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# **A COMPARATIVE ANALYSIS OF THE RIGHTS OF A CHILD UNDER THE NIGERIAN AND UGANDAN LAWS**

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## **1. INTRODUCTION**

The joy of every parent is to bear and have children; this is because this life will appear to be worthless if a man born of a woman could not in turn reproduce and procreate to have his own children too. It is a blessing from God which every parent always prays for.

Be that as it may, the right of a child begins from when it is yet unborn to the age of adulthood.<sup>1</sup> In fact a child deserves rights from both the parents and the society. No wonder the rights of a child have been the concern of the governments at both the national and the international levels.

At the international level, the United Nation Children's Fund has been at the vanguard of safeguarding the rights of a child. There are also many other International treaties and conventions on the protection of the rights of a child. An example of such conventions is the **Convention on the Rights of the Child- The Child Rights Convention 1991**, which requires States to ensure that segments of society, in particular parents and children are informed, have access to education and are supported in the use of basic knowledge of child health.<sup>2</sup>

On the other hand, there are also copious legislations at the national, State and local levels enacted towards giving protection to the child. Some of these

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1 Section 17 of the Nigerian Child Rights Act, 2003.

2 Article 24 (2) (e) of the Convention.

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rights include those provided in Chapters 1V of the 1999 Constitution of the Federal Republic of Nigeria as well as the Constitution of the Republic of Uganda 1995

Nigeria and Uganda share many a thing in common among which is the membership of the Commonwealth of Nations. Notwithstanding this, there are many other areas where they both differ. Whereas Nigeria practiced federalism as a system of government, Uganda on the other hand practices a unitary system of government.

To this end, this paper is desired to examine the comparison between the rights available for a child under the Nigerian Child's Rights Act 2003 Vis-a Vis the provisions in the Uganda Children Act Cap 59 Laws of Uganda 2000. Note that, the Nigerian Law been newly enacted in less than four years has not recorded any significant reported cases. Lastly conclusion and recommendations are also discussed.

## **2. THE POSITION OF THE RIGHTS OF A CHILD UNDER THE NIGERIAN LAWS.**

The rights of a child in Nigeria before 2003 though recognised but were neglected overtly or covertly. But with the enactment of the Child Rights Act in the year 2003, the government has taken a giant stride to address the rights of a child as recognised by the United Nations particularly as contained in paragraph 9 of the Declaration of Rights of the Child which is to the effect that, the child shall not be admitted to employment before an appropriate minimum age, (which is considered to be between the age of seventeen and eighteen), he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.

### **a. The Rights of a Child under the Nigerian Child's Rights Act.**

The rights and responsibilities of a child is provided under Part II of the Child's Right Act with particular reference to the application of the provisions of Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 or any successive constitutional provisions relating to fundamental rights.<sup>1</sup> The first of the rights guaranteed a child under the act is the *right to survival and*

<sup>1</sup> Section 3 of the Child's Rights Act, Law of the Federation of Nigeria, 2003.

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*development.* This is to the effect that it shall be the duty of the government and the parents alike to ensure that the survival and physical and mental development of a child is adequately protected.<sup>1</sup> It is also provided that a child upon being born shall be given a befitting name. It is a right which must be accorded whether on his birth or on such other date as is dictated by the culture of his parents or guardians<sup>2</sup>. Not only that, a child's name shall be registered after birth in accordance with the provisions of the **Birth, Death, etc (Compulsory Registration) Act, 1992.**

Further, it is also provided that every child has a right to freedom of association and peaceful assembly in conformity with the law and in accordance with the necessary and directions of his parents or guardians.<sup>3</sup> This particular provision is similar to the provision of **Section 40** of the Constitution which is to the effect that every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests, provided that the provisions of this section shall not derogate from the powers conferred by the Constitution on the Independent Electoral Commission with respect to political parties to which that Commission does not accord recognition. It should be noted that the latter provision from the Constitution is more embracing than provision of the former as the right of a child is subject to necessary guidance and directions from his parents or guardians.

