



**CHILD PROTECTION IN THE NORTHERN STATES OF  
NIGERIA: A NEED FOR A NEW CHILD LAW**

**BY**

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**A thesis submitted in fulfilment of the requirement for the  
degree of Doctor of Philosophy in Laws**

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## ABSTRACT

Islamic law and the Convention on the Rights of the Child (CRC) have provided for the protection of the rights of children. The rights to life, health, dignity, religion and family are part of the body of rights guaranteed to every child by both regimes. Though the two regimes have much in common in terms of protection provided for the child, there are however areas where they disagree. Freedom of religion, child marriage, best interest of the child, age of maturity and adoption are areas where the two regimes substantially disagree. Several Muslim States have tendered reservations on the provisions of the CRC that are considered as contrary to Islamic law. Though Nigeria ratified the CRC without reservation, most of the states in Northern Nigeria declined to domesticate the CRC for its perceived conflict with Islamic law. The Child's Right Act 2003 which applies in the Federal Capital Territory, Abuja came on board upon domestication of the CRC by the National Assembly. For most of the Northern States with Muslim majority, there is still no legislation that is dedicated to child protection that provides for the protection of the rights of the child, the result thereof is the absence of a legal framework on child protection in most of the Muslims states of Northern Nigeria. Doctrinal and empirical methodologies were used in discussing the rights of children under Islamic law and the Convention on the Rights of the Child. The same methodologies were used in discussing the effect of their conflict on children in most of the states in Northern Nigeria. Further, comparative methodology was used in examining the conflict between the two regimes and historical methodology was used in tracing the historical background of some issues discussed in the thesis. This study found out that the scenario has negatively affected millions of children in the area of health, education and dignity. The *almajiri* phenomenon is a reflection of the bitter reality affecting children in the Northern states. The way out of this unfortunate situation is therefore the promulgation of a law on child protection based on Islamic principles for the states of Northern Nigeria so that it will be accepted by the Muslim majority who are skeptical of the Child's Right Act 2003 and consider it a Western ideology that is aimed at taking Muslim children out of the control of their parents and surrender them to the proxies of the West.

## ملخص البحث

لقد نصت كل من الشريعة الإسلامية واتفاقية حقوق الطفل على حماية حقوق الأطفال. تعتبر حقوق الحياة، والصحة، والكرامة، والدين، والعائلة جزءا من الحقوق التي ضمنها كلا النظامين لكل طفل. وبالرغم من أن النظامين يتشابهان كثيرا في الحماية المقدمة للطفل؛ فإنهما يختلفان في بعض النواحي. فمن بعض تلك النواحي التي يختلف فيها النظامان اختلافا جوهريا: حرية الدين، وزواج الطفل، والمصلحة المثلى للطفل، و سن الرشد، والتبني. لذا، فقد أعلنت كثير من الدول الإسلامية تحفظاتها على أحكام اتفاقية حقوق الطفل المخالفة للشريعة الإسلامية. وبالرغم من أن نيجيريا صادقت على الاتفاقية دون أي تحفظ، فإن معظم الولايات الشمالية لنيجيريا امتنعت تبني الاتفاقية بسبب صراعها مع الشريعة الإسلامية. وبناء على قانون حق الطفل الصادر في عام 2003 والذي يطبق في إقليم العاصمة الاتحادية؛ تعتبر "أبوجا" من بين تلك التي تبنت اتفاقية حقوق الطفل، وذلك من طرف التجمع الوطني. أما فيما يخص معظم الولايات الشمالية التي تحتوي على الأغلبية المسلمة؛ فإنه لا يوجد حتى الآن تشريعات مكرسة لحماية الطفل، والتي تنص على حماية حقوق الطفل، لذلك وكنتيجة لذلك فإنه لا يوجد هنالك أي إطار قانوني لحماية الطفل في معظم الولايات الإسلامية الشمالية لنيجيريا. لقد تم استخدام المنهجيتين الأيديولوجية والتجريبية في مناقشة حقوق الطفل في الشريعة الإسلامية واتفاقية حقوق الطفل. كما استخدمت نفس المنهجيتين في مناقشة أثر صراع النظامين على الأطفال في معظم ولايات شمال نيجيريا. علاوة على ذلك، فقد تم استخدام المنهج المقارن في دراسة الصراع بين النظامين، كما استخدمت المنهجية التاريخية في تتبع الخلفية التاريخية لبعض القضايا التي تمت مناقشتها في الأطروحة. لقد وجدت هذه الدراسة أن هذا المشهد قد أثر سلبا على ملايين الأطفال في مجال الصحة، والتعليم، والكرامة. تعتبر ظاهرة "الماجري" انعكاسا للواقع المرير المؤثر على الأطفال في الولايات الشمالية. وبالتالي فإن السبيل للخروج من هذا الوضع المؤسف هو إصدار قانون ذو مبادئ إسلامية بشأن حماية الأطفال لولايات شمال نيجيريا، وهذا لتوخي قبولها من قبل الأغلبية المسلمة المشككة في قانون حق الطفل الصادر في عام 2003 والذي يعتبرونه أيديولوجية غربية تهدف إلى تجنيب الأطفال المسلمين هيمنة الوالدين، وتسليمهم إلى وكلاء غربيين.

