

AN ANALYSIS OF THE EFFECT OF NON-CONFORMITY WITH STATUTORY PROVISIONS IN CRIMINAL TRIAL OF CHILDREN IN NIGERIA*

Introduction

Children are a special genre of human beings and as such the international community recognises the need to treat matters concerning them with special attention.¹ Like all human beings, children may commit crime. When they do, should they be tried in courts? If they are to be tried in courts, should the procedure of the trial be conducted in the same manner like that of any other adult human being? Extant laws in Nigeria have answered these questions through their provisions. For instance, extant laws show clearly that children can be tried for crimes committed in courts but these courts are to special types of courts dedicated to children alone.² Moreover, special procedure, different from trial of adults, are clearly spelt out in the provisions of extant laws to be employed in the trial of children. Some states in Nigeria, contrary to extant statutory provisions, are yet to establish specialized courts required for trial of child offenders.³ The result is that, in these states, criminal trial of children are held in regular courts contrary to the provisions of extant laws. And in some other cases, procedures adopted for criminal trial of adults are also employed in trial of children contrary to extant laws. The pertinent question therefore is, does non-conformity to procedures spelt out in statutory provision really matter in the criminal trial of children in Nigeria provided there is substantial conformity to extant laws? It is crucial to point out here that the procedures being referred to in this context crucially span issues such as designations of the court of trial, the composition of such court and regulation of attendance of the proceeding when a child offender is on trial. These provisions, though statutory, are sometimes not observed in the criminal trial of children though there might be substantial compliance. Substantial compliance in the sense that, for instance, although a court might not bear the nomenclature assigned to it by a statute but it still meets the requirement of the statute in terms of composition of the court. In such an instance, can we say that the requirement of the statute has been met? This issue is important to us in determining whether such non-conformity does have the effect of nullifying the proceedings and forming a ground for challenging the decision of a court in a higher court?

In this discourse, we will limit our focus to three of these breaches which are usually common in the criminal trial of children in Nigeria. First is the issue of trial in a court bearing a different name other than that prescribed by statutes even though the status of the judicial personnel⁴ manning such courts may be basically same with that prescribed by statute. Secondly, is the issue of a single judicial personnel performing what should ordinarily be done by him and other person or persons, as prescribed by statutes. Thirdly, is where the trial of the child is done in open court or members of the public given unrestrained access to the trial in violation of extant statutory provisions?

To assist us, we posed three questions: what do legislations in Nigeria provide in the criminal trial of children especially as it relates venue of trial, composition of the adjudicating body and attendance to court proceedings? What are the implication(s) of failure to conform to extant

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¹ See generally the Preamble to the United Nation's Convention on the Rights of the Child 1989.

² Juvenile Courts and Family Courts.

³ As we shall see in details later in this paper, many States in Nigeria, despite enacting the Child's Rights legislation in their domain are yet to establish Family courts as mandated under these legislations.

⁴ Used here to include Judicial officers and Magistrates.

provisions of legislations in Nigeria in the criminal trial of children especially as it relates venue of trial, composition of the adjudicating body and attendance to court proceedings? Do we need changes in extant laws in this area?

We adopted an eclectic based approach incorporating analytical, descriptive and doctrinal methods of research. We also sourced our materials from primary sources and secondary sources.

Discourse

Statutory Provisions on Criminal Trial of Children

As we noted earlier, we shall for purposes of lucidity and brevity limit our inquiry to three areas. These are areas which often constitute the bulk of procedural miss-steps in the criminal trial of children in Nigeria. These areas are discussed in this section.

