

Abstract

It is a well-established fact that children are an integral part of the family and the future of our society. As such, it is expected that every marriage produces biological children and the absence of such is often viewed as unsettling especially in Nigeria where indigenous customs and beliefs predominantly dominate our society. Unfortunately, many couples due to a myriad of reasons are unable to bear children. While those who have children may not be adequately capable to cater for them due to reasons such as death and abject poverty. To this end, adoption offers such couples an opportunity for them to have children which they can legally call their own, with the requisite rights, privileges and responsibilities over such children as if they were the biological parents. Adoption has become a common practice in Nigeria with an ever-evolving process. However, its practice and acceptance has been hampered by many hurdles ranging from legal challenges such as inconsistent state laws and time-consuming process of adoption, institutional barriers, economic challenges amongst many others. In view of the above, this work seeks to critically examine the challenges and prospects of adoption in Nigeria.

Keyword: Adoption, Children, Family, Child's Rights, Nigeria.

1. Introduction

The existence of every society today is dependent on its family life. The family has over the years been regarded as the smallest unit of society, however, its role in shaping and building our communities cannot be overemphasized. It is because of this that Family is regarded as the first and primary agent of social change. Children are a fundamental feature of the family system as they ensure the existence of the family. According to Joyce Banda¹, 'the seeds of success in every nation on earth are planted in its children'. However, it is no news today that many individuals are not privileged to have children. The reason for the absence of these children is not far-fetched, many couples due to biological reasons cannot bear children, on the other hand, many persons who have children do not have the means to cater for them for reasons of death, sicknesses and abject poverty. It is for this reason that child adoption came about.

Child adoption is the creation of family relationship between a child and another person(s) who is/are not the natural parents of the child. It is the legal process whereby a person obtains judicial or administrative authority to take the child of another person as his own and parental rights and obligation are permanently transferred from the child's natural parents to the adoptive parent.² According to the Osborne's Concise Law Dictionary³, an adoption is affected by a court order which vests parental responsibility for a child in the adopter(s) and extinguishes the parental responsibility of the birth parents. Nevertheless, child adoption can still be effected orally under customary law. Adoption is an ever-evolving process that has been in existence from time immemorial. Even in the bible, we have instances of persons who were adopted. Yet, despite the fact that adoption is not a modern-day practice, it is still being perplexed with so many issues particularly in developing countries like Nigeria. These issues range from legal, institutional sociological and even economic issues. As a result, this study aims to analyse policies and practices of child adoption in Nigeria while recommending possible solutions to these challenges for a more effective adoption institution.

2. An Overview on the Concept of Adoption

According to Nwogugu, 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. It 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.⁴ Child adoption is a universal concept that provides legal rights for adopter and adoptee to become a family. It is a unique form of child care because it does provide permanent care and parenting for the adopted child as compared to other child care institutions that provide substitute family/home to a child.⁵ In the case of *E.N. Ekanem v. S.O. Ekanem*⁶, the Supreme Court held that the legal relationship between an adopted child and their adoptive parents is similar to that of a biological child and their parents. Additionally, a relationship of consanguinity between the adopted child and all members of the adopter's family is established. As a result, marriage or sexual relationship between the adopted child and any member of the adopter's family is absolutely prohibited. Upon complete adoption procedure, the transfer of right

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¹ Former President of Malawi

² B.A Garner, *Black's Law Dictionary*. (8thedn. Minnesota: West Publishing Co. 1999)

³ P.C. Osborne, *Osborne's Concise Law Dictionary* (9thedn. London: Sweet and Maxwell, 2001) p. 19

⁴ E.I. Nwogugu, *Family Law in Nigeria* (Heinemann Educational Books, Nigeria) p312.

⁵ Aniebue, P.N., & Aniebue, U.U. 'Adoption practices in Enugu, Nigeria' *Nigerian Journal of Clinical Practice* (2008) 11(1), 5-8.

