Charter on Human and People's Rights. Article 4 (1) of the CRWC provides that 'in all actions concerning the child undertaken by any person or authority, the best interests of the child shall be primary consideration.' This provision has been entrenched in Section 1 of the Nigerian Child Rights Act, which provides that 'in every action concerning a child, whether undertaken by an individual, public or private body, institutions of service, court of law, or administrative or legislative authority, the best interest of the child shall be the primary consideration'. A replica of the provision is also found in Article 3 (1) of the Convention on the Rights of the Child.

For many years now, the advertising industry has made use of child models to advertise the products of their corporate clients. Unfortunately, there are not too many legislations on the said subject matter and therefore no adequate resources to best assess the workability of the 'best interests of the child' principle stipulated by the international and regional conventions.

WHO IS A CHILD?

Article 1 of the Convention on the Rights of the Child defines a child as 'every human being below the age of 18 years, unless under the laws applicable to the child, majority is attained earlier.' The Committee on the Rights of the Child, the CRC Convention Monitoring Body, has encouraged state parties to review the age of the majority if it is set below 18 and to increase the level of protection for all children under the age of 18.⁷

Article 2 of the African Charter on the Rights and Welfare of the Child, adopts the definition of the CRC by defining a child as 'every human being below the age of 18'.

⁶ Nigeria ratified the CRC on 19 April 1991 and has ratified other international conventions that generally affect the rights of the child, United Nations Treaty Collection Available at https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en accessed 02 February 2016

⁷ The Convention on the Rights of the Child, Guiding Principles: General Requirements for all Rights, http://www.unicef.org/crc/files/Guiding_Principles.pdf accessed 02 February 2016

The definition of a child under Nigerian law was shrouded with much uncertainty until 2003 when the Child Rights Act (CRA) was enacted. This uncertainty was finally laid to rest by Section 274 of the Child Rights Act of 2003 which supersedes the provisions of all enactments relating to children. Section 277 of the Act defines a child as ‘a person under the age of eighteen years’. The CRA was a decision taken to harmonise the definition with the CRC and CRWC which Nigeria has ratified.

HUMAN RIGHTS FRAMEWORK FOR THE PROTECTION OF CHILDREN’S RIGHTS

The word right is derived from the Latin word *Rectus* meaning correct, proper, upright, natural, and plain.⁸ A simple definition of the word is given by the Merriam-Webster Dictionary as ‘morally or socially correct or acceptable’ or ‘agreeing with the facts or truth; accurate or correct; or ‘speaking, acting, or judging in a way that agrees with the facts or truth’. The full definition is given as; ‘being in accordance with what is just, good or proper; or ‘conforming to facts or truth’.⁹

Law has been employed at different times to protect children from oppression and abuse. The legal framework for the protection of children dates back to 1919 when an industrial minimum age was adopted by the International Child Labour Convention for the regulation of children’s participation in the workplace.¹⁰ The first ever Declaration of the Rights of the Child was made by the United Nations in 1959 and more than 26 years ago, on 20th November 1989, the Convention on the Rights of the Child (CRC) was adopted. The latest 1989 Convention was more like a promise to children: that the world would do everything in its power to protect and promote their rights to survive and thrive, to learn and grow, to make their voices heard and to reach their full potential.¹¹

⁸ LatinMeaning.com Available at <http://latinmeaning.com/what-does-the-latin-word-rectus-mean/> accessed 02 February 2016

⁹ Merriam-Webster Dictionary: <http://www.merriam-webster.com/> accessed 01 February 2016

¹⁰ Azalahu Akwara, Adekunle Soyibo and Michael Agba, ‘Laws and Children’s Rights Protection: The Nexus For a Sustainable Development in Nigeria’ (2010) 6 (2) *Canada Social Science*, 26-33 at 27