Also every child has a right to freedom of thought, conscience and religion. To achieve this right therefore, parents and guardians are mandated to provide guidance and direction in the exercise of the same having regard to the evolving capacities and best interest of the child. The duty of the parents and guardians to provide guidance and direction in the enjoyment of this right by the child shall be respected by all persons, bodies, institutions and authorities. Even where the custody of the child devolves on a person through fostering, guardianship or adoption, the right of a child to be brought up in and to practise his religions<sup>4</sup> shall be of paramount consideration. A similar provision on this right is enshrined in **Section 38** of the Constitution to the effect that every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom

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1 Section 4 Ibid.

2 Section 5 (1) & (2) Ibid

3 Section 6 Ibid.

4 Section 7 (1), (2), (3) & (4) Ibid.

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(either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.

Another right recognised by the Act is the right to private and family life. It is provided that every child is entitled to his privacy, family life, home, correspondence, telephone conversation and telegraphic communications and no child shall be subjected to any interference with this right, subject of course to the rights of parents and guardians to exercise reasonable supervision and control over the conduct of their children and the wards.<sup>1</sup> It is to be noted that a similar provision on this right is provided for under **Section 37** of the constitution of the Federal Republic of Nigeria 1999. In addition, every child is also entitled to freedom of movement subject of course to parental control which is not harmful to the child. This right is however subject to the right of both the parent and the guardian to exercise control over the movement of the child in the interest of the education, safety and welfare of the child.<sup>2</sup> An analogous Section in the Constitution is **Section 41** which provides that every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto or exit therefrom.

It is to be further noted that, a child shall not also be subjected to any form of discrimination merely by reason of his belonging to a particular community or ethnic group or by reason of his place of origin, sex, religion or political opinion; nor should a child be subjected to any disability or deprivation merely by reason of the circumstances of his birth.<sup>3</sup> An equivalent provision of this right is enshrined in **Section 42** of the Constitution which guarantees right to freedom from discrimination subject of course to the proviso provided under **Sub-Section 3** of the Section. A child in Nigeria is also guaranteed a right to dignity of his person. It is provided that a child is entitled to respect for the dignity of his person, and accordingly no child shall be subjected to physical, mental or emotional injury, abuse, neglect or maltreatment, including sexual abuse, torture, inhuman or degrading treatment or punishment, attacks upon his honour or reputation; or held in slavery or servitude, while in the care of a parent or guardian or school authority or any other person or authority

1 Section 8 (1), (2) & (3) Ibid.

2 Section 9 (1) & (2) Ibid.

3 Section 10 (1) & (2) Ibid.

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having the care of the child.<sup>1</sup>This is more or less akin to the provision of **Section 34** of the Constitution which is to the effect that, every individual is entitled to respect for the dignity of his person except for the purposes provided under the exceptions to the Section.

It is equally important to note that, every child is entitled to rest and to engage in play, sports and recreational activities appropriate to his age. Also, every child is entitled to participate fully in the cultural and artistic activities of the Nigerian, African and world communities. Importantly, every Government, person, institution, service, agency, organisation and body, responsible for the care and welfare of a child shall, at all times, ensure adequate opportunities for the child in the enjoyment of the rights provided for the child with regard to leisure, recreation and cultural activities.<sup>2</sup> Most significantly, a child under the Act is entitled to free health care services. It is provided that a child is entitled to enjoy the best attainable state of physical, mental and spiritual health. Every Government, parent, guardian, institution, service, agency, organisation or body responsible for the care of a child shall endeavour to provide for the child the best attainable state of health. Not only that, the Provision of the Section further provides that every Government in Nigeria shall endeavour to reduce infant and child mortality rate; ensure the provision of necessary medical assistance and health care services to all children with emphasis on the development of primary health care; ensure the provision of adequate nutrition and safe drinking water; ensure the provision of good hygiene and environmental sanitation; combat disease and malnutrition within the framework of primary health care through the application of appropriate technology; ensure appropriate health care for expectant and nursing mothers; and support, through technical and financial means, the mobilisation of national and local community resources in the development of primary health care for children.<sup>3</sup> Further every parent, guardian or person having the care and custody of a child under the age of two years shall ensure that the child is provided with full immunization.<sup>4</sup> The Act frowns against failure, neglect and/or refusal of every parent, guardian or person having the care of a child who fails in his duty to immunize his child and in so doing will be guilty of an offence and liable on conviction for a first offence, to a fine not exceeding five thousand Naira; and a second or any subsequent offence, whether in respect of that child or any other