Venue of Trial

Historically, Children and Young Persons Law is first Law promulgated specifically for persons that fall in the age bracket we know as children. This law was first promulgated in 1943 as Children and Young Persons Ordinance.⁵ This Law which has been replicated in several States in Nigeria, categorizes children as persons who are less than fourteen years while Young People are categorized as people who have attained fourteen years but has not attained seventeen years.⁶ The implication is that person who are seventeen years and above are not within the ambit of this Law. “Children” and “Young People” are collectively referred these Laws as “Juveniles”.⁷ These Laws also created a Juvenile Court constituted by a magistrate alone or with such other person as the Chief Judge shall appoint.⁸ From the creation of these Laws, “Juveniles” are to be tried in special courts known as Juvenile Courts.

The establishment of Juvenile Courts appears to be an innovation unique to this legislation as other complementing legislations⁹ of this era made no attempt to create special courts for the trial of children.

The enactment of Child’s Rights Act on 31st July 2003 brought a watershed in the annals of child’s rights advocacy in Nigeria. Inherent Constitutional issues meant that States in Nigeria were required to re-enact or “adopt” the Act in their domains before its impact could be felt by majority of Nigerian children. Thus the effect of Act now appears limited to children in Abuja¹⁰ while children in other parts¹¹ of Nigeria will only “feel” the effect of the Act if it is re-enacted in their States. The Act established a Family Court at the High Court and Magistrates Court level¹² and with seemingly¹³ limitless jurisdiction in both civil and criminal matters. The

⁵ Ordinance No. 41 of 1943.

⁶For instance, Children and Young Persons Law (Cap. 21) Laws of Enugu State 2004, section 2 and Children and Young Persons Law (Cap. 20) Laws of Anambra State 1991, section 2.

⁷*Ibid.*

⁸Children and Young Persons Law (Cap. 21) Laws of Enugu State 2004, section 6 (1) and Children and Young Persons Law (Cap. 20) Laws of Anambra State 1991, section 6 (1).

⁹ For instance, the Criminal Procedure Code Act and the Criminal Procedure Code Laws of the various States in Nigeria.

¹⁰The Federal Capital Territory.

¹¹The 36 States of Nigeria.

¹²Child’s Rights Act (Cap) Laws of the Federation of Nigeria 2010, section 150

¹³The ability of the court to impose fines and punishment although apparently limitless because matters before such courts can be heard and determined by a High Court judge is however still subject to the Constitution of the Federal Republic of Nigeria which may, expressly or impliedly, limit or authorize the limitations of the powers of the judges.

Child's Rights Laws of the States also followed suit in establishing Family Courts at both the High Court and Magistrates Courts levels.¹⁴

The Administration of Criminal Justice Act¹⁵ and the Administration of Criminal Justice Laws¹⁶ did not create any special court to try children accused of committing criminal offences.

Composition of the Courts

As we observed in the preceding section of this work, special courts were created by some legislations specifically to handle trial of children. We particularly mentioned two of such courts: Juvenile Courts and Family Courts. The Juvenile Courts created under the various Children and Young Persons Laws were to be manned by magistrates or by "such other person as the Chief Judge shall appoint."¹⁷ As previously observed, the Family Courts created under the Child's Rights legislations were to be at two levels: High Court and Magistrates Court. At the High Court level, the Family court shall consists of Judges appointed by the Chief Judge and assessors, who shall be officers not below the rank of Chief Child Development Officers.¹⁸ The Court at this level is deemed to be properly constituted by a judge sitting with two assessors and one of such assessors is to have attribute of dealing with children and matters relating to children preferably in the area of child psychology education.¹⁹ At the Magistrate Courts level, such Courts were to consist of Magistrates not below the rank of Chief Magistrates²⁰ and assessors, who shall be officers not below the rank of Senior Child Development Officer.²¹ At this level, the Court will be properly constituted by a magistrate and two assessors, one of who shall be a woman and the other person who has attributes of with children and matters relating to children, preferably in the area of child psychology education.²²

There is fundamental difference between the two levels of the Court in terms of matters that they may determine. The Court, at the High Court level, can only deal with matters bothering on already spelt out areas in the legislations and appeals from these areas from the magistrates²³ while at the magistrate's level they can only deal with issues bothering on areas not expressly mentioned in the legislations as falling within the powers of the Court at the High Court level to determine.²⁴

Attendance to Court Sitings

¹⁴See for instance, sections 152 and 153 of the Child's Rights Law No, 5 of Anambra State 2004 and sections 152 and 153 of the Child's Rights Law no, 5 of Enugu State 2016.