⁶ (2012) JELR 34944 (CA)

by the adoptee and the responsibility assumed by the adopter become sealed and irrevocable.⁷ Except where it is discovered that fraud, duress or undue influence was exerted on any of the party involved.

Although adoption is believed to be a statutory creation in most legal systems, the concept is probably as old as time itself, and certain ancient religions even allude to adoption in their texts. For instance, the Holy Bible captures the story of a Jewish baby found beside River Nile by Pharaoh's daughter who chose to adopt him and christened him Moses.⁸ Nonetheless, legal adoption as we have it today is a creation of statutes which gained ascendancy after the World War II for humanitarian reasons, as a solution to the predicament of children who had lost parents to the war.⁹ The major difference between fostering and adoption is that when a child is in foster care, the child's parents or the local authority still have legal responsibility for them. But when a child is adopted, all legal responsibility for the child passes to the new family. In the case of *Habiba Adesina & Anor v. Sharafadeen Amoo*¹⁰, the Supreme Court held that a foster parent is not considered a legal guardian of the child and does not have parental rights over the child.

2. Who can Adopt?

Pursuant to Section 129 of the Child's Rights Act (CRA)¹¹, the following persons are allowed to adopt a child

1. A married couple where each of them has attained the age of twenty-five years, and there is an order authorising them jointly to adopt a child; or
2. a married person, if he has obtained consent of his spouse, as required under section 132 of the Act; or
3. a single person, if he has attained the age of thirty-five years, provided that the child to be adopted is of the same sex as the person adopting; or
4. The adopter or adopters are persons found by the court to be suitable to adopt the child in question by the appropriate investigating officers.

In the case of *In Re P (a minor) (Adoption)*¹², the court held that a single person can adopt a child, regardless of their gender. Also, in the case of *Adedoyin Adepoju v. Adegoke Adedoyin & Anor*¹³, the court held that an unmarried couple can adopt a child together, even if they are not married. In the case of *Ojukwu v. Ojukwu*¹⁴, the court held that a man can adopt a child relinquishing the belief that only women can adopt.

3. Who May Be Adopted?

A careful reading of the provisions of Section 125, 127, 128 and 131 of the Child's Rights Act highlights that only a child can be adopted under the relevant laws. A child as defined by the Act is person less than 18 years of Age¹⁵. Under the Child's Rights Act a child can only be adopted based on the following grounds: the first is a person who is under the age of eighteen years whose parents or where there is no surviving parent, the guardian has consented to the adoption.¹⁶ The other is a child under eighteen years who is abandoned, neglected or persistently abused or ill-treated.¹⁷ Nevertheless, pursuant to the provisions of section 128 of the Child's Rights Act, whether child is abandoned or not, legitimate or illegitimate, such a child can be adopted as long as the necessary consents are obtained.

4. Legal Framework for The Regulation of Adoption of Children in Nigeria

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

In line with Section 4 (2), the National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution. One of the issues contained in the list includes matters relating to Children and young persons. Section 17(3)(f) of the constitution outlines that Children, young persons and the aged are protected against any exploitation whatsoever band against moral and material neglect. Paragraph (h) also ensures that the evolution and promotion of family life is encouraged. Additionally, Section 42(2) of the constitution provides that no citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth. A combined reading of these sections highlighted suffices to deduce that the constitution is emphatic on the protection of children particularly the orphaned and as such seeks to promote the practice of adoption in Nigeria.

⁷Tajudeen O.I. 'Adoption Practice in Nigeria –an Overview' *Journal of Law, Policy and Globalization* (2013) <<http://www.iiste.org/Journals/index.php/JLPG/article/viewFile/8922/9081>> accessed 17 August 2023

⁸ Exodus 2:1-10, the Holy Bible.

