

ADOPTION OF CHILDREN IN NIGERIA: PROBLEMS AND PROSPECTS*

Abstract

With operation of regulatory instruments in Nigeria, there are prospects for the challenges to child adoption. Thus, this study focused on a critical analysis of the challenges and prospects for child adoption in Nigeria. The research methodology was doctrinal using content analysis. The sources of data collection were literatures from physical library and e-library. This article found that the Child's Rights Act and other related legislation is not bereft of pitfalls and this impedes the progress of family law. It was recommended, among others, that the various agencies and NGOs should, in consultation with the Human Rights Commission and in collaboration with the office of the First Lady of respective states, establish child protection institutions across the respective states to secure the future of the adopted children, while the legislators also should abridge the lacuna in the legislation. This article is significant to all stakeholders in child adoption in Nigeria.

Keywords: Child Adoption, Problems, Prospects, Nigeria

1. Introduction

The compelling factors and situations to this research is the fact that, there have been series of humanitarian crises in Nigeria even currently as a result of Boko Haram insurgency in the North East, unending attacks by the Fulani herdsmen on communities in the North central which made or rendered many children orphans and without the warmth of a family and parental care. The United Nations Humanitarian Crises Report (UNHCR)¹ reports that the Boko Haram insurgence has rendered child from 5,400 households orphans. For this reason, there is need to integrate these affected children into families to avail them a touch of parental love else, they grow with resentment and hatred for the society due their condition. Furthermore, there is disparity of treatment meted to adopted children and biological children. For instance, how do adopted children and biological children fare within the families? Most at times, these adopted children are sent to community schools, while the biological children attend good schools, mostly referred to as private schools. In Nigeria, according to Ojelabi and others², the practice of child adoption is growing with improved public awareness through media, personal testimony, social research and other sources. It is interesting that both Governmental agencies and the NGOs are also promoting child adoption as a substitute to abortion to unintended/ unwanted pregnancy.³

2. The Concept of Child Adoption

Adoption is a process whereby a person assumes the parenting⁴ of a person being between the developmental period of infancy and puberty.⁵ Legal adoptions permanently transfer all rights⁶ and responsibilities, along with filiation⁷, from the biological parent or parents. According to the *Black's Law Dictionary*,⁸ adoption is the 'Statutory process of terminating a child's legal right and duties towards the natural parents and substituting similar rights and duties toward adoptive parents.' According to Nwogugu,⁹ adoption is the process which 'creates a parent-child relationship between the adopted child and the adoptive parents with all the rights, privileges and responsibilities between the child and the natural parents or guardians. Adoption was unknown to common law and is entirely a creature of statute. While according to Aduba,¹⁰ adoption is the process by which the legal relationship between a child and his natural parents is severed and re-established between the child and a third party or parties.

In many jurisdictions, the adopted person's full original birth certificate is cancelled and replaced with a fabricated post-adoption birth certificate which states that the child was born to the adoptive parents. This deception, where carried out, may continue with the adopted person for life and can be the cause for many well

*By **Chudi Charles NWABACHILI, LLB, BL, LLM, PhD**, Professor of Law, Department of Private and Public Law, Dean of Faculty of Law, Chukwuemeka Odumegwu Ojukwu University, Anambra State, Nigeria. +2348033404185; and

***Chinwe Patricia ILOKA, BA(ED), LLB, BL, LLM, PhD**, Lecturer, Faculty of Law, Chukwuemeka Odumegwu Ojukwu University, Anambra State, Nigeria. Email: chypat4@gmail.com, cp.iloka@coou.edu.ng. Telephone: 08035696281.