## **APPROVAL PAGE**

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*This work is dedicated to my lovely parents Shettima Muhammad Bashir Alkali and Hajja Fatima Alkali and my late sons Abba and Faruq may their souls rest in peace.*

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Malaysian Penal Code  
Syariah Criminal Offences (Federal Territories) Act 1997 (Malaysia)

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African Charter on the Rights and Welfare of the Child, 1990

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Cairo Declaration on Human Rights in Islam 1990

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Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979

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*Momoh v. Senate of the National Assembly [1981] 1NCLR 21.*  
*Oyewunmi Ajagunbade III v. Ogunesan [1990] 3NWLR 182 at 207.*  
*R v. Bangaza [1960] 5 F.S.C.*  
*Safiyatu Hussaini v. The State [Unreported] S.C.A./SW/28/2001.*  
*SERAP v. Federal Republic of Nigeria and Universal Basic Education Commission*  
*Suit number ECW/CCJ/APP/808.*  
*Shalla v. State [2007] 18 NWLR pt. 1066.*

## LIST OF ABBREVIATION

A.H.	After Hijra
ACHR	American Convention on Human Rights
ACRWC	African Charter on the Rights and Welfare of the Child
CA	Court of Appeal
CAN	Christian Association of Nigeria
Cap	Chapter
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCA	Customary Court of Appeal
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CPN	Child Protection Network
CRC	Convention on the Rights of the Child
CRHI	Cairo Declaration on Human Rights in Islam
e.g.	<i>exempligratia</i> - for example
Ed.	Editor
edn.	Edition
HC FCT	High Court Federal Capital Territory Abuja
HC	High Court
Ibid	(Ibidem) in the Same Place
ICCPR	International Covenant on Civil and Political Rights
ICERD	International instruments include International Convention on the Elimination of all forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICPED	International Convention for the Protection of All Persons From Enforced Disappearance
ICRPD	Convention on the Rights of Persons with Disabilities
IUM	International Islamic University Malaysia
LFN	Laws of the Federation of Nigeria
Ltd	Limited
MLJ	Malaysian Law Journal
MULAN	Muslim Lawyers Association of Nigeria
n.d.	No Date
n.p	No Publisher
n.p.	No Place of Publication
N	Naira
NBA	Nigerian Bar Association
NMLR	Nigerian Monthly Law Report
NWLR	Nigerian Weekly Law Report
PBUH	Peace be Upon Him
SC	Supreme Court
SCA	Sharia Court of Appeal
Trans.	Translation
USD	United State's Dollars



## LIST OF SYMBOLS

\$ Dollar  
£ Pounds

## TABLE OF TRANSLITERATION

*Before using this Table, you must first install the AHT Times New Arabic fonts.*

Table of the system of transliteration of Arabic words and names  
used by the International Islamic University Malaysia.

b	=	ب	z	=	ز	f	=	ف
t	=	ت	s	=	س	q	=	ق
th	=	ث	sh	=	ش	k	=	ك
j	=	ج	ṣ	=	ص	l	=	ل
ḥ	=	ح	ḍ	=	ض	m	=	م
kh	=	خ	ṭ	=	ط	n	=	ن
d	=	د	ẓ	=	ظ	h	=	ه
dh	=	ذ	‘	=	ع	w	=	و
r	=	ر	gh	=	غ	y	=	ي