¹¹ UNICEF Convention on the Rights of the Child, n 7

The CRC is a universally agreed set of non-negotiable standards and obligations which was built on varied legal systems and cultural traditions. It spells out the basic rights of the child everywhere; some of which range from the right to survival; development; protection from harmful influences, abuses and exploitation, to, right to participate fully in family, culture and social life. Every right spelt out in the Convention is inherent in human dignity and harmonious development of the child. The Convention gave birth to Regional Treaties like the African Charter on the Rights and Welfare of the Child (CRWC), and national laws like the 2003 Child Rights Act of Nigeria.¹²

Shortly after the adoption of the CRC, the African Union Charter on the Rights and Welfare of the Child (CRWC) was adopted by the African Union Assembly of Heads of States and Governments in July 1990. Nigeria signed and ratified the CRC and CRWC in 1991 and 2000 respectively. Both instruments contain a universal set of standards and principles for survival, development, protection and participation of children and recognise children as human beings and subjects of rights.¹³

The gains of the International Convention on the Rights of the Child (CRC) have been enormous. But overall, in spite of the gains, there are many children who have fallen even further behind. Old challenges have combined with new problems to deprive many children of their rights and the benefits of development. To meet these challenges, and to reach those children who are hardest to reach, we need new ways of thinking and new ways of doing.¹⁴

Children are neither the property of their parents/guardians nor are the helpless objects of charity. They are human beings and the subject of their own rights. CRC therefore offers a vision of the child as an individual and as a member of a family and community, with rights and responsibilities appropriate to his or her age and stage of development. By recognising children's rights in this way, the Convention firmly sets the focus on the whole child.¹⁵

Article 2 of the CRC prohibits the unfair treatment of any child. The Article applies to all children, whatever their race, religion or abilities; whatever they think or say, whatever type of

¹² Akwara et al, n 10

¹³ *UNICEF NIGERIA-FACTSHEET Child Rights Legislation in Nigeria* (2011) Available at http://www.unicef.org/nigeria/Child_rights_legislation_in_Nigeria.pdf accessed 02 February 2016

¹⁴ UNICEF Convention on the Rights of the Child, n 7

¹⁵ *Ibid*

family they come from. It does not matter where children live, what language they speak, what their parents do, whether they are boys or girls, what their culture is, whether they have a disability or whether they are rich or poor.¹⁶

Furthermore, Article 3 of the CRC makes absolute provision for the best interest of the child in decision making processes. It urges that the best interests of children must be the primary concern in the taking of decisions that affect them. All adults should do what is best for children. When taking decisions for children, adults must be mindful of the effects of such decisions on the overall wellbeing of the child.

Respect for the views of the child is also provided for under Article 12 of the CRC. Adults must give children the opportunity to have a say on matters/decisions that affect them. The Convention encourages parents to listen to the opinions of their children and to take such opinions into account when taking decisions on matters directly affecting the children.

In Nigeria, the Child Rights Act (CRA) of 2003 evidenced a final step taken by the Nigerian government to domesticate the principles enshrined in the CRC¹⁷ and the CRWC into law in Nigeria. The CRA incorporates all the rights and responsibilities of children; consolidates all laws relating to children into a single law. It specifies the role of governments, parents and other authorities, organisations and bodies.¹⁸

PROTECTION OF THE RIGHTS OF THE CHILD UNDER NIGERIAN LAWS

In Nigeria, there exist a plethora of laws that seek to protect the rights of children. The following represent the list of such legislations for the protection of the rights of children;

¹⁶ The Convention on the Rights of the Child, Guiding Principles: General Requirements for all Rights, n 7

¹⁷ It stipulates that 'Member States shall undertake to disseminate the Convention's principles and take all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention.'