¹United Nations Humanitarian Crises Report (UNHCR), 'The UN Refugee Agency: Supplementary Appeal,' (Nigeria Situation UNHCR, July, 2016) 7 – 3

²Ojelabi, O. A.; Osamor, P. E. and Owumi, B. E. 'Policies and Practices of Child Adoption in Nigeria: A Review Paper', *Mediterranean Journal of Social Science*, Vol 6, No 1 S1 (MCSEER Publishing, Rome-Italy, 2015)

³Aniebue, P. A and Anujebu, U. U. 'Adoption Practices in Enugu', *Nigeria Journal of Clinical Practice* 11(1) (2008) 5 – 8

⁴'Parenting' *Online Database* <<https://en.wikipedia.org/wiki/parenting>> accessed 6th June, 2023.

⁵Rathus S A *Childhood and Adolescence: Voyages in Development* (Cengage Learning, 2013) p. 48

⁶'Rights' *Online Database* <<https://en.wikipedia.org/wiki/rights>> accessed 6th June, 2023.

⁷'Filiation' *Online Database* <<https://en.wikipedia.org/wiki/filtration>> accessed 6th June, 2023.

⁸Byran. A. G. *Black Law Dictionary*, 8th ed. (Thomson West: 2004)52

⁹Nwogugu, E. I. *Family Law in Nigeria*, 3rd ed (HEBN Publishers Ltd., Ibadan, 2014) 333

¹⁰Aduba, J. N. 'Family Law,' *Unpublished Lecture Notes* (Faculty of Law, University of Jos, February, 2018)

documented traumas experienced by the adopted person, including loss of identity, family history, culture, biological family (including not only biological parents but also siblings and extended family), family medical history and records, and increased risk of suicide, homelessness, incarceration, PTSD, depression, and anxiety.¹¹ Unlike guardianship¹² or other systems designed for the care of the young, adoption is intended to affect a permanent change in status and as such requires societal recognition, either through legal or religious sanction. Historically, some societies have enacted specific laws governing adoption; where others have tried to achieve adoption through less formal means, notably via contracts that specified inheritance rights and parental responsibilities¹³ without an accompanying transfer of filiations. Modern systems of adoption, arising in the 20th century, tend to be governed by comprehensive statutes and regulations.¹⁴ Legitimacy, in connection with adoption, is that a child becomes legitimate once he is legally adopted.

3. Legal Framework for Adoption and Rights of Children in Nigeria

There was no statutory provision for adoption in any part of Nigeria before 1965. This caused a lot of hardship to parties or actors in child adoption. There was a demarcation between legal provisions and the practice of child adoption itself. This quagmire continued until 1965 when the first adoption legislation in Nigeria was eventually enacted in the then Eastern Region of Nigeria.¹⁵ This legislation was known as the Eastern Nigeria Adoption Law 1965.¹⁶ However, this legislation was not effective to address the perennial problems that bedeviled child adoption in Nigeria. The different traditions and cultures in Nigeria still carried on their different practices regarding child adoption. In other words, there was conscious need to enact an all-encompassing legislation that will address the issues in customary adoption and same be made enforceable. Therefore, just after the 1965 Eastern Nigeria Adoption Law, Lagos State promulgated an adoption law in 1968 and other South Western States subsequently followed with their own laws which had a lot in common with each other.¹⁷ This legislation did not cover the states in the Northern region and as such they did not have any legislation on child adoption. Even the international law came in concern about legislation on the child rights in about 20 years after the Nigerian 1968 enactment.¹⁸ Thus, on 20th of November 1989, the United Nations General Assembly adopted the Convention on the Rights of the Child (CRC) and in July 1990, OAU Assembly of Heads of States and Governments adopted the African Charter on the Rights and Welfare of the Child (ACRWC).¹⁹ Presently, both international instruments contain universal set of standards and principles for survival, development, protection and participation of children. Subsequently, Nigeria signed both international instruments (CRC and ACRWC) and ratified them in 1991 and 2000 respectively.²⁰ Following these commitments, the Nigeria federal government passed a comprehensive Child's Right Act 2003 into law. The Act is presumed to be culturally sensitive, compatible, relevant and in the best interest of the Nigerian child. It incorporates all the right and responsibilities of children and consolidates all laws relating to children into a single law.²¹

Child's Rights Act (CRA) 2003

The Nigerian Child Rights Act provides for child adoption under Part XII of the act. The part consists of 23 sections (124-148 of the Act). The basic provisions in these sections are that:

- vi. all state should provide services and facilities to enhance child adoption practice;
- vii. prospective adopters must make application to a court of law;
- viii. only children whose parent/guidance consent to adoption or those who have compelling reasons to be adopted can be adopted;

¹¹ Ibid.