⁹Future of Children, 'Overview and Major Recommendations' <<http://www.princeton.edu/futureofchildren/publications/journals/article/index.xml?journalid=66&articleid=450§ionid=3082>> Accessed 17 September 2023

¹⁰(2018) LPELR-44820(CA)

¹¹Cap C21 Laws of the Federation of Nigeria 2004

¹²P v P (1978) 4 S.C. 141

¹³(1994) 2 NWLR (Pt. 334) 358.

¹⁴(2010) 1 NWLR (Pt. 1189) 472.

¹⁵CRA 2003 s.277

¹⁶s.128 (a)

¹⁷s.128 (b)

Child's Rights Act (CRA) 2003¹⁸

The Child's Rights Act 2003 duly recognizes the paramountcy of the welfare and best interests of the child in adoption proceedings, in "every action concerning a child".¹⁹ The Act provides for child adoption under Part XII. The part consists of 23 sections (125-148 of the Act). Under the Act, where an application for adoption is made, it must be in the prescribed form and be accompanied with relevant documents. These documents include: The marriage certificate or sworn declaration of marriage, in respect of a married couple; birth certificate or sworn declaration of age of each applicant; two passport photographs of each applicant; a medical certificate of fitness of the applicant from a government hospital; and such other Documents as the court may require.²⁰ The child must also have been in the care of the applicant for at least three consecutive months immediately preceding the date on which the order is made. On the receipt of the application, the court is required by Section 126 (2)²¹ to order an investigation to be conducted by a child development officer, a supervision officer and any other person determined by the court. The court shall then make an adoption order after it is satisfied that certain criteria have been achieved.

Customary Law of Ishan, Yoruba and Nnewi, Anambra State

Customary adoption may either be formal or informal depending on the locality in question. Under the Ishan Native Law and Custom as upheld in *Martin v Johnson and Henshaw*²², adoption may be affected in a meeting of the family of the adopter and that of the adoptee in which formal transfer of parental rights and obligation is done.²³ Another example of customary adoption can be seen in Yoruba culture in the case of *Akinwande v. Dogbo*²⁴ where X took the child of his deceased sister into his household and the child lived there over a long period of time. During this time, X was responsible for the child's maintenance and upbringing. Thompson J. held that the child was adopted by X's under customary law. Under the Igbo customary law, particularly that of Umudim Nnewi in Anambra State, the mode of adoption is done within the relatives and does not involve outsiders. As such adoption of children who have no blood ties with the family is usually not encouraged. Adoption under customary law overlaps with guardianship, the only difference being that while guardianship lasts for a shorter duration, adoption lasts longer. Also, while there is permanent severance of ties between the adoptee and his biological parents under statutory adoption, cultural adoption is not so strict on that.²⁵

Sharia Law

The Sharia law system does not recognize adoption and as such makes no provision for its regulation. What is acceptable in Islamic law is guardianship otherwise known as kafalah. Kafalah is similar to foster-parenting but is different in that it is of a permanent nature and hence is more stable. Kafalah also differs from adoption in that although the "adoptive" parent has all the obligations of guardianship and maintenance towards the "adoptee", there will be no severance of family ties between the child and his/her biological family in favour of the new family.²⁶ Islamic law views kafalah as "a gift of care and not a substitute for lineal descent."

5. International Laws on The Adoption of Children

United Nations Convention on Rights of a Child (UNCRC)

The Nigerian Child Rights Act has built on the foundation laid by this convention. Article 21 of the Convention mandates States Parties to recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration. Additionally, Article 26 states that States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

African Charter on the Rights and Welfare of a Child (ACRWC)

This legislation recognizes the child's unique and privileged place in African society and that African Children need protection and special care in spite of their individual differences. Article 4(1) states that in all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration. Also, Article 24 also seeks to regulate adoption and mandates that States Parties which recognize the system of adoption shall ensure that the best interest of the child shall be the paramount consideration.