¹⁸ *UNICEF NIGERIA-FACTSHEET Child Rights Legislation in Nigeria*, n 13

- 1) The 1999 Constitution of the Federal Republic of Nigeria: The Constitution guarantees certain fundamental rights to every person including children. These rights are contained under Sections 33-46 of Chapter IV of the Constitution.¹⁹
- 2) The Children and Young Persons Act was promulgated to make provision for the welfare of the young and the treatment of young offenders and establishment of Juvenile Courts.²⁰
- 3) The Criminal Code of Nigeria²¹ catalogues a range of offences meant for the protection of the child and the preservation of his/her dignity. Other provisions exempt the child from criminal responsibility and punishment for some offences.
- 4) The Child Rights Act of 2003²² is an Act signed into law to protect the right of the Nigerian child. A child, like every other person, is entitled to some basic rights, his/her age notwithstanding. The Child Rights Act makes the application of Chapter IV of the 1999 Constitution possible. Part 1 of the Child Rights Act deals with actions pertaining to the best interest of the child. Such actions must be of paramount consideration in all aspects. Part 11 of the same Act also grants a right to the child to be given protection and care necessary for his/her wellbeing.

Section 1 of the Act specifically states that, ‘in every action, 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 of primary consideration.’ Section 2, Subsection 1 provides thus; ‘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, or other individuals, institutions, services, agencies, organizations or bodies legally responsible for the child’. Subsection 2 of the same Section states that ‘Every person, institution, service, agency, organization and body responsible for the care or protection of children shall conform with the standards established by the appropriate authorities,

¹⁹ These include: The Right to life (Section 33); The Right to dignity of the human person (Section 34); The Right to personal liberty (Section 35); The Right to fair hearing (Section 36); The Right to privacy and family life (Section 37); The Right to freedom of thought, conscience and religion (Section 38); The Right to freedom of expression and the press (Section 39); The Right of freedom of movement (Section 40); The Right to freedom from discrimination (Section 41); The Right to acquire and own immovable property anywhere in Nigeria (Section 42); The Right against compulsory acquisition of one’s property without Compensation (Section 43)

²⁰ Nwamaka Iguh and Onyeka Nosike, n 6 at 101 REFERENCE PROPERLY

²¹ CAP 71 Laws of the Federation of Nigeria CITE PROPERLY

²² *Federal Republic of Nigeria Official Gazette* (2003) Act No. 26, Vol. 90.

particularly in the areas of safety, health, welfare, number and suitability of their staff and competent supervision.’

Children’s rights under the 2003 Act are contained in Sections 4-18. These rights include the right to survival and development, right to freedom from discrimination, right to the dignity of the child, among others.

LAWS REGULATING ADVERTISEMENT

In this Paper, the terms advertisement and advertising would be used interchangeably to refer to the same thing. Advertisement has been defined by the Oxford popular English language as ‘a public notice promoting a product.’²³ To advertise means to ‘publicise goods or to promote sales.’²⁴

Advertising Law generally refers to the body of laws related to the means and methods of communicating information about a product or service to the public. Effective marketing through advertising is key to the success of any business, and all businesses also have a legal obligation not to violate the law.²⁵

There is no one law on advertising which has a universal coverage. In order to determine *international advertising* standards, one must be aware of the *advertising laws, rules and regulations* of each nation. The intent of this Paper is not to peruse a lot of laws but rather to examine the advertising laws in the United Kingdom (UK) and the United States of America (USA) and then compare these laws with the laws on advertising in Nigeria.

The Advertising Standards Authority (ASA) is the United Kingdom’s independent regulator for advertising across all media. The ASA regulates UK adverts to ensure they are truthful and socially responsible. A crucial part of that process is putting the protection of children at the heart of their work, and ensuring that the acts targeted at or likely to be seen by them are appropriate and do not cause them harm.

In the United States of America, the Federal Trade Commission (FTC) oversees and regulates advertising, marketing, and interstate trade practices in the United States. It has a body of

²³ Oxford Popular English Dictionary (Oxford University Press, Oxford, 2000) 7

²⁴ *Ibid* at p 7

²⁵ *HG.org Human Resources* Available at <http://www.hg.org/advert.html> accessed on 02 February 2016

regulations around which most advertising and marketing law is centered. Some of the principal concepts of advertising and marketing law include truth in advertising and unfair trade practices. These are the laws regulating how businesses relate the benefits of their products to the general public.²⁶ However, in 2013, the State of New York enacted its legislation on the Law Protecting Child Models' Labour Rights. This law protects child models working in New York by bringing them under the legal protection of the Department of Labor. It out rightly prohibits the hiring of under-16 girls as models. It also places limits on the number of hours young models can work and stipulates that designers who violate the law will be fined \$1,000 for the first offence, and \$2,000 and \$3,000 for the second and third. The law also includes provisions for setting up of mandatory financial trusts for the child models and the presence of chaperones and tutors on set. This law has been described as 'one of the biggest developments in a century, bringing a whole new group under legal protection.'²⁷