1 Section 11 (a) – (d) Ibid.

2 Section 12 (1), (2) & (3) Ibid

3 Section 13 (1), (2) & (3) (a) - (g) Ibid.

4 Section 13 (4) Ibid.

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child, to imprisonment for a term not exceeding one month.<sup>1</sup> Alternatively, the court may in substitution or addition to any penalty stipulated above make an order compelling the parent or guardian of a child to get the child immunized.<sup>2</sup>

Furthermore, a child is also entitled to parental care, protection and maintenance. Thus, no child shall be separated from his parents against the wish of the child except for the purpose of his education and welfare; and in the exercise of a judicial determination in accordance with the provisions of this Act which is in the best interest of the child. Not only that, every child has the right to maintenance by his parents, or guardians in accordance with the extent of their means, and the child has the right, in appropriate circumstances, to enforce this right in the family court.<sup>3</sup>

Fundamentally, a child under the Nigerian law has the right to free, compulsory and universal basic education and it shall be the duty of the Government of Nigeria to provide such education.<sup>4</sup> Also, every parent or guardian shall ensure that his child or ward attends and completes his primary school education; and junior secondary school education.<sup>5</sup> It is equally provided that every parent, guardian or person who has the care and custody of a child who has completed his basic education, shall endeavour to send the child to a senior secondary school, or in the alternative shall encourage the child to learn an appropriate trade and the employer of the child is also under obligation to provide the necessaries for learning the trade.<sup>6</sup> Where a female child becomes pregnant, before completing her education, she shall be given opportunity, after delivery, to continue with her education, on the basis of her individual ability.<sup>7</sup> Interestingly, the Act imposes penalty for failure, neglect and/or refusal of any parent, guardian or any other person having the custody of the child to send him or her to attain the basic primary school and junior secondary educations. Such a person is guilty of an offence and is liable on first conviction to be reprimanded and ordered to undertake community service; on second conviction to a fine of two thousand Naira or imprisonment for a term not exceeding one month or to both such fine and

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1 Section 13 (5) Ibid.

2 Section 13 (6) Ibid.

3 Section 14 (1) & (2) Ibid.

4 Section 15 (1) Ibid.

5 Section 15 (2) Ibid.

6 Section 15 (3) & (4) Ibid.

7 Section 15 (5) Ibid.

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imprisonment; and on any subsequent conviction to a fine not exceeding five thousand Naira or imprisonment for a term not exceeding two months or to both such fine and imprisonment.<sup>1</sup> The only exempted children not entitled to this particular right are the children with disabilities.<sup>2</sup>

It is to be further noted that every child who is in need of special protection measures has the right to such measure of protection as is appropriate to his physical, social, economic, emotional and mental needs and under conditions which ensure his dignity, promote his self-reliance and active participation in the affairs of the community.<sup>3</sup> Also, every person, authority, body or institution that has the care or the responsibility for ensuring the care of a child in need of special protection measures shall endeavour, within the available resources, to provide the child with such assistance and facilities which are necessary for his education, training preparation for employment, rehabilitation, and recreational opportunities in a manner conducive to his achieving the fullest possible social integration and individual development and his cultural and moral development.<sup>4</sup>

The most significant of all the rights a child enjoys is the right to protection against harm accorded him or her even when it is yet to be born. To this end, a child may bring an action for damages against a person for harm or injury caused to him wilfully, negligently or through neglect before, during or after the birth of that child.<sup>5</sup> Where the father of an unborn child dies intestate, the unborn child is entitled, if he was conceived during the lifetime of his father, to be considered in the distribution of the estate of the deceased father.<sup>6</sup> Also, where the mother of an unborn child dies intestate before the child is delivered, the unborn child is entitled, if he survives his mother, to be considered in the distribution of the estate of the deceased mother.<sup>7</sup>

**b. The Rights of a Child under the Ugandan Children Act and the Constitution of the Uganda.**

It is very interesting to note that the provisions relating to the rights of a child in Uganda are provided for under Part II of the Children Act. Like under the

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1 Section 15 (6) Ibid.