¹⁸Cap C21 Laws of the Federation of Nigeria 2004

¹⁹ s.1

²⁰s.126

²¹CRA 2003 Cap C21 Laws of the Federation of Nigeria 2004

²² (1936) WACA 91,92

²³J. Ngozika, U. Okaisabor, 'Adoption, Guardianship, Fostering: Practice and Procedure -Customary Law Perspective' at the National Workshop for Area/Sharia/Customary Court Judges organized by the National Judicial Institute, Abuja 18th – 22nd March, 2019

²⁴Suit No AB/26/68 (unreported) High Court Abeokuta. 14 July 1969

²⁵ *Ibid*

²⁶ Muslim Women's Shura Council, American Society for Muslim Advancement.2011 "Adoption and the Care of Orphan Children: Islam and the Best Interests of the Child." (The Digest; August 2011) p6. <http://www.wisemuslimwomen.org/images/activism/Adoption_%28August_2011%29_Final.pdf>accessed on 29 September 2023

6. Institutional Framework for The Adoption of Children in Nigeria

The Court

The court is one of the most vital institutions involved in regulating the adoption process in Nigeria particularly where it pertains to statutory adoption. The Court vested with the power to handle issues pertaining to Adoption process is the Family Court created under Section 149 of the Child's Rights Act. Under the said Additionally, pursuant to Section 150 of the Act, the court shall be at two levels: a) the court as a Division of the High Court at the High Court level: and b) the court as a Magistrate Court, at the Magistrate level. By implication of this section, it suffices to say that the State High Courts and Magistrate Courts wield jurisdiction in handling issues pertaining to child adoption owing to the existence of the Family Court. The Court shall have unlimited jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim in respect of a child is in issue.²⁷ It shall also have exclusive jurisdiction to deal with an application for an adoption order.²⁸ The court is also vested with the power to grant an adoption order to any person seeking to adopt a child. In fact, a statutory adoption is not complete without an adoption order. An application for adoption must be made to the Court.²⁹

The State Ministries (The Ministry of Women affairs)

There is no central ministry or agency created under the CRA to regulate adoption in Nigeria. Instead, the process is regulated by various state ministries such as the Ministry of Women affairs and Social Development. In Lagos state however, the agency that regulates adoption is known as the Ministry of Women Affairs and Poverty Alleviation. This ministry plays a crucial role in adoption by overseeing and regulating the adoption process. One of the core responsibilities of the ministry is to facilitate adoption, fostering, guardianship and child custody.³⁰ An application for adoption is first made to the Welfare and Social Agency of the state where the child is to be adopted. Upon receipt of the application, the Director of Social Welfare interviews the applicant(s) in respect of their eligibility for adoption.

Orphanages and Motherless Babies' Homes

Oxford Advance Learner's Dictionary³¹, defines an orphanage as 'a home for children whose parents are dead'³². A motherless Babies' home on the other hand is a home that seeks to take care of children whose mothers are no more but the fathers are alive.³³ Their importance in the adoption process cannot be overemphasized as they reduce the effect of traumatic events on less privileged children.³⁴ They also act as intermediaries, facilitating the adoption process by connecting children in need with prospective adoptive parents. It is important to note that no orphanage or Motherless babies' home can conduct the adoption of any child without the approval of the respective State Ministry where adoption matters are domiciled in the concerned State.³⁵ Other institution involved in adoption includes Hospitals, Non-governmental organizations, the National Agency for the Prohibition of Trafficking in Persons (NAPTIP), Religious bodies and the National Populations Commission.

7. Challenges of Adoption of Children in Nigeria

Inconsistent State Laws

In as much as various laws on Adoption exists today in Nigeria, there are still inconsistencies guiding adoption process in all States of the Federation. Various States have their different laws that guide adoption and the provisions of these laws are in conflict with one another. As a result, statutory adoption in the South East differs from Statutory adoption in the North. Another issue to note is that although the Child's Rights Act exist as the principal legislation guiding adoption in Nigeria, it is yet to be accepted in all the 36 States. Despite the enactment of the Child's 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.

