

Emerging Nigerian Muslim Fear over the Implementation of Child's Rights Act

Hassan, Abubakar Kawu

Department of Islamic Studies

Niger State College of Education, Minna

E-mail: abubakrkawu@gmail.com

Aboki, Shehu Abdur-Rahman

Department of Islamic Studies

Usmanu Danfodiyo University, Sokoto

Tel: 08032318313 E-mail: abokishehu67@gmail.com

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Abstract

This paper examines the Nigerian Muslims' apprehension on the implementation of the child's Rights Act. This is due to the fact that Islam being the religion of the significant segment of Nigerian population has exposed them to the rights of children other than the child Rights Act. Such rights as provided by Islam include right to proper upbringing, right to education, right to caring, right to equal treatment, right to love and affection, and right to life and equal life chances. The Muslims in Nigeria therefore express fear that if the Child Right Act is implemented, it will affect negatively their Islamic religious practices and promulgations on the Rights of the child based on Shari'ah (Islamic law). The paper recommends the domestication of the child Rights Act to allow for religious and cultural understanding of the act.

Keywords: Rights Act, Nigerian Muslims, Religion

1. Introduction

Nigeria as a nation witnessed the emergence of a new bill in both States and Federal legislative arms of government – the Child's Rights Act. The National Assembly in performing its legislative duties and in pursuance of the Nigeria's commitment to international human right obligations passed the act in the year 2003. The bill is centred on protecting and safeguarding the right of a child as primary consideration in all actions, ensuring that the child is given such protection and care as a necessity to his or her well-being.

Muslims became apprehensive and worried because the bill may or may not affect their religious practices. Such Islamic practices involve love and care for the child, training, welfare, reprehension and observance of religious rites and worship. This has preoccupied the minds of Muslims in Nigeria especially in the north where people express fears and concern on several contentious issues as it affects them. This is in recognition of the provisions of Islamic law as it relates to the rights, obligations, duties, liabilities and privileges of a child. It is based on this premise that the paper advocates for the likely views of Nigerian Muslims over the implementation of the Child's Rights Act. This further underscores the significance of domesticating these kinds of international instruments in order to allow them to conform to the Muslim practice in a multi-religious nation like Nigeria.

Unfortunately, majority of Muslim parents are not conscious of the provisions of the rights of children in *Shari'ah* due to several reasons such as poverty, corruption in the country, ignorance on the part of the mother and misinformation. After all, the Child's Rights Act if sincerely aimed should enforce our good cultural and religious values on the rights, care, upbringing and responsibilities of the child, taking into cognisance the realities of our time more importantly in terms of religious and cultural diversities.

2. Concept and Foundation of Child's Rights Act

The BBC English Dictionary defines a child as "a human being who is not yet an adult". By implication, a child is such a person (either male or female) who is between birth and puberty. He/She could be seen as someone who is not yet of age, that is, somebody under a legally specified age, who is considered not to be legally responsible for his or her actions. However, the Child's Rights Act specifically considers a child to be a person under the age of eighteen (18) years. (Child Rights Act, 2003).

Child's Rights Act is an Act promulgated to provide and protect the rights of a Nigerian child. Prior to the 20th Century, few efforts were made by any government to protect the health and wealth of children. In the United States, the establishment of the United States Children's Bureau in 1912 marked the beginning of modern child-welfare programme and public recognition of children's 'special needs'. It was in 1959 that the United Nations adopted the declaration of the Rights of the Child, which affirmed the rights of children everywhere to receive adequate care from parents and the community. The UN Convention on the Rights of the Child adopted in 1989 attempts to consolidate international law on the basic rights of children to survival, education and protection from abuse and exploitation (International committee of the Red cross, 2012). This was the genesis of the Child's Right Act and the beginning of awareness among policy makers in the third world nations on their supposed commitment to international laws and aspirations.

In tune with the international practice, Nigeria took its own dimension of the welfare of Nigerian child by signing into law on 31st of July, 2013, the Child Right Act, (Tamim, Ismail, Kadir, Abdulaziz, n.d). Nigerian Muslims were apprehensive about this Act because they did not know its implication on their religious practices and those of their children. Islam has already offered to Nigerian Muslims a spectrum of laws and general guidelines relating to children and other matters thereto long before the signing into law the Child Rights Act.