2 Section 15 (7) Ibid.

3 Section 16 (1) Ibid.

4 Section 16 (2) Ibid.

5 Section 17 (1) Ibid.

6 Section 17 (2) Ibid.

7 Section 17 (3) Ibid.

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Nigerian Act,<sup>1</sup> the definition of a child is given as a person below the age of eighteen years.<sup>2</sup> It is also provided that the welfare principles and the children's rights as provided under the First Schedule of the Act shall be the guiding principles in making any decision based on the Act.

Significantly the first right recognised by the Act is the right of a child to stay with his parent subject of course to where a competent authority determines in accordance with laws and procedures applicable that it is in the best interest of the child to separate him from his parents.<sup>3</sup> This provision is similar to Section 14 of the Nigerian Act which is to the effect that no child shall be separated from his parent against the wish of the child, except for the purpose of his education and in exercise of a judicial determination which of course is in the best interest of the child. The bulk of duty and responsibility to maintain a child is vested on parents, guardians and any person having custody of a child to provide and give a child the right to education and guidance; immunization; adequate diet; clothing; shelter; and medical attention. In addition a child is also to be protected from discrimination, violence, abuse and neglect.<sup>4</sup> It is also the duty and responsibility of every parent to have parental responsibility for his or her child and where the biological parents of a child are deceased, such responsibility may be passed on to relatives of either parent, or by way of a care order, to the warden of an approved home, or to a foster parent.<sup>5</sup>

It is also significant to note that there are provisions for the rights and welfare of a child under the Uganda Constitution. Specifically, it is provided that children shall have the right to know and be cared for by their parents or those entitled by law to bring them up. Not only that, a child shall also be entitled to basic education which shall be the responsibility of the State and the parents of the child. It is equally of note that a child shall not be deprived by any person of medical treatment, education or any other social or economic benefit by reason of religious or other beliefs.<sup>6</sup>

More importantly, children are also entitled to be protected from social or economic exploitation and shall not be employed in or required to perform

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1 Section 277 Ibid.

2 Section 2 of the Ugandan Children Act Cap 59 Laws of Uganda 2000.

3 Section 4 (1) &(2) Ibid.

4 Section 5 (1) & (2) Ibid.

5 Section 6 (1) & (2) Ibid.

6 Article 34 (1), (2) & (3) of the Constitution of the Federal Republic of Uganda, 1995.



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work that is likely to be hazardous or to interfere with their education or to be harmful to their health or physical, mental, spiritual, moral or social development. It is also a right that a child offender who is kept in lawful custody or detention shall be kept separately from adult offenders. In addition, the law shall accord special treatment and protection to orphans and other vulnerable children. The beauty and the elegant of the law is the protection and the rights to human dignity it accorded persons with disabilities and that the State and society shall take appropriate measures to ensure that they realise their full mental and physical potential.<sup>1</sup>

Furthermore, it is also prohibited and unlawful to subject a child to social or customary practices that are harmful to the child's health.<sup>2</sup> The Act also makes it unequivocally clear that no child shall be employed or engaged in any activity that may be harmful to his or her health, education, or mental, physical or moral development.<sup>3</sup> This is in agreement with **paragraph 9 of the Declaration of Rights of the Child** referred to earlier. A child is also entitled to leisure which is not morally harmful and the right to participate in sports and positive cultural and artistic activities; to a just call on any social amenities or other resources available in any situation of armed conflict or natural or man-made disasters; and to exercise all the rights stated in the Schedule and the Act, all the rights set out in the United Nations Convention on the Rights of the Child and African Union Charter on the rights and welfare of the African Child with appropriate modifications to suit the circumstances in Uganda that are not specifically mentioned in the Act.<sup>4</sup> Most importantly, the rights of a child is comprehensively provided for under the African Charter on the rights and welfare of the Child<sup>5</sup>

### **c. The Comparisons between Nigerian Child Rights Act and the Ugandan Children Rights Act.**

It is very pertinent to note that notwithstanding some similarities between the Nigerian Act and the Uganda Act, there exist some differences which in fact show the Nigerian Act is more comprehensive than that of the Ugandan Act. Nevertheless, it is manifestly clear that reading the two Acts side by side, one will see the areas where they have overlapped. It is interesting to note that both Acts recognised the right of a child to leisure, recreation