¹⁵Which replaced the Criminal Procedure Act (see section 493).

¹⁶ Which replaced the Criminal Procedure Law in States that enacted such legislation (See for instance, section 2 (b) of Administration of Criminal Justice Law No. 1 of Enugu State 2017.

¹⁷ See for instance, Children and Young Persons Law (Cap. 21) Laws of Enugu State 2004, section 6 (1) and Children and Young Persons Law (Cap. 20) Laws of Anambra State 1991, section 6 (1).

¹⁸ See for instance, section 152 (1) & (2) of Child's Rights Act, sections 155 (1) & (2) of the Child's Rights Law of Anambra State 2004 and section 155 (1) & (2) of Child's Rights Law of Enugu State 2016.

¹⁹ See for instance, section 152 (3) of Child's Rights Act, sections 155 (3) of the Child's Rights Law of Anambra State 2004 and section 155 (3) of Child's Rights Law of Enugu State 2016.

²⁰ This is not a requirement in the Child's Rights legislations of some States such as Enugu State. In Enugu State, for instance, it appears that Magistrates of any rank are qualify to adjudicate in family courts.

²¹ See for instance section 153 (1) of the Child's Rights Act and section 156 (1) of the Child's Rights Laws of Anambra State and 156 (1) of the Child's Rights Laws of Enugu State.

²²See for instance, section 153 (3) of the Child's Rights Act and section 156 (3) of the Child's Rights Laws of Anambra State and 156 (3) of the Child's Rights Laws of Enugu State.

²³ See for instance, section 152 (4) of the Child's Rights Act and section 155 (4) of the Child's Rights Laws of Anambra State and 155 (4) of the Child's Rights Laws of Enugu State.

²⁴ See for instance, section 153 (4) of the Child's Rights Act and section 156 (4) of the Child's Rights Laws of Anambra State and 156 (4) of the Child's Rights Laws of Enugu State.

Generally members of the public are allowed to attend court sittings whether you are a party or not or whether you have interest in any matter before the court or not.²⁵ Matters involving children form exceptions to this rule as we discussed here. For instance, in Juvenile Courts, no person other than the members and officers of the court and parties to the case, their legal representatives and other persons directly concerned in the case are allowed to attend court sitting.²⁶ Other persons need the leave of court²⁷ to attend. The bona fide representatives of a newspaper or new agency are not to be excluded except by special order of the court.²⁸ It is an offence to publish the name, address, school, photograph or anything that is likely to lead to the identification of the child or young person before a Juvenile Court except with the permission of the court or as required by the provisions of that statute.²⁹

Further, in Family Courts, attendance is also restricted. Only members and officers of the Court, the parties to the case, their solicitors and counsel; parents or guardian of the child; and other persons directly concerned in the case shall be allowed to attend the Court and accordingly members of the press are excluded from attending the Court.³⁰ Consequently, no person was to publish the name, address, school, photograph, or anything likely to lead to the identification of a child whose matter is before the Court except as required by provisions of the enabling legislation.³¹ It is a criminal offence to publish the name, address, school, photograph, or anything likely to lead to the identification of a child whose matter is before the Court³²

Failure to Conform to Statutory Provisions

In the part of the work, we shall be primarily concerned with the effect of failure to conform to any of the procedural requirement under the various relevant extant legislations in the trial of child offenders. Our focus will be on failure to conform to statutory procedural requirement as to venue of trial, composition of the adjudicating body and attendance to court proceedings.

