

Baby making factories and the Reproductive Health Rights of Women in Nigeria

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Abstract

Campaigns have recently been launched in Nigeria to tackle the abduction of young, poor and vulnerable girls for the purpose of bearing babies which are illegally sold to women unable to have children. The paper argues that forcing women to procreate violates their reproductive health rights. Women should have autonomy in deciding whether and when to have a child. In the same vein, separating children from their parents is an infraction of their right to parental care and protection. While Nigerian Constitution does not contain explicit provisions on women's reproductive health rights, such provisions can be inferred from the fundamental human rights that it upholds. Children's rights are also protected in the constitution and in other legal and policy frameworks. Nigeria has also created a dedicated agency to prevent human trafficking. The paper adopts the doctrinal method of research to review children's rights and women's reproductive health rights in Nigeria and the various instruments that protect such rights. It unravels the reasons for the booming trade in babies. It reveals that the growing number of 'baby making factories' is due to the government's failure to show sufficient commitment to tackling this menace using available domestic instruments. The paper concludes that effective monitoring of the activities of child charity organisations, prosecuting and punishing operators of the baby making factories and mustering the political will to implement the international instruments on women's reproductive health rights would go a long way in curbing the scourge of baby making factories in the country.

Keywords: Child trafficking, Reproductive health rights, Baby making factories

1. Introduction

While Nigeria has been battling with human trafficking in recent times, the battle took a new turn with the discovery of 'baby making factories'. The owners of these 'factories' abduct young and vulnerable girls who are already pregnant but want to avoid community disapproval of falling pregnant outside of wedlock or those that are not pregnant but are forced to conceive at the factories. The babies are sold to women that cannot conceive. Forcing young women to bear children violates their human rights as enshrined in the Nigerian Constitution and various international instruments to which the country is a signatory. Equally, the women who patronise the baby making factories are in most cases responding to pressure from society due to their childlessness. This violates their reproductive health rights that provide that women should make autonomous decisions in relation to procreation.

Baby making factories in Nigeria mainly operate under the guise of charity organisations or maternity homes. Patronage of these 'markets' is driven by cultural practices and beliefs, economic factors, societal values, and corruption.

This paper examines the legal framework for the protection of the rights of a child in Nigeria and women's reproductive health rights, the various reproductive health rights of women, and the factors responsible for trafficking. It concludes with recommendations to stem this ugly tide.

2. Conceptual Clarifications

2.1 Child trafficking

Child trafficking has gained prominence and attracted international attention in recent times. Trafficking has been defined as the recruitment, transportation, transfer, harbouring, or receipt of persons, by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve consent for a person to have control over another person for the purpose of exploitation. Exploitation includes prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.¹

Subparagraph (b) of Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children states that the victim's consent is irrelevant in any situation where there is a prima facie case of exploitation. Furthermore, whether or not the means set out above are used, the recruitment of a child for transportation, transfer or harbouring or receipt of a child for the purpose of exploitation amounts

¹ Article 3(a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing The United Nations Convention Against Transnational Organised Crime 2000.

to trafficking in persons.¹ According to the Protocol, a child is any person under the age of 18.² This definition of a child is *impari materia* with the definition in some international treaties to which Nigeria is a signatory.³ It goes without saying that the activities of the baby making factories reported by the media amount to trafficking of both the new born baby and their mother.