In Nigeria, advertising is regulated by the combination of federal, state laws, subsidiary legislation and guidelines.²⁸ Although different rules apply to different products, the three main Agencies regulating advertisement in Nigeria are;

- 1) Advertising Practitioner's Council of Nigeria (APCON): The Council was established by Act No. 55 of 1988.²⁹ One of the major responsibilities of the Council is to vet advertisements. Vetting is the process of submitting advertisement materials for a formal and thorough examination by the Advertising Standards Panel (ASP) prior to the granting of approval or clearance for such materials to be publicized, aired or printed.³⁰ The Council makes it mandatory for all advertisements to be legal, decent, honest, truthful, respectful and mindful of Nigeria's culture.
- 2) National Agency for Food and Drug Administration and Control (NAFDAC).
- 3) National Broadcasting Commission. (NBC) Act 55 of 1999: NBC is a parastatal of the Federal Government of Nigeria, empowered to regulate the broadcasting

²⁶ *Ibid*

²⁷ Susan Scafida, <http://fashionista.com/2013/10/new-york-signs-law-protecting-child-models-labor-rights> accessed 03 February 2016

²⁸ Nigerian Law of Intellectual Property Watch, *Nigeria's Advertising Laws, Regulation and Guidelines: The Simple 'Don'ts'* <http://nlipw.com/nigerias-advertising-laws-the-simple-donts/> accessed 02 February 2016

²⁹ Cap A7 Laws of the Federation of Nigeria 2010 CITE PROPERLY

³⁰ The Advertising Practitioners Council of Nigeria website <http://www.apcon.gov.ng/index.php/2014-08-25-23-53-03/vetting-of-advertisements> accessed 04 February 2016

industry.³¹The NBC Act makes an elaborate attempt to protect the child from inordinate advertisement.³²

Apart from the provision made in Part V of the Advertising Practitioners (Registration ETC.) Act of 1998³³ for the establishment of an Advertising Standards Panel, there is no special provision for advertising as it affects children. Under Part IV (second schedule), Section 23 of the 1998 Act allows for the establishment of a panel known as Advertising Standards Panel which shall be charged with the duty of ensuring that advertisements conform with prevailing laws of the Federation. It can be inferred that the use of child models for advertisement purposes without their due consent works contrary to the provisions of the Constitution and Child Rights Act which states that the best interests of the child should be pursued in decision making affecting the child.

There is nothing in the law that prohibits the use of child models for advertisement purpose, neither is there any mention of the requirement to seek for 'the best interests of the child' when advertising. The only mention of children is found under the Nigerian Code of Advertising Practice and Sales Promotion, Regulation 5 of the Spirit Drinks Regulation of 2005 and

³¹ The National Broadcasting Commission website <http://www.nbc.gov.ng/home> accessed 04 February 2016

³²The following are rights of a child under Nigerian Broadcasting code;³²

- i. Exploitation of children and youths in any form shall be avoided
- ii. Special caution shall be exercised with the content and presentation of advertisements placed in or adjacent to a programme designed for children and youths.
- iii. Particular care shall be taken to ensure that an advertisement targeted at children contains nothing which might result in physical or psychological harm, or which exploits their natural credulity.
- iv. Children and youths shall not be used in the advertisement of a product recognized as being potentially dangerous.
- v. An advertisement shall not encourage children and youths to enter strange places, converse with, or receive gifts from strangers.
- vi. Direct sales appeal or exhortation shall not be made to children unless the products advertised are such that children can reasonably afford.
- vii. An advertisement of a commercial product or service shall not contain any appeal which suggests in any way that unless a child buys or uses the product, he/she will be failing in some duty, losing social status or lacking in loyalty towards some person or organization.
- viii. An advertisement shall not lead children to feel inferior to others because they or their parents do not own the product advertised, or that they are liable to be held in contempt or ridicule, for not owning it.
- ix. An alcoholic beverage advertisement shall not be broadcast adjacent to a children, youth or sports program.