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1 Articles 34 (4), (6), (7) & 35 (1)

2 Section 7 Ibid.

3 Section 8 Ibid.

4 Rule 4 (a), (b) & (c) of the First Schedule to the Act. Ibid.

5 Articles 3-31

and cultural activities as it is referred to under the Nigerian Act<sup>1</sup> and right to participate in sports and positive cultural and artistic activities as provided for under the Ugandan Act<sup>2</sup>. Also, the two Acts recognised the right to health and medical attention including immunization for a child, only that the provision relating to the right of a child on health is more embracing under the Nigerian Act than that of the Uganda. In addition, the right to parental care, protection and maintenance as it referred to under the Nigerian Act<sup>3</sup> and the right of a child to stay with his parent or guardians as provided under the Ugandan Act<sup>4</sup>. The Acts also recognised that the right of a child to education of which the Act of Nigeria is emphatic that it is mandatory and compulsory for the right to be provided for the child especially from the primary to the junior secondary educations.<sup>5</sup> This is however not the case with the Act of Uganda which merely provides for the right of a child to education without more.<sup>6</sup>

Given the above situation, however, there are many areas in which the Acts have differed. In fact it is these areas of differences that will manifest where the two jurisdictions can learn from one another in order to appreciate the need for reform of the law relating to the rights of a child.

#### d. The Lessons between Nigerian and Ugandan Acts

It is very important to note that the first noticeable difference between the two Acts is that the provisions relating to the rights of a child under the Nigerian Act are more comprehensive than that of the Ugandan. Specifically, the provision relating to each of the rights of a child as contained under each Section is all embracing under the Nigerian Act than that of the Ugandan. For instance, the right of a child to health goes beyond medical care and immunization alone under the Nigerian Act as it also include the provision of good hygienic and environmental sanitation and even impose penalty and sanction on the erring parents and guardians who fail to immunize their children.

Fundamentally, one difference that is clear between the two Acts is that whereas the Nigerian Act recognised some of the human rights as entrenched

1 Section 12 of the Child Rights Act, Law of the Federation of Nigeria 2003.

2 Rule 4 of the First Schedule of the Children Act Cap 59 Laws of the Uganda 2000.

3 Section 14 of the Child's Right Op cit.

4 Section 4 (1) of the Children Act Op cit.

5 Section 15 of the Child's Rights Act Op cit.

6 Section 5 (1) (a) of the Children Act Op cit.

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in **Chapter IV of the Constitution of the Federal Republic of Nigeria**, as some those rights to be enjoyed by the child, this is manifestly omitted in the Ugandan Act but instead incorporated as well under **Chapter IV of the Uganda Constitution**. It is respectfully submitted that the incorporation of these rights to be part of the rights of a child will go a long way to make the law more in tune with the international standard. The provision of **Rule 4 of the First Schedule of the Children Act** to the effect that a child can also enjoy all other rights not mention in the Act is vague. Also, the right of a child to basic education in Nigeria is free and compulsory especially from primary to junior secondary educations. The same is not with that of the Ugandan Act as well as the specific provision of Article 34 (2) of the Uganda Constitution which shares parents in the responsibility of a child education. It is also suggested that this right should be made free and compulsory so as to conform to the United Nations principles of providing adequate and sound education for the child.

It is very significant to note that the Nigerian Act even provides for the right of an unborn child, to the effect that an unborn child even after the birth can sue for damages for any harm or injury caused him wilfully, recklessly, negligently or through neglect before, during or after the birth. Not only that such an unborn child is also entitled to be considered in the distribution of the estate of his father if the father dies intestate. However, this is subject to his or her pregnancy being conceived during the lifetime of the deceased father. The same rule applies to the mother who dies intestate before the child is delivered, the unborn child is entitled, if he survives the mother to be considered in the distribution of the estate of his deceased mother.<sup>1</sup> Since this provision is lacking under the Uganda Act, it is most respectfully suggested that this is a lesson from the Nigerian Act that will greatly add flavour to the Uganda Act.