2.2 Baby making factories

Child trafficking has taken a new dimension in Nigeria in the form of the illegal sale of infants to desperate women that cannot conceive. The first official report on such a case was made by UNESCO in 2006. However, the evidence did not show a clear case of human trafficking. The report cited cases of young women that fell pregnant out of wedlock approaching doctors, nurses or orphanages that take care of the mother during her pregnancy and after delivery sell the baby to couples that want children. The natural mother would be asked to sign an agreement repudiating her rights to the baby in return for monetary compensation. Thus, the report was confirmed to the sale of infants and illegal international and domestic adoptions.⁴

This could be likened to commissioned adoption, a situation where a woman undertakes to bear a child for someone else and transfer her rights to the child once the baby is born.⁵ Surrogacy involves a similar arrangement where a woman is hired to gestate a baby for another woman. “The hired gestator is implanted with an embryo produced by fertilizing the contracting mother’s egg with the contracting father’s sperm using [in vitro fertilization]. The child therefore inherits the genes of both contracting parents and is generally unrelated to the birth mother.”⁶ The surrogate mother’s womb can be likened to an incubator rented for the period of gestation and she makes no contribution to the baby’s genes.⁷

The agreement in this case involves three parties, the commissioning mother, the surrogate mother and the baby. However, only the two adults are able to grant consent. While Nigerian society generally does not condone bearing children out of wedlock, a surrogate mother could be spared societal disapproval and could enjoy some financial gain. However, while commercial surrogacy is legal in jurisdictions such as India and South Africa, it has yet to be embraced in Nigeria.

Recent trends reported in the media show, however, that young girls are now being coerced into offering their babies for sale.⁸ This often occurs in places disguised as maternity or charity homes. Young girls that fall pregnant unintentionally and are afraid of abortion are lured by promises that they will be looked after, given a safe abortion or even be given a job to take care of themselves and the baby. Girls from poor backgrounds that are not pregnant are also taken hostage and men are hired to sleep with them until they fall pregnant. They are kept at the home throughout the pregnancy and are not allowed to attend antenatal clinics. In some cases, their babies are not delivered by trained medical personnel.⁹ This clearly violates their reproductive health rights.

2.3 Reproductive health rights

Reproductive health is defined as counselling, information and services for women to promote healthy and safe sexual expression.¹⁰ Reproductive rights embody a woman’s autonomy in relation to her body. Autonomy has been defined as the “liberty” or “freedom to act”; it encompasses “dignity”, “freedom of the will”, “independence”, and the faculty of “critical reflection”.¹¹ In deciding when to procreate, a woman exercises her right to bodily self-determination. A woman’s body is the medium for a pregnancy. She bears the consequences of whatever happens to her body, and therefore should have the right to control it.¹² Furthermore, such control must be exercised independently. In other words, reproductive autonomy is required to enjoy a reproductive right. Apart from impairing the reproductive autonomy of the surrogate mother, the commissioning mother that patronises a baby making factory is responding to pressure from society to bear a child.

The Cairo Conference on Population and Development (ICPD) of 1994 defined reproductive health as

¹Ibid Article 3(c)

²Ibid Article 3(d)

³Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child, and the Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, among others.

⁴Svetlana S. Huntley, “The Phenomenon of ‘Baby Factories’ in Nigeria as a new Trend in Human Trafficking” (2013) International Crimes Database Report p2

⁵D. Meyerson, ‘Surrogacy Agreement’ in C. Murray (ed) *Gender and the New South Africa Legal Order* (Juta, 1994) 123

⁶Dorothy Roberts, “Race and the New Reproduction” in Nancy Ehrenreich (ed) *Law, Medicine, and the Construction of Motherhood* (New York University Press, 2008) 308-309

⁷ Ibid 309-310

⁸Svetlana S. Huntley, *Supra* note 5

⁹Philip Obaji, “Exposed: Nigeria’s Notorious Baby Factories” Retrieved from www.thedailybeast.com. Accessed on 12 September 2017. Christiana Okpala “How girls are Kidnapped for baby-factories in Nigeria” 01/07 2017 retrieved from www.nextedition.com.ng Accessed on 14 September 2017

¹⁰ Ogoh Alubo, ‘Adolescent Reproductive Health Practices in Nigeria’(2001)5(3) African Journal of Reproductive Health, 110

¹¹ Gerald Dworkin, *The theory and Practice of Autonomy* (Cambridge University press, Cambridge 1988) at 6