³³ Section 23 of art V (Second schedule),

Regulation 5 of the Wine Regulations of 2005, which all provide that radio, television or print media advertisements of alcohol beverages shall not be permitted in children's programmes and children, sportsmen or expectant mothers cannot be used as models to advertise such products.³⁴

ASSESSMENT OF THE RIGHTS OF THE NIGERIAN CHILD IN THE ADVERTISING INDUSTRY

Two issues arise here. The first revolves around the use of child models. The second is the impact of advertisement on children. In the advertising industry in Nigeria, the use of child models has been on the increase. In assessing the rights of children in the advertising industry, due emphasis must be placed on Article 3 of the CRC which requires that the best interest of the child be of concern to adults who take decisions on behalf of children.

Particular note must be taken of the provision of Section 18 of the Child Rights Act which recognises that no child is capable of entering into a contract. It follows therefore that children below the age of 18 as prescribed by the Act cannot enter into a contract with any person or body corporate.

Unfortunately, decisions on the choice and use of child models are often taken by the parents/guardians on behalf of such children. Most times, the decisions are borne out of selfish gains and not necessarily for the best interest of the child. The opinions of the child models, especially the very young ones, are never sought, neither is consent ever received. The questions of what the child model stands to gain arises. Most pediatric products and cosmetics are advertised using babies and toddlers. Sometimes the babies are showcased naked in a bid to emphasise the efficacy of the products advertised. The child is a human being who also possesses the right to the dignity of his or her human person. It is a different ball game if the child were an adult who decides to jettison such rights in order to make other gains. In this instance, the child is just used as a mere tool. The argument of this paper is that if such must occur, the law should protect the right of the child model and insist on a certain trust fund from

³⁴ Nigerian Law Intellectual Property Watch, *Nigeria's Advertising Laws, Regulation and Guidelines: The Simple 'Don'ts'* n 31

the proceeds of the product and from stipend paid for the modelling job. Hitherto, the negotiations and payments are always made between the parents/guardians and the advertisement company. Both parents/guardians and the advertising companies jointly violate the rights of the child who is recognised under the law as being subject to his/her own rights.

In ameliorating this, there must be a law to adequately and specifically protect child models as evidenced in the New York legislation on the Law Protecting Child Models' Labour rights. In addition to placing limits on the number of hours young models can work, the proposed law must make provision for the establishment of a mandatory special trust fund for child models.

On the second issue, advertisements have subtle effects on children. Despite the provisions of the regulations on advertisement in Nigeria, marketers and advertisement companies still make productions that impact negatively on children. One particular advert of a detergent brand, encourages children below the age of twelve to jump inside a dirty water reservoir. There are still adverts that make subtle insinuations to children that only mothers who use some products for their children love them. Some brand adverts instill inferiority complex into children by their style and presentation. These advertisement productions violate the rights of the child. The rights violated may extend to the right to life where such advertisements may induce a child to take steps that are inimical to life.

CONCLUSION

Advertisement makes children subjects of their parents/guardians. Most of the parents/guardians use child models to derive monetary gains from the advertising companies who themselves are profit-driven.

Ratifying of the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (CRWC) by Nigeria, and more recently, the signing into law of the Child Rights Act (CRA) makes the 'best interest of the child' principle an accepted international, regional and national norm. The Child Rights Act incorporates international standards and best practices of child protection, based on the protection measures of the 1989

Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (CRWC).

With the Child Rights Act in place, it is believed that Nigerian children have a bright future when it comes to actualisation of their rights and privileges. However, actualisation of the principle appears to be more in paper than in practice especially when it has to do with decisions taken by others on behalf of the child. The international community, the Federal Government of Nigeria and children's rights activists need to do much more to protect the rights of the child.