¹² A legal guardian *Online Database* <<https://en.wikipedia.org/wiki/legalguardian>> accessed 6th June, 2023.

¹³ In the nations of the European Union and in the United Kingdom, parental responsibility refers to the rights and privileges which underpin the relationship between the children and the children's parents and those adults who are granted parental responsibility by either signing a 'parental responsibility agreement' with the mother or getting a 'parental responsibility order' from a court. The terminology for this area of law now includes matters dealt with as contact and residence in some states. *Online Database* <[https://en.wikipedia.org/wiki/parental responsibility](https://en.wikipedia.org/wiki/parental%20responsibility)> accessed 6th June, 2023.

¹⁴ Wikipedia, 'Adoption' *Online Database* <<https://en.wikipedia.org/wiki/Adoption>> accessed 6th June, 2023.

¹⁵ Chukwu, L. O. C. *Adoption of Children in Nigeria under the Child's Rights Act 2003* (Adoption of Bill of Rights, 2012) 45

¹⁶ It came into force on the 20th of May 1965

¹⁷ Iphey, 'Adoption Laws of Lagos State/Practice and Procedure, Nigerian Village Square' *Online Database* <<http://www.nigeriavillagesquare.com/articles/guest-articles/adoption-laws-of-lagos-state-practice-and-procedure.html>> accessed on 13th June, 2023.

¹⁸ Ibid.

¹⁹ UNICEF, 'Child Rights Legislation in Nigeria,' UNICEF Nigeria-Fact Sheet (2011) *Online Database* <http://www.unicef.org/nigeria/Child_rights_legislation_in_Nigeria.pdf> accessed on 4th June, 2023.

²⁰ UNICEF. The Child's Right Act: UNICEF Nigeria- Information Sheet (2007) <http://www.unicef.org/nigeria/Child_rights_act.pdf> accessed on 6th June, 2023.

²¹ UNICEF, 'Child Rights Legislation in Nigeria,' UNICEF Nigeria-Fact Sheet (2011) *Online Database* <http://www.unicef.org/nigeria/Child_rights_legislation_in_Nigeria.pdf> accessed on 6th June, 2023.

- ix. except the court sanctions it, the Act prohibit payment to facilitate the adoption of a child;
- x. adopted children register must be maintained to record child adoption activities within a court;
- xi. no adopter or any other person shall facilitate re-adopting of an adopted child except with the court's sanction;
- xii. and periodic visit to every child adopted under the Act must be maintained to ensure their wellbeing; and
- xiii. it also provides for a system of child justice administration and a child's rights implementation committees at all levels of government.²²

This has also called for domestication by the states in Nigeria. However, in 2011, eight years after the enactment of the law, only 24 out of the 36 States Houses of Assembly have passed the *Child Rights Act* 2003 into law while others are still in the process of doing so.²³ Among these states are Akwa Ibom, Lagos, Plateau, Oyo, Nasarawa, Ogun, etc. They do so because the belief that issues involving child rights protection are on the residual list of the Nigerian Constitution, thus they are within the legislative competence of the states.²⁴ It is to be noted that the issue of child rights is no longer national but transcends to the regional and international law parlance. It is notwithstanding whether all the states in Nigeria domesticate the national legislation or not. Any act or omission that abuses the right of a child is actionable, nationally and/or internationally.