¹² Rosalind Poland Petchesky, “Beyond a Woman’s Right to Choose” Feminist Ideas about Reproductive Rights’ in Nancy Ehrenreich (ed) *The Reproductive Rights Reader Law, Medicine, and the Construction of Motherhood* (New York University Press, 2008)106-107

follows:

“Reproductive health is a state of complete physical, mental and social well-being and not merely absence of disease or infirmity, in all matters relating to the reproductive system, and to its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. Implicit in this last condition are the right of men and women to be informed about and to have access to safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods of birth control which are not against the law, and the right of access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant.”¹

Thus, the right to reproductive health means that all women should be able to exercise control over their reproductive lives. Young women that are coerced to give birth to babies that are sold at baby making factories are deprived of their reproductive autonomy. These factories are thus forms of human trafficking.

3. The Legal Framework for the Protection of the Rights of the Child and the Reproductive Health Rights of Women in Nigeria

This section examines the legal framework in Nigeria for the protection of the rights of the babies offered for sale in the baby making factories, the teenage mothers that given birth to them and the women that adopt the babies.

3.1 The legal framework for the protection of the rights of the child in Nigeria

Nigeria has different frameworks to combat human trafficking, and for the protection of the rights of women and children. These are contained in both domestic legislation and international instruments ratified by the government. The latter include the United Nations Convention Against Transnational Organised Crime (2000) and the Palermo Protocol (2000); the United Nations Convention on the Rights of the Child(1989), and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (CRC- OPSC) 2000; the ICC Statute (2002); the Convention on the Elimination of All Forms of Discrimination against Women (1979) and the Optional Protocol to this Convention(CEDAW-OP) 1999, and the International Labour Organisation Convention No. 182 on the Worst Forms of Child Labour (1999).

Apart from the Convention on the Rights of the Child, the treaties highlighted above are not yet in operation in Nigeria because the required conditions have not been fulfilled.²

The domestic instruments include certain provisions of the 1999 Constitution of the Federal Republic of Nigeria, particularly Chapter four on Fundamental human rights. A detailed discussion on the various instruments for the protection of the rights of children in Nigeria is beyond the scope of this paper. This section focuses on the laws that protect the rights of babies offered for sale and the teenage mothers that give birth to them in the baby factories.

3.1.1 Child Rights Act 2003

As a member of the international community, Nigeria has signed and ratified the Convention on the Rights of the Child which is the most comprehensive instrument on the protection of children’s rights. Nigeria’s attitude to this convention is unique because unlike other international instruments where its commitment has not gone beyond ratification, the Convention has been domesticated in accordance with the provisions of the Nigerian Constitution.³ Among other provisions, the Child Rights Act which is the Nigerian version of the Convention on the Rights of the Child. The Convention covers the rights and responsibilities of a child, protection of the rights of a child, child justice administration, and the right not to be separated from parents against the child’s wishes. Apart from the fundamental human rights that are recognised in Chapter four of the 1999 Constitution, the Act provides a wide range of rights for Nigerian children. Some of the rights protected in the Act are pertinent when it comes to baby making factories. They include, among others, the child’s right to dignity,⁴ health and health services,⁵ parental care, protection and maintenance,⁶ and the right of the unborn child to protection against harm.⁷ The Act also prohibits abduction, removal and transfer from lawful custody,⁸ as well as buying, selling, hiring or otherwise dealing in children for the purpose of hawking or begging for alms or prostitution, etc.⁹ It

¹Paragraph 7.2, Available at: <http://www.un.org/ecosocdev/gen info/women/womrepro.html>

²Section 12 of the Nigerian 1999 Constitution states that a treaty must be domesticated before it can operate in Nigeria.