3. Rights of Children in Islam

It is significant to mention that parent-child relationship is a reciprocal one. The rights of parents are the duties of children while the rights of children are the duties of parents. Islam, under *Shari'ah* has laid down practical guidelines which if faithfully observed will adequately and effectively cater for every kind of rights and responsibilities in such a symbiotic relationships described above. According to Islam, children are entitled to various rights. These can be summarized as follows:

3.1 The right to proper up-bringing.

The first and foremost of all the rights due to children is the right to be properly brought up and raised under a very healthy Islamic code. In other words, children should be given suitable, sufficient, sound and adequate religious, ethical and moral guidance engraved with true values, the meaning of right and wrong, truth and falsehood, correct and incorrect, appropriate and inappropriate and so on. Allah the Almighty stated in the Glorious Qur'an:

O you who believe! Save yourselves and your families from a fire whose fuel is men and stones.
(Qur'an 66:6)

Every one of you (people) is a shepherd. And everyone is responsible for whatever falls under his responsibility. A man is like a shepherd of his own family and he is responsible for them. (Bukhari, 3/733 and Muslim,20/4496).

Children being part of ones own family, are therefore a trust given to the parents. Parents will be responsible for this trust on the day of judgement. Parents are essentially responsible for the moral, ethical and the basic and essential religious teachings of their children.

If parents fulfill this responsibility, they will be free of the consequences on the day of judgement. The children will thus, become better citizens and a pleasure to the eyes of their parents both in this life and in the hereafter. Al-Qur'an confirms this:

And those who believe and whose families follow them in faith, to them shall we join their families; nor shall We deprive them (of the fruit) of aught of their works; yet is each individual in pledge for his deeds. (Q52:21)

In addition to this, Allah's Apostle stated as related by Abu-Hurairah (R.A) that:

When a person dies, his actions come to an end except in respect of three matters that he leaves behind: a continuing charity, knowledge from which benefit could be derived and righteous issue who pray for him (Muslim, 1631).

This statement by the Prophet (SAW) reflects the value of the proper upbringing of children. It has an ever lasting effect, even after death.

3.2 The Right to Education

Closely related to proper upbringing is the Child's right to education. Indeed, they are not mutually exclusive. Education in Islam is not limited to bookish knowledge but includes moral and religious training also. Parents must not only provide for children's education in schools and colleges but should also take personal interest in their studies, helping them if they can. This gives children a feeling of working with the parents and encourages them in studies. Parents can only do this by sacrificing their own comfort and social activities in the best tradition of the Prophet (SAW) that acquisition of knowledge through education is a duty of every Muslim. In another Hadith, the Apostle of Allah (SAW) reiterated as narrated by Amr ibn Sa'id or Sa'id ibn al-'As:

"A father gives his son nothing better than a good education."
(Hadith No. 1284 Tirmidhi)

Education that is mentioned above is not limited to any particular one. Knowledge which is achieved through education is the only thing that every Muslim man and woman is encouraged to pray for. In al-Qur'an Allah instructed:

“Say: O my Lord! Increase me in knowledge” (Q20:114)

Since good actions and conduct are believed to be confirmation of faith (Q95:6) and faith is acquired as a result of knowledge based on the teachings of Islam (35:28), parents must take decisive steps to educate their children and pray for them to acquire useful knowledge. The Prophet (SAW) was quoted as saying:

The best legacy you can leave for your children is good education and good upbringing. (Mishkat, 4977).

No wonder, there is no responsible and informed Muslim parent that will neglect the education of his or her children because Muslim parents are enjoined to educate their children right from birth through their personal examples. Al-Qaradawi (1984) observed that a child has a right to sustenance, education, and proper care.

3.3 The Right to Caring

Children have the right to be well-fed, well-groomed, properly clothed, well-taken care of, in terms of housing and utilities and to be well protected till they grow up to adulthood. It is primarily the duty of the father to do that. A mother can provide help if necessary. Protection mentioned entails the protection against physical, moral as well as intellectual harm. Parents must ensure the Child's all-round personality development. They must be kind, patient and tolerant with children. They must only resort to strictness for the sake of disciplining the children and protecting them from all sorts of undesirable behaviour. (Al-Uthaymeen, 2008).