Statutory provisions can it either be mandatory or directory. However as observed:³³

...there is no laid down general rule stating the formula for ascertaining precisely whether a particular provision is mandatory or directory though judges have evolved rules for guidance. It is the duty of the Court to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed and in such exercise the courts must look into the subject- matter, consider the importance of the provisions to the general object intended to be secured by the statute and upon review of the case in that aspect decide whether

²⁵ See for instance, section 36 (3) & (4) of the Constitution of Federal Republic of Nigeria 1999 as amended.

²⁶ See For instance, section 6(5) of the Children and Young Persons Law of Anambra State 1991 and section 6 (5) of Children and Young Persons Law 2004 of Enugu State.

²⁷ See For instance, section 6(5) of the Children and Young Persons Law of Anambra State 1991 and section 6 (5) of Children and Young Persons Law 2004 of Enugu State.

²⁸ See For instance, section 6(5) of the Children and Young Persons Law of Anambra State 1991 and section 6 (5) of Children and Young Persons Law 2004 of Enugu State.

²⁹ See For instance, section 6(6) of the Children and Young Persons Law of Anambra State 1991 and section 6 (6) of Children and Young Persons Law 2004 of Enugu State.

³⁰ See for instance, section 156 of the Child's Rights Act and section 159 of the Child's Rights Laws of Anambra State and 159 of the Child's Rights Laws of Enugu State.

³¹ See for instance, section 157 (1) of the Child's Rights Act and section 160 (1) of the Child's Rights Laws of Anambra State and 160(1) of the Child's Rights Laws of Enugu State.

³² See for instance, section 157 (2) of the Child's Rights Act and section 160 (2) of the Child's Rights Laws of Anambra State and 160(2) of the Child's Rights Laws of Enugu State.

³³ Bello, JSC in *Ifezue v. Mbadugha & anor* (1984) LPELR-1437 (SC) Pp. 91-94.

the provisions is mandatory or only directory...importantly, the consequences of holding a provision to be mandatory or directory ought to be taken into account...

This position was also affirmed by Ejiwunmi JSC when he opined³⁴ that “...it is my clear view that the question whether a statute is mandatory or directory falls to be determined upon a true construction of its provisions...”

Although the task of delineating a mandatory provision of a statute from a directory provision is not an easy one, the Nigerian Supreme Court offers some leeway to make such tasks easier. For instance, it has held³⁵ that the word “shall” when used in statutory provision imports that a thing must be done and that it not merely permissive but mandatory.

It is important to reiterate that the distinction between mandatory provisions of a statute and directory provisions of a statute is very important especially in a criminal trial. This is because a strict compliance with a mandatory statutory requirement relating to procedure in a criminal trial is a pre-requisite of a valid trial, and where the judge proceeded to try the accused without strictly complying the mandatory statutory provisions, the trial would be declared a nullity by an appeal court.³⁶ “Nullity” here does not mean that the facts of trial does not exist but that failure to observe any mandatory statutory provision has made it in law that the trial amounted to no trial at all.³⁷

It will apposite at this stage to examine the effects of the failure to comply with statutory requirements in the criminal trial of children in light of the position of law already highlighted. Our examination will be done using the template already established earlier in this work.³⁸

Venue of Trial

As we saw earlier in the work, the Children and Young Persons Laws established “Juvenile Courts”³⁹ in the States where they applied while Child’s Rights Laws established “Family Courts”.⁴⁰ The pertinent question is whether the failure to try child offenders in courts designated as such will vitiate the trial of such offenders? In other words, will failure to establish these specialized courts which have apparently resulted in child offenders being tried in regular courts vitiate the these trials in regular courts? In establishing Juvenile Courts, the enabling Law merely states:⁴¹

A Juvenile Court for the purpose of the hearing and determination of all matters relating to juveniles shall be constituted by a magistrate sitting with such other persons, if any, as the Chief Judge shall appoint.