Short: a = ا ; i = ي ; u = و

Long: ā = آ ; ī = إ ; ū = و

Diphthong: ay = آي ; aw = آو

# **CHAPTER ONE**

## **INTRODUCTION**

### **1.0 BACKGROUND TO THE RESEARCH**

Nigeria, like most countries of the world, has ratified the Convention on the Rights of the child 1989 (CRC) which is an international instrument on child protection that made provision on the rights of the child which included the rights to life, education, health, name, dignity and also made prohibition of certain practices that are seen as detrimental to the growth and well being of the child. Islamic law, as a divine law that regulates the entire life of human beings (both spiritual and mundane), has placed on parents and all stake holders the great obligation of ensuring that children are given all that is required of them to develop and become useful members of the society, hence Islam cautioned believers to protect themselves and their families from hellfire. Islam is keen on the care of children and on providing them with their full rights. Since the first stage of life, Islam has protected the child by forbidding abortion, upon birth, Islam has immunised him against loss by affirming his lineage to his parents. Islam has equally imposed upon the parent the duty to take care of their children's health and welfare during the period of nursing. It is also obligatory for parents to train their offsprings until they come of age by guarding, instructing, educating and giving their hands in marriage according to Islamic rites.

Much as the two regimes provide for the right of the child, yet there appear areas where they significantly vary and that has made some countries especially where Muslims constitute a great number of the population to have some reservation in their bid to ratify the CRC. In an attempt to domesticate the provisions of the CRC, many

states in Nigeria promulgated the Child Rights Law. However, most of the states in Northern Nigeria declined to promulgate the law on child protection based on the CRC despite pressure from the international community and NGOs towards it, the reason for which is due to the inherent conflict between the CRC and Islamic Law. That has resulted in the absence of a comprehensive legislation on child protection in most states of Northern Nigeria thereby making children vulnerable in most part of the Northern states. This study therefore intends to examine the conflict in the two regimes, to look at the effect of the absence of a comprehensive law on children in the Northern states and to suggest a new law based on Islamic principles that will be acceptable to most states of Northern Nigeria where Muslims constitute the majority so that children in the region can be better protected.

### **1.1 STATEMENT OF THE PROBLEM**

Islamic law has provided for the rights of children for so long. However, these rights are in conflict with the rights provided under the Convention on the Rights of the Child. The result thereof was the non-domestication of the Convention by some countries.

In Nigeria, there is no national legislation that has comprehensively provided for the rights of children, each state is at liberty to make laws concerning the rights of the child because it is a matter under the concurrent legislative list. In an attempt to domesticate the provisions of the CRC some states promulgated the Child Rights Law but most states in Northern Nigeria where Muslims constitute the majority population declined to make the law based on the CRC due to its conflict with Islamic law. This scenario has led to the absence of a comprehensive legislation on child protection in many states of Northern Nigeria thereby immensely contributing in making children

in the Muslim majority Northern states more vulnerable compared to their counterparts in the Southern states.

## **1.2 HYPOTHESIS**

Islamic law and the Convention on the Rights of the Child have provided for the protection of the rights of children. This study analyses the rights of children under the two regimes. There seems to be conflict in the provisions of these important regimes and which situation has led to non-acceptance and indeed rejection of the provisions of the Convention by a large population of Nigerians, especially Northern Nigeria where Muslims constitute the majority population. The result thereof is denial of rights to health, education and dignity of the child. The denial of these rights is due to absence of a law that comprehensively provide protection and sanction for abuse of child's right in this part of Nigeria, for the states that domesticated the CRC, children are better protected compared to their counterparts in the North. The *almajiri* (children studying under an informal Islamic education system who sometimes end up on the street as beggars and victims of abuse) in the North is a serious challenge and a manifestation of the negative impact of the lack of a comprehensive law on child protection in the Northern states. This research is therefore based on the hypothesis that:

- There is conflict between Islamic Law and the CRC as a result of which the Muslim majority in the Northern states of Nigeria refused to domesticate the provisions of the CRC.
- The rejection of the Convention has led to the absence of a codified law that guarantees the rights of children in many parts of Northern Nigeria where Muslims constitute the majority population.