Again, parents are expected to spend moderately for the welfare and well-being of their children. Negligence is not condoned, accepted or even tolerated in Islam. Such a way will have a negative effect on the child regardless of the societal status. In essence, parents should neither be extravagant nor miserly in material provisions (welfare) for their children. A *Hadith* of the Prophet says:

When sa'd bin Abi Waqqas requested from the Prophet (S.A.W) to allow him give two-third of his property as charity (Sadaqah) because he had only one daughter, the Prophet (S.A.W) replied, 'No' He then requested to give one-third, the Prophet (S.A.W) replied, "You may give a third as Sadaqah, but that is a lot. To leave your heirs rich is better than to leave them poor and begging from people" (Bukhari, 8/384).

This means that parents should not spend all they have on their own comforts and luxuries but must make provisions for children's welfare after the parents die.

3.4 The right to equal treatment

The children also have the right to be treated equally in terms of financial gifts and other related matters. No one should be preferred over the others. All must be treated fairly and equally. Anything short of this is considered according to Islam as an act of injustice. Khalifa Abubakar (RA) narrated that Allah's apostle (SAW) was approached by one of his companions, al-Nu'man bin Basheer who said:

O Prophet of Allah (SAW): I have granted a servant to one of my children (asking him to testify to that gift). But Allah's apostle asked him: "Did you grant the same to each and every child of yours?" When Allah's apostle was informed negatively about that he said: "Fear Allah, the almighty and be fair and just to all your children. Seek the testimony of another person, other than me. I will not testify to an act of injustice." (Bukhari and Muslim).

The Prophet (SAW) called such an act of preference of one child over the others as an act of "injustice". Injustice is forbidden in Islam because it will definitely lead to an atmosphere of hatred, anger and dismay amongst the children in a household. In fact, such an act of injustice may most likely lead to animosity amongst the children and consequently this will affect the entire family environment. In certain cases, a child may demonstrate a tender care for his or her ageing parents which may cause the parents to grant such a child a special gift like ownership of a house, a land, a farm, a car or any other valuable item. However, Islam considered such financial reward a wrong act. Such a caring and loving child is enticed to only reward from Allah (SWT). Although it is nice to appreciate such a loving and caring Child's dedication and special efforts, this must not lead to disobedience to Allah, the Almighty. (Q65:1).

But if a parent granted one of his children, financial help to fulfil a necessity such as medical treatment coverage, the cost of marriage, the cost of initializing a business and a host of others, then such a grant would not be considered as an act of injustice and unfairness. It will fall under the right to spend in the essential needs of the children, which is a requirement that a parent must fulfil.

3.5 The right to love and affection

Psychological needs also fall under some rights which children have over their parents. Small children need to be loved, caressed, kissed and hugged. The Prophet (SAW) loved children greatly. He would allow his grandsons Hassan and Hussain (RA) to ride his Shoulders even during prayers. (Bukhari and Muslim). In streets, he would offer salutations and greetings of peace (Salam) to children, play and cut jokes with them. Sometimes, he will even

kiss small children in the street. Once, a Bedouin saw the Prophet (S.A.W) kissing a small kid. Out of wonder, he said: “*I have eight (8) children but I have never kissed them*”. The prophet remarked, “*What can I do if Allah has taken away love and compassion from your heart*”. (Muslim)

The prophet (S.A.W) would show special kindness to orphaned children. Love and leniency can do much that fear and strictness cannot do. However, if leniency leads to rudeness on the part of children, it should be mixed with strictness. That will tell the children that parents are basically kind but can be tough if children show rudeness and bad manners. (Al-Uthaymeen, 2008).

Islam sees that if parents fulfil their duties towards all children in terms of providing them with necessary training, educational backing, moral, ethical and religious necessities, this will definitely lead to a more caring child, a better family atmosphere and a better social environment and awareness. On the other hand, any negligence in those parental duties can lead to loss of a child or ill treatment of the parents at a later age. However, Islam equally underscores the significance of duties which children have towards their parents.

3.6 The right to Life and Equal Life Chances

One of the inalienable rights of the Muslim Child is the right to life. Unequivocally, Allah commanded parents not to take their children’s lives. Preservation of the Child’s life comes in several passages of al-Qur’an. For instance, Qur’an 17:31 declares:

*kill not your children for fear of want; We shall provide sustenance for them as well for you.
Verily the killing of them is a great sin.*

This injunction is better understood when viewed from both historical as well as sociological perspectives. Infanticide, and the sale of children to slavery or concubine were frequent practices of ancient societies of the Near East as well as in Europe and elsewhere. The patriarch’s power over his family includes the right to decide at the time a child was born to him whether to let it live or condemn it to die. (Patai, 1959). The Church disapproves of infanticide partly because no infant was to die unbaptized. Still, throughout Western Europe, both infanticide and sale of children were rather common until about 1000A.D particularly whenever war and famine were raging. (Hamidullah, 1982).