It is important to note the use of word “shall” and the phrase “in all matters relating to juveniles”⁴² appears to make it mandatory that the provisions of this Law must apply in relation to trial of child offenders. This provision is reinforced by Juvenile Courts Rules

³⁴Amokeodo v. IGP & Ors. (1999) LPELR-468 (SC) Pp.13-14.

³⁵ See for instance, Nwankwo v. Yar’Adua (2010) 12 NWLR (Pt.1209) 518.

³⁶ Muhammed JSC in Omosaye v. State (2014) LPELR- 22059, Pp. 30-31.

³⁷Muhammed JSC in Omosaye v. State (2014) LPELR- 22059, Pp. 30-31.

³⁸ In section 2.1.

³⁹Fn 11.

⁴⁰Fn 15 and Fn 17.

⁴¹For instance, section 6(1) of the Children and Young Persons Law of Anambra State 1999.

⁴² The term “Juvenile” is defined to include a child and a Young Person. A “Child” is any person who is yet to attain the age of fourteen years while a “Young Person” is a person who has attained the age of fourteen years but has not attained seventeen years. See for instance, section 2 of Children and Young Persons Law of Anambra State 2016.

made pursuant to a provision⁴³ of the Children and Young Persons Law. Part 2⁴⁴ explicitly provides that its provisions “...shall apply in the case of a child or young person brought before a court charged with an offence.”⁴⁵ This Rules defines “court” to mean Juvenile Court.⁴⁶ From a combined reading of these sections, we can conclude that: first, all trial of juvenile⁴⁷ offenders from the coming into force of Children and Young Persons Law should be done at courts designated as Juvenile Court. Secondly, Juvenile Court Rules must be applied to the trial of all juvenile offenders. On the basis of this position, we contend that most of the trial of children done after the Children and Young Persons Law was fully⁴⁸ operational⁴⁹ in some States will qualify as a nullity when challenged in an appeal court for breach of mandatory statutory provision which in this instance is the venue of the trial because most of these States failed to establish Juvenile Courts to try child offenders.

Child’s Rights Laws came into the scene from July 2003 and created Family Courts at Magistrates level and the High Court level. The Court is created for the purpose of “hearing and determining matters relating to children.”⁵⁰ Interestingly, the provisions of these Laws at both Federal and State levels are declared to “supercede the provisions of all enactments relating to any other matter pertaining to children already provided for in this Law”⁵¹ The implication of this provision for criminal trial of children is that in so far as a State has enacted a legislation akin to Child’s Rights Law and with inevitable⁵² provision such as this, no other legislation in the State can govern criminal trial of children in such State. The inescapable conclusion is that criminal trial of children outside a court designated as Family Court in such States where a Child’s Rights Law legislation exists and with similar provision as already mentioned will render such trial a nullity for breach of a mandatory statutory provision.⁵³

Composition of the Courts

The Children and Young Persons Laws provides that the Juvenile Court “to hear and determine all matters relating to juveniles” *shall* be constituted by a magistrate sitting with such other

⁴³ Section 9 of Children and Young Persons Law of Anambra State.

⁴⁴ Trial of Offenders.

⁴⁵ Rule 5 of Juvenile Courts Rules.

⁴⁶ Rule 2 of Juvenile Courts Rules.

⁴⁷ Persons below seventeen years.

⁴⁸ The Child Right’s Laws adopted by many States in many States in Nigeria has whittled the effect of the Children and Young Persons Laws in these States. Some Child’s Rights Laws provide that its provisions supercede the provisions other enactment on this area and that even when such other enactments are permitted to exist, their provisions must not be inconsistent with the provisions of such Child’s Right law. Some States like Anambra State have even expressly repealed the Children and Young Persons Law see section 276 of the Child’s Rights Law of Anambra State 2004.

⁴⁹ Most Children and Young Persons Laws were operational in States during the period prior to 31st July 2003 when the first Child’s Rights Act was enacted at the Federal Level.

⁵⁰ For instance, Section 149 of the Child’s Rights Act and sections 152 of the Child’s Rights Law of Anambra State.