³ Ibid

⁴Section 12 of the Child Rights Act 2003

⁵Section 13 of the Child Right Act, 2003

⁶Section 14 of the Child Right Act, 2003

⁷Section 17 of the Child Rights Act, 2003

⁸Section 27 of the Child Rights Act, 2003

⁹Section 30 of the Child Rights Act, 2003

prohibits unlawful sexual intercourse with a child,¹ and other forms of sexual abuse and exploitation.² All these rights could be invoked to protect Nigerian children from the scourge of baby making factories. The rights of a new born baby that is offered for sale in these factories and those of the teenage mothers that give birth to them are sufficiently covered by the provisions of the Act. It is thus clear that the baby making factories' activities contravene the Child Rights Act.

While the Child Rights Act provides uniform legislation to protect the rights and welfare of the Nigerian child, in the country's constitution, child rights are on the concurrent legislative list, which falls under the jurisdiction of State Houses of Assembly and the National Assembly. This means that each state in Nigeria must have an equivalent law on children's rights. As at 25 May 2017, about 12 states had yet to domesticate the Child Rights Act. They are Kaduna, Enugu, Gombe, Adamawa, Bauchi, Borno, Kano, Katsina, Kebbi, Sokoto, Yobe and Zamfara.³ Since the Act's provisions are not applicable in states that have yet to domesticate it, the rights of the child are not uniformly protected in Nigeria.

3.1.2 *Trafficking in Persons (Prohibition) Law and Enforcement and Administration Act, 2003*

This Act was enacted to curb human trafficking and related activities in Nigeria. Some of its provisions prohibit the activities practiced by the baby making factories. The Act prohibits deception, coercion or any means whatsoever to induce, seduce or force any person under the age of 18 to have intercourse with another person.⁴ It also prohibits parents or persons in custody of children under the age of 18 from encouraging seduction or causing unlawful carnal knowledge of them, prostitution or the commission of indecent assault upon them.⁵ Section 14 prohibits the procurement of persons under the age of 18 years to have unlawful carnal knowledge of them. The Act deals with all manner of ways which a person could use to lure a girl under the age of 18 to have unlawful carnal knowledge of her including conspiracy to induce a girl under the age of 18 by means of false pretences or other fraudulent means⁶; threatening or intimidation to procure a person under the age of 18 years to have a carnal connection with a man;⁷ taking or enticing any person under the age of 18 years or persons of unsound mind;⁸ confining or detaining another person against his/her will or unlawfully depriving another person of liberty with the intention to defile⁹; buying and selling a person for a purpose;¹⁰ and permitting the defilement of any person under the age of 18 on his/her premises.¹¹ Penalties depend on the gravity of the offence and range from imprisonment for a certain number of years or for life, to fines.

3.1.3 *The Criminal and Penal Codes of Nigeria*

In Nigeria, criminal law is contained in the Criminal Code¹² which is applied in the Southern States and the Penal Code¹³ which is applied in the Northern States. Some sections of the Criminal and Penal Codes can be employed to protect the rights of children against the activities of baby making factories. The Criminal code provides that:

“Any person who unlawfully and indecently deals with a girl child under the age of sixteen years is guilty of a misdemeanor or is liable to imprisonment for two years with or without caning. If the girl is under the age of thirteen years, he is guilty of a felony and is liable to imprisonment for three years with or without caning.”¹⁴

To “deal with” includes any act without consent, and constitutes an assault on the woman. The Criminal Code defines assault as follows:

“A person who strikes, touches, or moves or otherwise applies force of any kind to, the person of another, either directly, without his consent or with his consent, if the consent is obtained by fraud, or who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another without his consent in such circumstances that the person making an attempt or threat has actually or apparently a present ability to effect his purpose, is said to assault the other and the act is called assault. The term ‘applies force’ include the case of applying heat, light, electrical force, gas, odour, or any other substance or thing whatsoever, if applied in such a degree as to cause injury or personal discomfort.”¹⁵

¹Section 31 of the Child Rights Act, 2003

²Section 32 of the Child Rights Act, 2003

³G. Opara, “Senate moves to domesticate Child Rights Act in 13 States” The Guardian 26 May 2017 available at <https://guardian.ng>