There can be no doubt that pre-Islamic Arabia practiced infanticide, which al-Qur’an condemns in very strong terms and classifies it as a grave offence. (Qur’an 17:31). It could be argued that ‘child’ includes both male and female, but the pre-Islamic Arabian type of infanticide practice affected extensively only the female children, because they believed girls to be profane creatures of satan or some god other than their native gods, which were to be eliminated. Socio-economic as well as religious explanations have been offered to this effect. The Qur’an uses “children” without specifying the Child’s sex. And whatever the reasons for and frequency of infanticide, Islam categorically condemns the practice and reaffirmed the infant’s right to life and equal life chances. It also reproached the practice of infanticide in the following words:

Lost are those who slay their children, from folly without knowledge and forbid food which Allah hath provided for them, forging (lies) against Allah, they have indeed gone astray and needed no guidance. (Q6:140).

In the end, parents are admonished to receive their infants, male or female, joyfully as the gift and honour of Allah as demonstrated by the Prophet (SAW) in words as well as in deeds. That the birth of a child should be a festive occasion marked with joy, charity and thankfulness. (Qur’an 16: 52 – 62, Ibn Majah).

4. Fear of Nigerian Muslims on the Implementation of Child’s Rights Acts

It is the hope of Muslims in Nigeria that the Child’s Rights Act will enforce and enhance our good cultural and religious values as they affect the Rights, care, responsibilities and up-bringing of children. However, because of the marginal difference between western and Islamic cultural heritage, people continue to express concerns and fears over the implementation of the said Act. These fears emanate from several contentious issues in the Act as they seem a direct disregard for Islamic injunctions over the status of the children. Unless they are domesticated to accommodate religious and cultural diversities, Muslims hopes will continue to be their fears in that regard. The fears of Muslims in Nigeria over this Act could be summarised as here under discussed.

4.1 Fear of the unknown

The Child’s Rights Acts is a promulgation of western ideas over rights of children. It is a common knowledge in Islam that the west is not known to care for the children more than the Islamic world and the middle-east in particular. Examples abound. Therefore, the Muslims’ fear over the Child’s Rights Act emanates from the fact that the act originated from the western world which has been known to bring programmes and structures that have failed Nigeria as a nation. Such programmes and activities include democracy, educational system, western banking system and other economic reforms that have not done Nigeria any good.

To begin with, it is a well-known tradition in Muslim communities that Muslims sent their children to acquire Islamic education before coming for western education. However, the Child’s Right Act, 2003 provides in Section 30-(2) d that a child shall not be used “for any purpose that deprives the Child of the opportunity to attend and remain in school as provided for under the compulsory, free Universal Basic Education (UBE) Act”.

In relation to this provision, Abdul (2006) observed that in a typical Northern part of Nigeria: in the tradition of prophet Muhammad (S.A.W) is held in a high esteem. Therefore, some children are sent to Qur'anic schools to acquire Islamic education before western education. In fact, they are sometimes at rush to see that the child memorises the whole Qur'an before the age of seven (7). By the provision of the Act in section 30 (2) d, any parent or guidance that sent his/her child to Qur'anic school to acquire Islamic education before Western education is liable to an offence against compulsory UBE Act. What is more damaging to Islamic tradition than to impose unnecessary premonitions on Muslim parents in furtherance of their commitment to Sunnah of the Prophet (S.A.W)? This is really contentious and will continue to elicit the attention and concern of conscious and well-informed Muslims in Nigeria.

4.2 Fear of Direct Contradiction between Child's Rights Act and Islamic law

There is the fear of things promulgated by Allah under Islamic law (*Shari'ah*) over a Child that may be seen as going against the Child's Rights Act. No conscious Muslim will keep his or her eyes pilled and watch man-made-laws overriding divine injunctions. For examples, Section 21 of the Child's Right Act, (2003) prohibits what it called Child marriage. It provided that:

No person under the age of eighteen (18) years is capable of contracting a valid marriage, and accordingly, a marriage so contracted is null and void and of no effect what so ever.