⁵¹ Section 274 (1) (d) of the Child’s Rights Act , section 273 (1) (d) of Child’s Rights and other Related Matters Law of Ebonyi State 2010, section 273 (1) (d) of Child’s Law of Anambra State 2004 and section 273 (1) (d) of Child’s Rights Law of Enugu State 2016.

⁵² The pr ovision are almost always replicated in these legislations.

⁵³ The use of the word “shall” in establishment of Family Courts in these Child’s Rights law legislations clearly indicate that the establishment of such courts is mandatory requirement for the operation of such laws.

persons, if any, as the Chief Judge shall appoint.⁵⁴ The implication of this is that an adjudicating magistrate, in this instance, may sit alone or with other persons subject of course to the Chief Judge appointing these other persons. This legislation will therefore not be breached if a magistrate going by the name Juvenile Court sits alone to hear and determine a matter involving a juvenile provided the Chief Judge did not appoint “other persons” to sit with him. If the Chief Judge had appointed other persons to sit with him and he still sits alone, then he will be in clear breach of this apparently⁵⁵ mandatory statutory provision. The phrase “such other persons” suggests that the Chief Judge was under a duty to appoint more than one person to sit with a magistrate at the juvenile court. If he appoints only one person to sit with the magistrate, then the requirement of this legislation would not have been met and such sitting will be in breach a statutory provision.

As we already noted, the Child’s Rights legislations established Family Courts at the magistrates court as well as at the High court level. At the High Court level, the Family court shall consist of Judges appointed by the Chief Judge and assessors, who shall be officers not below the rank of Chief Child Development Officers.⁵⁶ While at Magistrates level, such Courts were to consist of Magistrates not below the rank of Chief Magistrates⁵⁷ and assessors, who shall be officers not below the rank of Senior Child Development Officer.⁵⁸ Again, the word “shall” suggests that it is mandatory if Family Courts at all level are to be properly constituted to abide by the provisions of the Child’s Rights legislations. Thus our position is that no Family Courts will be properly constituted if it is not constituted in the way provided in Child’s Rights legislations.

Attendance to Court Sittings

Children and Young Persons Laws, as earlier noted, restricts attendance to only members and officers of the Court, the parties to the case, their solicitors and counsel; parents or guardian of the child; and other persons directly concerned in the case. This, again, appears to be a mandatory provision. The relevant section provides,

In a Juvenile Court no person other than the members and officers of the court and parties to the case, their legal practitioners and other persons directly concerned in the case, shall, except by leave of such court, be allowed to attend...⁵⁹

Again, the highlighted words suggest the mandatory nature of this provision. Consequently, a failure to comply with this provision by allowing persons who should not attend court proceedings to attend will have the effect of nullifying such proceedings.

Similarly, the provisions of the Child’s Rights legislations stipulating those who can attend Family Court proceedings at High Court level and Magistrate’s Court level limits those eligible to attend to only members and officers of the Court, the parties to the case, their solicitors and counsel; parents or guardian of the child; and other persons directly concerned in the case shall be allowed to attend the Court with members of the press being expressly excluded from

⁵⁴ See for instance, section 6 (1) of Children and Young Persons Law of Anambra State.

⁵⁵ The use of the word “shall” imports that it is a mandatory requirement.

⁵⁶ See for instance, section 152 (1) & (2) of Child’s Rights Act, sections 155 (1) & (2) of the Child’s Rights Law of Anambra State 2004 and section 155 (1) & (2) of Child’s Rights Law of Enugu State 2016.

⁵⁷ This is not a requirement in the Child’s Rights legislations of some States such as Enugu State. In Enugu State, for instance, it appears that Magistrates of any rank are qualify to adjudicate in family courts.

⁵⁸ See for instance section 153 (1) of the Child’s Rights Act and section 156 (1) of the Child’s Rights Laws of Anambra State and 156 (1) of the Child’s Rights Laws of Enugu State.