Constitution of the Federal Republic of Nigeria 1999 (as amended)

The Constitution²⁵ of Nigeria also makes some provisions that guarantee the child of his fundamental rights for the reason of sharing in the same humanity. The constitution provides for the fundamental objectives and derivative principles of the state policy under its chapter 2²⁶. Sections 17 and 18 provides for social and educational objectives respectively. Some specific provisions which relate to child's rights are section 18 (3) (a) which provides that the government shall ensure 'free, compulsory and universal primary education'²⁷ to children. Also, section 17 (3) (f) provides that 'children and young persons...are protected against any exploitation whatsoever, and against moral and material neglect'.²⁸ This provision of the constitution does not make restriction to any kind of child, whether he be legitimate or illegitimate, adopted or non-adopted, orphan or non-orphan. That is to say, these provisions cover even an adopted child. However, and so unfortunate, these provisions being under chapter 2 of the constitution are non-justiciable, according to section 6 (6) (c).²⁹ But there is a leeway to this. This is by taking leverage on chapter 4 of the same constitution. Chapter 4³⁰ is about the fundamental rights of every citizen. The rights which can have much impact on the child's rights include the right to life³¹, right to personal liberty³², right to freedom from discrimination³³. Section 46 of the Constitution³⁴ makes these fundamental rights justiciable and enforceable. Therefore, adopted child's right can be effectively protected and secured.

Beijing Declaration: Fourth World Conference on Women

This is another legislation that has concern about the child's rights. Beijing Declaration provides under declarations 23, 24, 29, 32 specifically focused on girl child's rights.³⁵ Declaration 23 and 32 provides for full enjoyment by the girl child as it relates to human rights and fundamental freedoms and the protection of same against violation. Declaration 24 provides for elimination of all forms of discrimination against girl child. Declaration 29 provides for prevention and elimination of all forms of violence against girls. These provisions are so relevant to the child's rights. Though it focuses on only female child, but adopted child has some coverage based on these declarations by the Beijing. Convention on Elimination of all Forms of Discrimination against Women also gives credence to Beijing Declaration.³⁶ Nigeria ratified this Convention on 13th June, 1985.

²² Tajudeen, O. I. 'Adoption Practice in Nigeria-an Overview', *Journal of Law, Policy and Globalization*, 19 (N. P., 2013).

²³ *Ibid.*

²⁴ Nwogugu, E.I. *Family Law in Nigeria* (Ibadan Heinemann, 1990)76

²⁵ *Constitution of the Federal Republic of Nigeria*, 1999, as altered

²⁶ *Ibid.*

²⁷ *Ibid.* section 18 (3) (a)

²⁸ *Ibid.* Section 17 (3) (f)

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.* section 33

³² *Ibid.* section 35

³³ *Ibid.* Section 42

³⁴ *Constitution of the Federal Republic of Nigeria*, 1999, as amended

³⁵ *Beijing Declaration: Fourth World Conference on Women*

³⁶ Article 5 (b) of the *Convention on Elimination of all Forms of Discrimination against Women*, 1979.

United Nations Convention on Right of the Child of 1989

This convention is very useful in any discuss about the child's rights. Thus, the Nigerian Child Rights Act has built on the foundation laid by this convention. The Convention provides in its preamble part the meaning of the term 'recognizing' as it basically related to a child. The parties to the Convention ratify it by 'recognizing that the child for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love, and understanding' (bold emphasis mine).³⁷

Article XVI provides as follows:

- (i) no child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home, or correspondence nor to unlawful attacks on his or her honor and reputation.
- (ii) The child has the rights to the protection of the law against such interference or attacks.³⁸

Article 3 of CRC provides that in all actions concerning children, the best interests of the child shall be a primary consideration.³⁹ Article 32 of CRC⁴⁰ requires state parties to ensure protection of the child from economic exploitation and performance of hazardous work. This also affects both the adopted child and non-adopted child. They share equal rights as far as this Convention is concerned. The Convention was adopted in Nigeria on the 20th November, 1989.