- Child abuse and suffering have become notorious in many parts of Northern Nigeria as compared to the South due to the absence of legislation that provides for rights of the child and sanctions for the abuse of child's right in the Northern States.

Provision of a law on child protection based on Islamic rules with sanction for abuse of child's rights would help in checking the abuse of child's right in Northern Nigeria.

### **1.3 OBJECTIVES OF THE RESEARCH**

The objectives of the study are:

- i. To determine the areas where Islamic law and the Convention on the Rights of the Child are in conflict.
- ii. To examine the legislations on child protection in Nigeria.
- iii. To evaluate the problems and effects of the absence of a law on child protection in Northern Nigeria.
- iv. To propose and recommend a new law based on Islamic principles that will provide for child protection in the Northern states of Nigeria.

### **1.4 SCOPE AND LIMITATION OF THE STUDY**

This study focuses on the analysis of the conflicts between Islamic law and the Convention on the Rights of the Child on issues of child marriage, freedom of religion, the term best interest of the child, age of maturity and adoption. It will equally look at how such conflict has resulted in the rejection of a Child's Right Law based on the Convention by most states of Northern Nigeria, the effect of the absence

of a comprehensive legislation on child protection on the children of Northern Nigeria and suggest a law based on Islamic principles for the Northern states of Nigeria.

Northern Nigeria comprises of 19 states and the FCT with predominantly Muslim majority population except for Plateau and Benue states that are predominantly Christians hence outside the scope of this research due to its predominant Christian population. While states like Adamawa, Kogi and Taraba have almost the same percentage of Muslims and Christians. The rest are predominantly Muslims thus they become the main focus of this research.

Due to the current insecurity in Northern Nigeria caused by the boko haram insurgency, the researcher's ability to go round most of the states in the North was a challenge. Similarly, some States are under a state of emergency hence making abuse of human rights and unlawful detentions very common.

Similarly, generally due to the insecurity people are sceptical and afraid of visitors for fear of the unknown thereby making them reserved when it comes to interview. Some refused to be interviewed and in the case of those who agreed to be interviewed; much restraint and caution were applied in furnishing useful information to avoid stepping on some toes and lack of trust.

## **1.5 LITERATURE REVIEW**

Islamic law and the Convention on the Rights of the Child guarantee the rights to children; however there appears to be conflict between these two important laws on the protection of the child. Due to the conflict, most states of Northern Nigeria declined to promulgate a child right legislation based on the Convention even though Nigeria has ratified the Convention. The study analyses the conflict between these important regimes and looks at the effect of the absence of a child's right legislation

that provides protection to children in Northern Nigeria and suggests a child rights law based on Islamic principles for the Northern states of Nigeria. The following literatures have looked at the issues of child's right from the perspectives of Islamic law and the Convention. They have equally attempted to identify the conflicts in the two regimes.

### **1.5.1 Islamic Law**

Islam considers children as a treasure to be cherished and protected at all times hence encouraged believers to always pray for the good of their offsprings.

Accordingly Sayyid Qutb opines that it is always the hope and prayer of a believer for his offspring to follow his footsteps thus bringing them great joy. In this way, those that are classified as God's servants will multiply. Indeed these are a man's first responsibility.<sup>1</sup>

Fūdah is of the opinion that it is the obligation of Islamic state to ensure that human rights are upheld and respected by all its citizens. The presence of the *shura* (consultative assembly) under Islamic law will further advance the realisation and respect for human rights because they are to serve as a watch dog so that the ruler, judge etc all respect human rights. Islamic law insists that all its subjects must enjoy their God given rights. No person old or young shall be denied of any of his rights save in accordance with the rules of the shari'ah.<sup>2</sup>

Abīk and Al-kāfī, expounded that the foundation upon which human rights issues is predicated upon under Islamic law is justice to all. In other words, every individual whether an adult or a child is entitled to rights given by Allah and no

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<sup>1</sup> Sayyid Qutb, *In the Shade of the Qur'an*, translated from Arabic by Salahi, A., (United Kingdom: The Islamic Foundation, 2006), at 448.

<sup>2</sup> 'Abd al-Ḥamīd 'Alī Fūdah, *Huqūq al-Insān Baina al-Nizām al-Qanuniyyah wa Shari'ah Al-Islāmiyyah*, (Iskandariyyah: Dār al-Fikri, 2006), at 57.