⁵⁹ See for instance section 6 (5) of the Children and Young Persons Law of Enugu State.

attending the Court.⁶⁰ Again, the key in the relevant sections in virtually all the Child's Rights legislation is the word "shall" employed to limit the persons that can attend such court.⁶¹ Our position is that this word makes the provisions in these sections a mandatory statutory provision and such failure to abide with terms stipulated in them will have the effect of nullifying any proceedings already conducted before the Court in breach of these mandatory provisions.

Conclusion

Summary of Findings

In this paper, we saw that there are laws, both at the Federal and State levels in Nigeria, regulating criminal proceedings against children⁶² in Nigeria. However, it is only Juvenile Courts created under the Children and Young Persons legislations and Family Courts created under the Child's Rights legislations that are specially designated in the enabling legislations to handle criminal trial of children. Other legislations dealing with matters relating to trial of children did not create any special court for such purposes.

We noted that the provisions of most legislation fall broadly into two genre: mandatory or directory. Failure to comply with mandatory provision of legislation is declared to render null a proceeding conducted in breach of such provision. Further, one way to determine a mandatory provision of legislation is the presence of the word "shall". The word "shall" has been held not to be permissive but mandatory by the Supreme Court.⁶³

We also discovered that most of the provisions regulating the criminal trial of children particularly as it relates to venue of trial, composition of courts and attendance of court proceedings are mandatory because of the use of the use of word "shall". On this basis, we therefore concluded that failure to follow these provisions will render the proceedings of a criminal trial of children a nullity.

Recommendations

It appears all the States in Nigeria now have Child's Rights legislation in their domain. There was initially a recent claim that two States: Kano and Zamfara do not have Child's Rights legislations in their domain.⁶⁴ However, Kano House of Assembly passed the Child's Right Protection Bill on 23 May 2023⁶⁵ while Zamfara House of Assembly is reputed to have passed such a Bill on 16th August 2022.⁶⁶ Indeed, the Governor of Zamfara State is even said to have signed the Bill into Law the following day, 17th August 2023.⁶⁷ Therefore, it may be safe to conclude that all the States in Nigeria have now enacted a Child's Rights legislation in their domain.

Most Child's Rights legislations in the States bear close resemblance to the "parent" legislation, the Child's Rights Act. A key feature in the Child's Rights Act is the creation of Family Courts to deal with all matters relating to children. However, many States in Nigeria do not have

⁶⁰Fn 33.

⁶¹ *Ibid.*

⁶² Person below 16 years.

⁶³ Fn 38.

⁶⁴ See "States and Child Rights Act" Daily Independent editorial of 3 May 2023 <<https://independent.bg/state-and-the-child-rights-act-3/>> (accessed 1/12/2023).

⁶⁵ See Jack Acheme, "Kano Lawmakers passes Child Rights Protection Bill" <<http://von.ng/kano-lawmakers-passes-child-rights-protection-bill>> (accessed 1/12/2023).

⁶⁶ "Save the Children International Applauds Zamfara State House of Assembly for Passing Child Protection Bill" <<https://nigeriansavethechildren.net/news/save-children-applauds-zamfara-state-house-of-assembly-passing-child-protection-bill>> (accessed 1/12/2023).

⁶⁷ "Matawalle signs Child's Protection Bill into Law" <<https://gazettengr.com/matawalle-signs-child-protection-bill-into-law/>> (accessed 1/12/2023).

Family Courts despite the adoption of the Child's Rights legislations in their domain. This apparently prompted Nigerian government, through the then Minister of Education to pronounce that the Federal Government of Nigeria would establish Family Courts in 16 States of Nigeria.⁶⁸ It is uncertain which legal platform the Federal Government will leverage on to fulfil this lofty aspiration for although the Child's Rights legislations of the States are similar to Child's Rights Act at the Federal level, the States are perfectly within their legislative competence to make such legislations. Moreover, the Child's Rights Act is only applicable to FCT, Abuja and not any other State in Nigeria.