Another area of interest that will be of great significance to the Uganda Act is the provision of the right for a child in need of special protection measure. This is to the effect that a child is entitled to special protection measures such as appropriate to his physical, social, economic and mental needs, and under conditions which ensure his dignity, promotes his self-reliance and active participation in the affairs of the community. Not only that, every person, authority, body or institution that has the care or the responsibility for ensuring the care of a child in need of special protection measures shall

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<sup>1</sup> Section 17 (1), (2), & (3) of the Child's Rights Act Op cit.

endeavour, within the available resources to provide the child with those needs which will facilitate his education, training, preparation for employment, rehabilitation and recreational opportunities in a manner conducive to achieving his fullest social integration and individual development and his cultural and moral development.<sup>1</sup> It is most humbly submitted that this kind of provision is lacking under the Uganda Act and it will go a long way to assisting a child to incorporate such a provision in our law. The right to a befitting name after birth is also lacking under the Uganda act. Indeed, a child is entitled to be given a name on his birth or on such other day as it is dictated by the culture of his parent. This kind of provision as well is lacking in the Ugandan Act.

On the other hand, there are also some lessons that can be derived by the Nigerian Government under the Ugandan Act. The first of such lesson has to do with right of a child to a just call on any social amenities or other resources available in any situation of armed conflict or natural or man made disasters.<sup>2</sup> Note that it is not that there is no similar provision in the Nigerian Act,<sup>3</sup> but that of the Uganda is more explicit, comprehensive and all embracing to have included situation of armed conflict and natural disaster. Also, It is evidently clear from **Section (7) of the Nigerian Act** that, the provisions with regard to right to free and compulsory education is not applicable to children with mental disabilities, this is so because, those children will not be able to fit in properly and thus becoming liability to their teachers. However, the Uganda Act specifically provides for the appropriate steps that must be taken by the parents of the children with disabilities to see that those children are assessed as early as possible as to the extent and nature of their disabilities; offered appropriate treatment; and afforded facilities for their rehabilitation and equal opportunities to education.<sup>4</sup> This provision if read side by side with the provision of **Section 16 of the Nigerian Act** may appear to be the same but the specific treatment accorded the disabled children by the Ugandan Act is commendable and should also be adopted by Nigeria.

#### **d. Conclusion and Recommendations.**

It is manifestly clear from the foregoing that the rights of a child is very crucial in any civilized society and this can be seen from the provisions of

1. Section 16 (1) & (2) Ibid.

2. Rule 4 of the First Schedule of the Children Act Op cit.

3. Section 16 (2) of the Child Rights Act, Nigeria

4. Section 9 of the Children Act, Uganda.

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the two Acts and the Constitutions under review. The rights of a child are not only recognised nationally, it is and has continued to be given credence and prominence at the international levels especially by the United Nations in her numerous conventions on the rights, protection and welfare of children. This being the situation, it is suggested that the above highlighted lessons should be appraised by the governments of Nigeria and especially Uganda considering the fact that the Nigerian Act is more recent than that of Uganda which has been in vogue since 1997 but codified into Laws of Uganda in the year 2000, and come up with a modality to co-opt the missing link and provisions in the respective Acts. Interestingly, the recently introduced Universal Secondary Education in Uganda is a giant stride taken by the Government to accord the children the right to education. But it is respectfully suggested that, that step should be complemented by extending the free education to commence from the primary education so as to allow for sufficient and reasonable number of school goers and attendants. With this development, it thus becomes imperative to co-opt the right to free education of a child in the Children Act. Indeed, there are great advantages in doing so as to improve the well being of children and also to spur the government, parents, guardians, bodies, authorities, institutions and any other person having the custody of a child under his care.

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## REFERENCES

1. *Child's Rights Act, 2003, Nigeria.*
2. *The African Charter on the Rights and Welfare of the Child, 1999.*
3. *The Children Act, Cap 59 Laws of Uganda 2000.*
4. *The Constitution of the Federal Republic of Nigeria, 1999.*
5. *The Constitution of the Federal Republic of Uganda, 1995.*
6. *The Convention on the Rights of Child, 1991 (United Nation)*