Redundant Legislation

The laws regulating adoption in Nigeria is very backdated when place side by side with adoption laws from other developed jurisdictions (which will be done in the subsequent part of this chapter). A careful perusal of the words of the

²⁷Child's Rights Act 2003 Cap C21 Laws of the Federation of Nigeria 2004Section 151(1)(a)

²⁸*Ibid* Section 136

²⁹*Ibid* p. 33 Section 126(1)

³⁰Editor, 'Ministry of Youth and Social Development' <<https://youthandsocialdevelopment.lagosstate.gov.ng/>> accessed 23 November 2023

³¹J. Murray, *Oxford Advanced Learners Dictionary* (9th Ed. Oxford: Oxford University Press, 2018)

³²A.A. Muhammed 'Common Practices in Orphanages: A Case Study of Bauchi Nigeria' *International Journal of Umranic Studies*. Vol 3. Issue 1. Pp.35-42.

³³*Ibid*

³⁴'Data analysis of orphanage homes fund distribution in Nigeria.' <https://www.researchgate.net/publication/365925968_DATA_ANALYSIS_OF_ORPHANAGE_HOMES_FUND_DISTRIBUTION_IN_NIGERIA>accessed 23November 2023

³⁵*Ibid* p 35

CRA for example will reveal that although it is a domestication of the United Nations Convention on the rights of a child, it is yet to embrace modern realities on adoption. For example, the Act is silent on the issue of international adoption. The Act also does not provide for consent of the child during the adoption procedure. There is also a long tedious process of paperwork that must be met before adoption is finalized. Adoption in Nigeria can take as long as 2 years compared to Adoption in Canada and South Africa which can be finalized in a year. Additionally, there has been no record of the Child's Rights Act being reviewed by the legislature since its enactment in 2003. The implication of this is that redundant provisions are still guiding the adoption institution after 20 years.

Complex Adoption Procedure

One of the major factors that discourages adoption in Nigeria is the complexities involved in the adoption process. Owing to the number of guidelines set up on how adoption is to be conducted, adoption in Nigeria becomes a time-consuming process which often scares away adoptive parents. The process of adoption is rigorous and involves a lot of paperwork. Failure to comply with any of the guidelines amounts to kidnapping or child trafficking which is a punishable offense. Or as seen in the case of *Olaiya v. Olaiya*³⁶, where an adoption procedure is not properly concluded, the court will fail to recognize the adoptee as a child of the adopter. Because of the rigorous and bureaucratic process involved in statutory adoption, many persons particularly desperate couples would prefer to follow the backdoor and pay whooping amount of money to get a child.

Corruption and Fraud

Corruption is a major cankerworm that has eaten deep into the fabrics of the Nigerian society today. Nowadays, there is hardly any institution in the country that has not been tainted by corruption this is also inclusive of adoption. Owing to the complex adoption process, some persons usually bribe their way out in order to hasten up the process. Even Magistrates are being bribed in order to favor the adoptive parents. There have also been issues of falsified documents and other unethical practices. Moreover, because the process of adoption is usually done behind closed doors with very minimal access to the public, it makes it difficult for the entire process of adoption to be transparent and fair. Although the Child's Rights Act provides that the best interest of the child must be put first in any circumstances, Children are often exempted from the adoption process.

Conflict between Customary Law and Statutory Adoption

There is reluctance under customary law in making a child to be a member of a family other than through natural processes of birth. Consequently, adoption is sometimes confused with guardianship or foster ancestry³⁷. Secondly, based on the ethno-religious practices of adoption, there is an insistence on blood relationship between the child and the person who desires to adopt them. As a result, adoption of children who are born by strangers are often frowned on and discouraged. A major reason for this is usually premised on the fear that one can adopt a child born of a criminal or a child with a viral disease and/or spiritual problem.