⁴Section 12 of the Act

⁵Section 13 of the Trafficking in Persons (Prohibition) Law Enforcement And Administration Act, 2003

⁶Section 17 of the Trafficking in Persons (Prohibition) Law Enforcement And Administration Act, 2003

⁷Section 18

⁸Section 19

⁹Section 19(c)

¹⁰Section 21

¹¹Section 26

¹²CAP C38 LFN, 2004

¹³Northern States Federal Provisions Act, CAP P3 LFN, 2004

¹⁴Section 222 of the Criminal Code Cap C38 LFN 2004

¹⁵Section 252

This section of the Criminal Code can be invoked to render the operators of baby making factories liable as it is primarily intended for sexual offences such as assault and rape. The Penal Code contains a similar provision:

“Whoever commits an act of gross indecency upon the person of another without his consent or by use of force or threats compels a person to join with him in the commission of that act shall be punished with imprisonment for a term which may extend to seven years and shall be liable to a fine: Provided that a consent given by a person below the age of sixteen years to such an act when done by his teacher, guardian, or a person entrusted with his care or education shall not be deemed to be a consent within the meaning of this section.”¹

The Criminal Code also contains some provisions which could be used to render operators of baby making factories liable for “conspiracy to defile”: “Any person who conspires with another to induce any woman or girl, by means of any false pretence or other fraudulent means, to permit any man to have unlawful carnal knowledge of her is guilty of a felony and liable to imprisonment for three years...”²

In terms of this section, it is a crime to conspire to induce a young girl to permit a man to have unlawful carnal knowledge of her.³ The Penal Code has a related provision on the inducement of young girls for illicit intercourse: “Whoever, by any means whatsoever, induces a girl under the age of eighteen years to go from any place or to do an act with the intent that the girl may be or knowing that it is likely that she will be forced or seduced to illicit intercourse with another person shall be punished with imprisonment which may extend to ten years and shall be liable to a fine.”⁴

Operators of baby making factories who lure girls into having sexual relations and subsequent delivering babies for sale could be held liable under this section of the Criminal Code for causing or encouraging defilement. They could also be liable as an accessory (either before or after the fact) to the offence of rape. This is defined as:

“Any unlawful carnal knowledge of a woman or girl, without her consent or with her consent, if the consent is obtained by force, or by means of threats or intimidation of any kind, or by fear of harm, or by means of false or fraudulent representation as to the nature of the act, or in the case of a married woman, by impersonating her husband...”⁵

While the provisions of this section are similar to the Penal Code, the latter is more comprehensive. Section 282 of the Penal Code states, that, whether or not a young girl gives her consent, if she is under the age of 14 years or is of unsound mind any sexual intercourse with such a girl is considered rape.⁶

The owners of baby making factories could also be held liable for the offence of abduction. The Criminal Code defines abduction as occurring when, “Any person with the intent to marry or carnally know a female of any age, or to cause her to be carnally known by other person, takes her away, or detains her against her will...”⁷

The Criminal Code gives special consideration to girls who are unmarried and under the age of 16, and provides that whoever takes such a young girl from the custody of her parents or guardian without their consent is guilty of abduction. It adds that it is immaterial whether or not the girl gave her consent or that the abductor believed that the girl was older than 16. Section 361 of the Criminal Code is therefore considered to be helpful in instituting criminal charges against baby making factories. According to this section, taking a female of any age without her consent is abduction.

3.2 Legal framework for the protection of the reproductive health rights of women in Nigeria

This section discusses the reproductive autonomy of surrogate mothers and commissioning mothers who patronise the baby making factories. As noted earlier, those that give birth are often coerced into selling their babies by the owners of the baby factories, while many of those that patronises the factories do so as a result of societal pressure to have their own children.