National Human Rights Commission Act

This is a Nigerian legislation that was enacted by the National Assembly of the Federal Republic of Nigeria on the 27th day of September, 1995. This is an Act by Nigeria to establish the National Human Rights Commission, for the protection of human rights, dignity and freedoms. National Human Rights Commission Act is a kind of an encyclopedia which accommodates, gives life, makes the effects of all other legislations having to do with the child's rights, including the international law instruments. Section 5 (a) of the Act provides the Commission shall deal with all matters relating to the promotion and protection of human rights guaranteed by all the above legislation, as well as other legislation having to do with human rights. In a nutshell, Nigeria fully recognizes and is a party to international legislation (as examined above) that deal with the issues of child's rights. In other words, apart from its domestic legislation, child's right of adopted child in Nigeria is also regulated and protected by international legislation. By implication, this can be invoked accordingly as the case may be. However, the basic instrument very much operational in the country is the Child Rights Act and the Child Rights Law of different states.

4. Challenges to Child Adoption in Nigeria

Cultural Impediment or Barrier

Statutory adoption permanently severs the relationship between the child and its natural or biological parents, but most cultures do not support formal adoption under the statutory law. This is because it permanently severs the relationship of the child with its natural or biological parents. A good example of this culture is found in the South-Eastern Nigeria. For example, the complicated ethno-religious beliefs and practices of the *Igbo* people makes formal adoption difficult. Most at times, adopted children are not usually accepted as born children of adopter.⁴¹ Most of these adopted children in that society are treated as outcast and constantly reminded that they do not belong to the family. See *Aduba & Ors v Aduba*⁴² where the Respondent was adopted since when he was five years old and had married with children but the Appellants denied him the right to partake in the share of the deceased (father) property on the ground that he is not a biological or natural child of the deceased.

Non-Domestication of the Child Rights Act by some States

Despite the enactment of the Child Rights Act in 2003, there are some states that are yet to domesticate the Act to allow for a uniform adoption process across the country as well as meeting up international best practices as the Act itself is a domestication of the United Nations Convention on the Rights of Children. The consequences of this non-domestication of the Child's Rights Act are that, where there is a pre-2003 legislation on adoption, it will continue to apply.

³⁷ *United Nations Convention on Right of the Child*, 1989.

³⁸ *Ibid.* Article XVI (1) (2).

³⁹ *Prince v Massachusetts* 321 US 158 (1944) Judgment of January 31st 1944.

⁴⁰ *Ibid* Art 32 (1) and (2) (a)–(c).

⁴¹ Ojelabi, O.A., Osamor, P.E. and Owumi, B.E. 'Policies and practices of child adoption in Nigeria: A review paper', *Mediterranean Journal of social science*, vol.6, 1s1 (MCSEER Publishing, Rome-Italy, 2015)

⁴² *Aduba & Ors v Aduba* (2018) LPELR-43765 (CA)

Abuse of Adopted Children by their Adopted Parents

Most people find it very difficult to give up their children for adoption. This is because, most adopted children are being abused by their adoptive parents. Sometimes, the children are usually assaulted, physically abused.

Restriction of Adoption to only Citizens of Nigeria

Section 131(1) (d) of the CRA⁴³, makes it mandatory for the applicants to be citizens of Nigeria and in the case of joint application, both applicants should be citizens of Nigeria. This is a big challenge to foreigners who intend to adopt but they are not citizens of Nigeria. Based on the provision of the Act, only citizens of Nigeria may apply for adoption of a child. Though, there seems to have abuses of adopted children in other countries, solution does not lie in outright prohibition of foreigners from adopting and worst where it is a joint application by a Nigerian and non-Nigerian couple.

Social Stigma

There are social stigmas associated with couples who adopt due to fertility issues. They suffer one of the worst humiliations in the society and are mostly reminded of the fact that, the adopted children are not their biological children. Because of this stigmatization, couples having fertility issues would rather choose to stay alone than to adopt and become a target of scorn and humiliation. In order to put an end to this stigma, most couples who have adopted will begin to neglect the adopted children the moment they start to have their own biological children.