The Muslims' fear against this provision is medicated on the fact that under Islamic law, such marriage is valid even though it can only be consummated when the wife attains the age of majority. The Prophet (S.A.W) married Aisha (R.A) when she was a minor but the marriage was consummated when she attained the age of maturity (Bukhari). The age of maturity is also relative taking the biological differences in human beings into consideration. This provision therefore is directly contradicting what Islam does not frown at.

Again, Section 22 (1) of the Child's Rights Act provides that "No parent, guardian or any other person shall betroth a child to any person". This equally prohibits what Islamic law did not frown at. While a girl under Islamic law has the leverage right to certain acceptable degree, there is a level he or she can not discern completely for himself/herself and thus, the main of his/her betrothal rests in his/her parents. Of course, he/she has a choice to a certain level, she cannot betroth herself to any one of her choice except with the consent and permission of her parent or guardian as stipulated under the pillars of marriage in Islam. (Bukhari and Muslim)

4.3 Fear of lost glory

Muslims in Nigeria fear that the standards and ideals promulgated by Islam over the Child in terms of discipline and training in proper manners, on one hand and socialisation and care, on the other hand, may be lost to the strange law of Child's Right Act. To take good care and show compassion toward children is one of the most commendable deeds in Islam. This does not deprive the parents of the right to scold rebuke and even hit (flog) the child as situation demanded, but with emphasis on moderation. No doubt, these are in the best interest of the child.

The Prophet (SAW) was fond of children and he expressed his conviction that his Muslim Community would be noted among other communities for its kindness to children. It is a charity of a higher order to attend to their educational needs and teach them proper manners. Interest in, and responsibility for the Child's welfare are questions of first priority (Muslim). It is also on record that the Prophet (SAW) urged parents to demand that their children begin practicing the regular daily prayers by the age of seven (7). If the children do not start the practice by the age of ten(10), they should be disciplined by physical means – without causing them harm or injury of course only to show disapproval of their behaviour (Abu Dawud).

On this subject, Abdullahi ibn Amr ibn al-As narrated that the Apostle of Allah(SAW) said:

"Command your children to pray when they become seven years old and beat for it (prayer) when they become ten years old; and arrange their beds (to sleep) separately."

(Hadith 196: Sunan Abu-Dawud)

Unfortunately, as much as parent's responsibility for the Child's welfare remains binding and as long as the child is a minor or incapable of taking care of himself or herself, this lofty ideal established by Islam may be lost to other man-made-laws in the name of protecting the interest of the child. More specifically, some of the provisions in the Child's Rights Act negate this wholesome standard which may incapacitate parents to take decisive decisions about their children for fear of being punished under the act in return. Section 152(4) a of the Child's Rights Act provides that:

The court at the High Court level shall have the power to deal with all matters relating to the enforcement of the rights of the child as set out in this Act on the application for redress by a child who alleges that a right has been, is being or is likely to be infringed in respect of him.

The implication of this provision lies in the fact that a child could apply for redress in a low court even if he is been rebuked or hit for any undesirable behaviour in the name of '*freedom for everything*' under the control or care of the parents. The clause in some sections of this act, giving parents very limited and powerless control over the behaviour of the child, either as a parent or guardian does not hold any water. This is because such redress seeking by the child could unavoidably cause harm or displeasure to the parent.

...No mother shall be treated unfairly on account of her child. Nor father on account of his child...

The Child's Rights have been adequately provided for in Islam, taking into consideration the "best interest" of the child, the rights, obligations and responsibilities of the parents as well as cultural diversities. However, the western version of the Child's Right Act are portrayed as if nothing of such nature exist in Islam. Then, the mentality of the general public, including Muslims who are not conscious of their religious legal provisions are pedalled to regard these international instruments as Supreme and the only responses to Child's Rights and general well being.

4.4 Fear of Non-recognition of Environmental Peculiarities and Influences

The enforcement of the provisions of the Child's Rights Act cannot achieve optimum results unless they are fully domesticated to recognise our environmental peculiarities and influences. Section 30 (2) a of the Child's Rights Act (2003) for example provides that:

A child shall not be used for the purpose of begging for alms, guiding beggars, prostitution, domestic or sexual labour or for any unlawful or immoral purposes.