While women’s reproductive health rights are not expressly recognised in the Nigerian Constitution, such rights encompasses certain other rights that are recognised under the constitution such as the right to life, dignity, security and liberty, and private and family life, etc. Furthermore, Nigeria is a member of the international community and women’s reproductive health rights are new area in international human rights law. The right of autonomy in relation to one’s body is a fundamental human right that is enshrined in most international human rights instruments.

Nigeria has ratified numerous international and regional instruments guaranteeing this right. These include the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁸; the Convention on the

¹Section 285 of the Penal Code

²Section 227 of the Criminal Code CAP C38 LFN, 2004

³Ibid

⁴Section 275 of the Penal Code

⁵Section 357 of the Criminal Code

⁶Section 282 (1) (e) of the Penal Code

⁷Section 361 of the Criminal Code CAP C38 LFN2004

⁸See Articles 1, 2, 12 and 16 of the ICESCR

Elimination of All Forms of Discrimination Against Women (CEDAW);¹ the African Charter on Human and Peoples' Rights (African Charter);² and the Protocol to the African Charter on the Rights of Women in Africa (Women's Protocol).³ However, these instruments have not translated into improved reproductive health rights for its female citizens due to the fact that most have yet to be domesticated in accordance with the provisions of the constitution. Consequently, women whose reproductive autonomy is infringed by baby making factories might not be able to enforce their rights by invoking international instruments, but could do so by claiming that such rights are already recognised in the constitution.

4 The Factors Responsible for baby markets

4.1 Cultural practices and beliefs

Traditional African society is rooted in succession. In ancient traditional societies, a man would go to great lengths to ensure the continuation of his dynasty. He could marry an additional wife, or enter into a sororate union (where the wife's sister is brought in to procreate on behalf of her sister). Thus, traditional African society expects that a woman should procreate. This enhances her value as a member of her husband's household and the community at large holds her in high esteem as a result of her ability to give birth. On the other hand, an infertile woman will go to great lengths to safeguard her marriage and retain her social standing.

In some Nigerian communities, a woman can be disinherited if she is unable to have children. Women that find themselves in this situation and have tried all available medical means to no avail patronise baby making factories.

It is thus clear that women in Nigeria do not have the right of autonomy in respect of their bodies as a result of pressure exerted by their husbands, relatives and the community at large. This violates their reproductive health rights.

4.2 Economic factors

Given the current economic situation in Nigeria there are high rates of unemployment and poverty. Baby making factories offer desperate young women from poor backgrounds the opportunity to make money to survive. Likewise, for the young men that provide sexual services to impregnate the young women, these factories are a means of survival. For their part, the owners stand to reap substantial profit.

4.3 Societal values and orientation

Most traditional societies in Nigeria do not acknowledge women's reproductive autonomy. They also frown on having children out of wedlock. Some young girls that fall pregnant enter the baby making factories to avoid stigmatisation. A case in point is that of Juliana Emos who ran away to a baby making home in a remote area in Abia state on discovering that she was pregnant. Fearing her family's reaction, she agreed to sell her baby after delivery. She was paid seventy thousand naira for the baby and returned home to continue her normal life.⁴

Furthermore, the fact that Nigerian society holds the rich in great esteem without questioning the source of their wealth means that the owners of the factories operate with impunity and enjoy high social status.

4.4 Corruption

While there have been several reports in the media on raids on baby making factories, most of these cases are not diligently prosecuted. Indeed, most are merely subjected to trial by media.⁵ Concerted efforts are lacking to deal with the operators of these factories and dismantle them. It is alleged that some unscrupulous security agents and state officials are working in cahoots with the baby sellers in return for rewards.⁶

4.5 Onerous adoption laws

In Nigeria, adopting a child from a government or other approved institution is an extremely onerous process. Furthermore, the laws governing child adoption vary from state to state. There is no uniform law on adoption in Nigeria. There are also age limits; a couple over the age of 50 might not qualify.