The current position in Nigeria is such that many States do not have a dedicated Family Court building or even a Family Court.⁶⁹ The general practice seem to be in some cases to empower all judges and magistrate to determine cases involving children that are presented before their court while trying to observe minimal standard required for cases of such nature.⁷⁰ In some other cases judges and magistrates are dedicated for the purpose of hearing and determining only cases involving children. This situation has been justified by referencing a suggestion made by the Committee on the Convention of the Rights of the Child (CRC) which recommends that States can "ensure the appointment of specialised judges and magistrates for dealing with cases of juvenile justice" because it may not always be possible or practicable to establish juvenile courts either "as separate courts or as part of existing regional/ district court".⁷¹ We are however of the view that the suggestion from Committee on CRC will not avail in the circumstances for the following reasons. First, the requirement for establishment of Family Court is mandatory requirement of Child's Rights legislations. Failure to establish Family Court while simultaneously claiming to be operating the Child's Rights legislation and purporting to be conducting criminal proceedings or trial of children outside Family Courts is a breach of mandatory statutory provisions and can render such proceedings a nullity. Secondly, with the adoption of Child's Rights legislation in the States in Nigeria, matter involving children, particularly judicial proceedings, are now exclusively within the domain of Child's Rights legislations and as such no other inconsistent provision outside that prescribed in the legislation is allowed to operate.⁷² In view of this, we suggest that States that have not established Family Courts pursuant to Child's Rights legislations should do so urgently. Alternatively, they can amend such legislations to incorporate other courts handling issues of children outside Family Courts provided in such legislations. For instance, such amendment could be for courts to temporarily hear and determine issues involving children, both at High Court and Magistrates court levels, "pending the constitution of a Family Court in the State". In this way, we contend, the illegality that may lead to eventual nullification of most criminal trial of children for not conforming to mandatory statutory provisions will be avoided.

Conclusion

⁶⁸Modupe Aderogba, "Nigerian Government establishes Family Courts in Nigerian States" <<https://von.gov.ng/Nigerian-government-establishes-family-court-across-states/>> (accessed 2/12/2023).

⁶⁹Alkali Ibrahim Ahmed "Protecting the right of the Child: The Role of the Magistrates Court" <https://nji.gov.ng/wp-content/uploads/2021/12/Protecting-the-right-of-a-child-the-role-of-the-magistrates-court-by-Alkali-Ahmed>. Pdf (accessed 2/12/2023).

⁷⁰ For instance hearing such matters in chambers instead of open court.

⁷¹See fn 72.

⁷²The legislation typically declares the provision of the legislation superior to other legislation relating to children and any provision of any other legislation contrary to the legislation void (For instance section 273 of Child's Rights Law of Ebonyi State 2010 and section 273 of Child's Rights Law of Enugu State 2016)

There is no doubt that failure to comply with the provisions of the Child's Rights legislations of States in terms of venue of trial, composition of court and attendance to proceedings in such courts form fundamental breaches of mandatory statutory provisions in criminal trial of children. Consequently, such infringements of statutory provisions will lead to nullification of any such criminal proceedings when challenged in appellate court. Apart from this, such breaches deprive children of benefits inbuilt in the provisions of these statutory provisions. For instance, both Juvenile Courts and Family Courts provide for some personnel to assist a person presiding over the adjudication of matters involving children. Indeed, the provisions establishing Family Courts is more explicit in making the requirement for assistance to the presiding judge or magistrate mandatory. The calibre of the assistance⁷³ buttresses the reason for their mandatory inclusion in the composition of such Family Courts. Their experience and expertise will certainly be of great benefit for any judge and magistrate presiding over criminal trial of children and also benefit the children as it will help such presiding arbiter to explore non- punitive options in dealing with child offenders in line with their stage of development.

⁷³ Chief Child Development Officers and Senior Child Development Officers.