Non- recognition of Adoption under Islamic Law

Islamic law does not allow for adoption of children. It only recognizes fostering and guardianship.⁴⁴ The non-recognition of adoption under Islamic law denies couples or individual who wishes to adopt based on the provisions of the CRA. As a result of this non recognition, couples or individual who wishes to adopt will be left with the only option of fostering the child. Fostering does not sever the relationship of the child with its natural or biological parents but restricts the performance of parental responsibility to time and the child may be withdrawn from the custody of the foster parent at any time. The repercussion of this is that, the foster parent will continue to live in constant fear of losing the child someday to its biological or natural parents.

5. Prospects of Child Adoption in Nigeria

There are some basic things which if done will promote the effectiveness of child adoption. They are:

Awareness Campaign among all Actors

Commencement of an extensive and forceful awareness campaign among all actors in respect of the basis and contents of the CRA and state obligations to promote and protect the rights of a child can be a focus. It is also to see that State Legislatures, civil society groups, Grand Khadis and the ministries of Women Affairs, Child and Justice at the state level to tune their respective draft laws on the promotion and protection of the rights of a child by reflecting their positive socio-cultural and religious factors that seek to promote the child's interest and wellbeing.

Amendments of the Child's Rights Act

There is a bill to amend the CRA to allow for adoption by non-Nigerians. While in the case of a single application by non-Nigerian couples, adoption should be allowed subject to restriction of travelling out of Nigeria with the child. But the permission of the Court must first be had and obtained. This will give room for adoption under a statute and help check the cases of child trafficking and illegal adoption.

Orientation and Enlightenment

The series of humanitarian crises from Boko Haram insurgency, Fulani herders-farmers mayhem, militancy, flood, etc. render many children orphans and homeless. There is need to enlighten the public on how to adopt and reintegrate these children into families to avail them a touch of parental love. Otherwise, they will grow with resentment and hatred for the society due to their condition.

Functionality of the Family Court

There is also need to ensure that adequate enquiries are been conducted before adoption could be allowed so as to prevent cases of maltreatment of such adopted child or children by his/her adoptive parents.

⁴³ 2003.

⁴⁴Nwogugu, E. I. *Family law in Nigeria* (Ibadan Heinemann,1990)326

6. Conclusion and Recommendations

Though the Federal Government of Nigeria has dissuaded the procedures of child adoption from various Nigerian cultural practices to the regulation of a statute called the Child Rights Act, the procedures under the Act is still faced with a lot of challenges as well as enviable prospects. However, notwithstanding the shortcomings, there are a lot of pluses to the practice and procedures of child adoption in the present Nigerian society as compared to the antiquity. This makes the statute on child adoption and other related legislation plausible and commendable. Basically, these have been what this research work has been committed to exploring and critically examining. Thus, the researcher has carefully presented the findings in a critical and systematic order. The following measures may be useful:

- d) The governments, in collaboration with the NGOs, should raise funds to widely produce, gazette and distribute the *Child Rights Act* and Child Rights Laws of the domesticated states to all relevant stakeholders in the child protection sectors, including the motherless babies' homes and any prospective adopter. This will go a long way to promoting child adoption.
- e) The National Assembly should also resuscitate and form steering committees that will work with Houses of Assembly of all the states towards the enactment and implementation of the Child Rights Law in states which have not done so. This will discourage the traditional, customary, and ethno-religious practices on child adoption for the law to have its place.
- f) The government at different tiers should properly fund and equipped the various institutions in relation to child's right and adoption.
- g) The Chief Judge of the state should immediately takeover thorough supervision the Family Courts and ensure protection of the rights of adopted children.
- h) The governments and/or the NGOs should renovate the existing children's homes to meet the needs of children living with disabilities and to also provide them with other educational facilities. This will also encourage prospective adopters to give more value to any child they will adopt.
- i) As a way of checking the abuse of adopted children by their adoptive parents, there should be an efficient social welfare department that regularly sends the child development officers on visits to adoptive homes to conduct investigations in order to ensure that such children are not abused or maltreated.