5 The way forward

The Nigerian Government should demonstrate political will in domesticating the various international instruments on child and women's rights which it has ratified. As noted earlier, in terms of the Nigerian

¹Articles 3, 5 and 16 of CEDAW

²Article 18 of the African Charter on Human and Peoples' Rights

³Article 14 of the Protocol to the African Charter on Human and Peoples Rights

⁴Christiana Okpala "How girls are Kidnapped for baby-factories in Nigeria" 01/07 2017 retrieved from www.nextedition.com.ng Accessed on 14 September 2017

⁵Svetlana S. Huntley, *Supra* note 7

⁶Philip Obaji, "Exposed: Nigeria's Notorious Baby Factories" Retrieved from www.thedailybeast.com. Accessed on 12 September 2017

Constitution, treaties signed and ratified must be domesticated before they become law that can be used in cases involving their violators before courts of law.

Consistency is also required in the application of the Child Rights Act. Only children in states that have adopted the Act have recourse to its provisions. The Nigerian government should encourage states that have not yet domesticated the Act to do so. Indeed, the Senate could do so if the states do not. Section 12(2) of the constitution empowers the National Assembly to make laws not only for the Federation, but also any part thereof. In terms of section 12(3), before the president assents to such a law, it must have been ratified by the majority of all the Houses of Assembly in the Federation. In addition, section 4(5) of the constitution provides that an Act domesticating a treaty would prevail over any inconsistent law enacted by a state House of Assembly. Instead of waiting for states' Houses of Assembly to re-enact the Child Rights Act, these provisions could be invoked to make the Act applicable in states that have no law on child rights. The Senate recently moved a motion in this direction.¹ However, it is not enough to domesticate the Act; the necessary structures should be put in place for its implementation, including family courts in all states.

Since most baby making factories are offshoots of charity homes and maternity centres, the Nigerian government should also make a concerted effort to regulate the operations and activities of such organisations. In the same vein, the various states' child adoption laws should be reviewed to enable citizens to adopt and foster children without resorting to crime.

Adequate measures are required to empower the youth by creating meaningful employment. This would discourage their involvement in the baby making factories.

Moreover, there should be adequate education on the rights of individuals under Nigerian law. Community members need to be made aware of the fundamental human rights enshrined in the constitution and the various international treaties to which Nigeria is a signatory. The girl child should know that she has the right to reproductive autonomy and should not be coerced to take any action that will infringe on such autonomy. Likewise a married woman who is barren should not be pressurised to take actions that are not in consonance with her reproductive health rights. Nigerian courts have made positive pronouncements against discriminatory practices that disentitle a woman without children from inheriting from her husband. In the Supreme Court's recent decision in the case of *Anekwe & Anor. V Nweke*², Justice Muhammad JSC held:

"It baffles one to still find in civilised society which cherishes equality between the sexes, a practice that disentitles the woman (the wife in this matter) to inherit from her late husband's estate, simply because she has no 'male child' from the husband. This practice I dare to say, is a direct challenge to the creator who bestows male children only; female children only (as in this matter), or an amalgam of both males and females, to whom he likes. He also has the sole power to make one barren. There is virtually nothing one can do if one finds oneself in any of the situations. To perpetuate such a practice as is claimed in this matter will appear anachronistic, discriminatory and un-progressive. It offends the natural justice, equity and good conscience. That practice must fade out and allow equity, equality, justice and fair play to reign in the society."

This is an encouraging development as it will protect women that are unable to bear children from being deprived of their property rights on the death of their husbands. Society at large also needs to be made aware that selling babies in whatever guise is against Nigerian law.

Finally, while Nigeria has not domesticated a number of international treaties that could be used to address baby making factories, it has adequate domestic laws to combat this scourge. These laws should be used to full force to deal with the operators of the factories and deter new entrants to this booming trade.

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¹ The motion was moved on 25 May 2017
²(2014) Vol. 234 LRCN P. 34 at 65 FP

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