The problem arising from this section over which Muslims express concern and apprehension is not in the area of begging for alms and guiding beggars per se, but some of these provisions of the act tend to over look the realities of our time and prevalent practices which are traceable to socio-economic problems of this country. Poverty and corruption are great twin problems of our dear nation. It is as if to say that these have formed part of the national life which impact on the well being of our children. Politics in Nigeria must be urgently refined to effectively outlaw and eliminate the use of children as thing or as sources of human parts for "juju" in order to win elections at all costs. Similarly, the increasing moral decadence in our society must be reversed. Education must be made available and affordable to all children. Children must not be allowed to drop out of school because their parents are poor. Vocational training for self-reliance must be enhanced with viable programs and activities to cater for the academically weak children. To couple it all, all tier of government in partnership with the private sector, international agencies and Non-governmental organisations (NGOs) must speed up the present pace of job creation. (Mamman, 2008).

It is only when children are empowered by streamlining our national life as described above that the Child's Rights Acts can be complemented to impact effectively in our society.

4.5 Fear of Rendering Customary and Shariah Courts Irrelevant in the Present and Subsequent Dispensations

Matters of family life and personal law generally fall under the jurisdiction of customary and *Shari'ah* courts. By this act, there shall be family courts to decide cases related thereof (Section 52 and 70 of the Child's Rights Act, 2003). However, it should be pointed out that maintenance, custody, guardianship, worship and adoption etc are matters of family and personal laws which have already been provided for to be dealt with by Area Courts (now *Shari'ah* Courts) and Customary Courts with appeals arising through to *Shari'ah* Court of Appeal. Abdul (2006) observed that the jurisdiction on matters of family life under this act was to some extent what the constitution of the Federal Republic of Nigeria refers to as Islamic Personal Law which fall within the juristic confines of customary and *Shari'ah* Courts. But this power is by this act exclusively vested in what it established as Family courts in both Magistrate and High courts. This position is seen by Muslims, especially those in the legal profession as a calculated attempt to phase out Shariah and Customary courts.

In addition, but not entirely different from the fore-going is the provisions of section 152 (4) and 153 (1). These sections which vested exclusive right on the High court and Magistrates to preside over family courts only interpret the legal implications of the Act that the Child's Right is all encompassing. This will definitely cause conflict with already established jurisdiction in other courts (Abdul, 2006). In order not to be oblivious of the inconsistency within the Act, Section 39 already vests jurisdiction in "Magistrate courts or any other courts" to try offences in relation to rights and responsibilities of a child brought before it.

5. Conclusion

The paper has observed that Islamic law has offered a comprehensive package for the rights and responsibilities of the child. However, since people particularly the Muslim faithful have become apprehensive of the Child's Rights Act and its implementation, the stakeholders should pay great attention to various issues raised especially where the government will also perform its obligations. These are in the areas of socio-economic conditions, precipitating practices like begging, early marriage, failure to enrol children in schools, failure to immunise to mention just a few. It should also be noted that people value their religion seriously and will not mind to contravening the provisions that go contrary to the tenants of their religion. In essence, to have effective implementation of a law acceptable to the people in this regard, there is the need for a version of the Child's Rights Act that will not disregard Islamic injunctions on the status of children and will not overlook some of the realities of our time, more importantly in terms of religious and cultural diversities.

6. Recommendations

Based on the apprehension Muslims in Nigeria are exhibiting over the implementation of Child Rights Act, this paper recommends the following:

- 1- The Child Rights Act should be reviewed and domesticated to allow proper analysis of grey and contentious provisions in the Act which may lead to expunge or alteration of some, and insertion of some other provisions. This will create room for religious and cultural understanding of the act.
- 2- Efforts should be made to involve religious bodies and scholars in interactions and discussions on the Child's Rights Act.
- 3- Government should intensify its efforts to alleviate the socio-economic problems in the society especially poverty and corruption, which have eaten deep the fabrics of Nigeria.
- 4- Marriageable age is relative and it differs from one religion to another. Islam makes a distinction between marriage and its consummation. That is the reason why Islam do not consider the age of maturity as barrier to marriage. This should be considered in making decision by Nigerian government on Child Rights Act.
- 5- Where there is a conflict between the provision of the Child's Rights Act and the provision of Islamic law, the provisions of Islamic law should take precedence in Muslim dominated regions of the country.

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