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. Adopted children too are not left out as they are often called names such as 'one whose biological parents cannot trace', 'a bastard child that has no root' and mostly reminded by others, that the adoptive parents are not his/her biological parents.

Religious Challenges

Nigeria is widely known for being an overtly religious nation where religious dogmas form a strong part of our belief system. It is important to note that the 2 most prominent religions in Nigeria seem to be somewhat silent on adoption. There are no conscious efforts by our churches mosques to promote adoption. As a result, adoption still sounds like a mundane concept to most adherents. In Islam, for example, adoption is banned and is not recognized in the Quran. On the path of Christianity, a lot of churches today are silent on the issue of adoption even when in the bible, we have instances of persons being adopted.

8. Prospects of Child Adoption in Nigeria

Despite the gloomy challenges presented above, government and stakeholders are working together to improve the process and attitude towards adoption. An example of this is the progress made in the Adoption Law of Lagos step which reflects a step towards improving the legal framework of adoption making it more structured and transparent. Secondly, organisations such as the Nigerian Association for Women Advancement (NAWA) are collaborating with relevant agencies to streamline the adoption process, raise more awareness and provide support to adoptive parents. Many churches have taken it upon themselves to sensitize members about the need for adoption and fostering. They have also

³⁶(2002) 8 N.W.L.R. (Pt. 782) 652

³⁷Nwogugu, E.I. *Family Law in Nigeria*, 3rd edition (HEBN Publishers Ltd., Ibadan, 2014) 343

established foster homes and orphanages to this effect to cater for the less privileged children and act as intermediaries to facilitate adoption. These efforts by the government and relevant stakeholders are commendable. Nevertheless, Nigeria still has a long way to go in improving the efficiency of child adoption particularly from the legal point of view as our laws are yet to adopt growing trends in adoption especially the issue of international adoption.

9. Summary of Comparative Analysis of Child Adoption Procedure in Nigeria vis-à-vis Canada and South Africa

An analysis of the prospects and challenges of adoption in Nigeria cannot be complete without a juxtaposition with these countries because of the similarities they share with Nigeria. Under the adoption laws of these States, adoption done at a free cost and is to be finalized within 9 months except in the case of private adoption or international adoption. The laws also allow for persons of 18 years of age to adopt and limits the need for paperwork in adoption. Adoptive parents also undergo a compulsory training course to ascertain their readiness to adopt. Most notably is the fact that children are allowed to participate in the adoption process by giving their consent.

10. Conclusion and Recommendations

This study explored the concept of adoption in the Nigerian society and the challenges hindering the adoption process. The effect of these is that the rights of children are not properly catered for which further underscores the significance on the need to remedy this error in Nigerian family system. Owing to the fact that children are the future of every society, there is therefore an urgent need to pay close attention to matters that shape their future especially on the issue of adoption because the family is the number one agent of social change and development.

In the light of the above, the following recommendations may be helpful:

- 1) The best interest of the child should remain paramount and the society and government at large should frown at any attempt to marginalize a child owing to the circumstances of their birth. As such, children should be allowed to participate the adoption process and equally give their consent.
- 2) Orphaned children are to adequately be catered for. This is possible when the government puts into consideration the funding of social homes in the annual budget rather than leave it in the hands of private individuals.
- 3) There is an urgent need for legislators to sit down and critically review the provisions of the CRA as what applied in 2003 may not be relevant in this current dispensation.
- 4) There is also a need for the government to create a central agency to supervise of ministries and institutions involved in child adoption regulation in Nigeria.
- 5) The process of adoption should become more simplified with lesser focus on multiple paperwork and more focus on integrating a computerized adoption system. This would also reduce the amount of money spent on printing, filing and documenting papers and ensure that all adoption procedures are properly documented and accounted for.
- 6) There should be government support for families who wish to adopt. This can be in the form of providing them with the services of a legal practitioner who can guide them through the process to make informed decisions and also reducing the amount of fees that should be paid for an adoption.