

**INTERPLAY OF THEORIES AND PRINCIPLES OF CHILD CARE IN AFRICA:  
A YORUBA CUSTOMARY LAW ANALYSIS\*<sup>1</sup>**

**Abstract**

*The drive towards a universal child's rights regime has necessitated the assimilation of foreign ideals by indigenous ethnic groups. As members of cultures navigate the impact of multiple laws, a major concern is that in order to survive, persons have had to abdicate historical identities that have sustained their peculiarities. Instead of development, forceful introduction of foreign child care ideals into previously incompatible environments, have run the risks of sustaining 'cultural lags' which continue to erode existing values without providing enduring alternatives. The resulting anomalies are of course against the essence of treaties that enable the rights of persons to relive their own socio-cultural heritage. This research relies on the qualitative content analysis of laws, to examine prominent theories that have shaped child care practices in Africa. This paper posits that incidents of child care are universal to all races, and they entail all that caretakers should do for children, sometimes beyond regiments of child's rights laws. The paper represents the existing theoretical discordances on the universality of children's right. Through an ethnographic study of Yoruba People of South Western Nigeria, this author accesses how Nigerian indigenous jurisdictions have catered for children, within their own informal but structured orientations. This study relates to wider constituencies of child care that justifies omnibus verses in Child's Right Treaties. The conclusion is that popular child's rights conceptions are not all servicing and without limitations. It is desirable that global stakeholders also understand underlying values that have sustained indigenous cultures. A multicultural attitude to valid laws should enable smooth applications of compatible child protection methods, without eroding fair indigenous principles that have sustained enviable family cultures, pre-globalization.*

**Keywords:** Child's Care, Child's Right, Conflict of Theories, Yoruba, Africa

**1. Introduction**

Theorists have propagated<sup>2</sup> on universal principles and values which are regarded as ideal, irrespective of positive laws.<sup>3</sup> To enable sustainable peace, the popular position is that legislations that will attend to the needs of people<sup>4</sup> must already exhibit these universal agenda. A common value assessment for all persons, irrespective of race, culture or clan was therefore included in the first international agreement on the protection of world's children. The Geneva Declaration of the Convention of the League of Nations on the 26<sup>th</sup> of September 1924 stated in its preamble that 'humanity owes to the child the best it has to give'. Although the above declaration was not binding in effect, authors and child's rights activists began to conceive universal notions on what constitutes children's welfare.<sup>5</sup> The 1989 United Nation's Convention on the Right of Children presented an international regime for children in form of its declarations;<sup>6</sup> recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>7</sup> These referenced laws, are resultantly premised on the need to promote and protect the Child's right to total wellness irrespective of its custodians influence. Caretakers became formally conferred with articulated obligations to avail the child with;

- a. **Survival Rights<sup>8</sup>**; these include the basic rights to adequate survival through articles to life, in form of food, shelter, clothing, safe water, health care.

<sup>1</sup>\*By **Aderonke E. ADEGBITE PhD**, Department of Private and Business Law, Lead City University, Ibadan, Nigeria. Email: deronkeadegbite@gmail.com

<sup>2</sup> Aquinas, Plato, Aristotle, Austin, John Finnis see generally JM Elegido (2010) *Jurisprudence* ed. Aguda Spectrum Law Series p 1-46

<sup>3</sup>*Ransome Kuti v Attorney General of the Federation* (1985) 2 NWLR pt 6 211 at 230 per Kayode Eso JSC.

<sup>4</sup> Thomas Hobbes, Grotius 1583-1545, John Locke and Rousseau 1688, 1789 and 1776 especially after the English Revolution.

<sup>5</sup>Other binding instruments are the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights<sup>5</sup> and other international regimes which applies to children After another consistent proclamation at Geneva in 1936, the United Nations in 1948 formally declared distinctively, the Universal Rights of the Child as adopted by the General Assembly on 20 November 1959

<sup>6</sup>The Children's Treaty is reputed to be the first of its kind to incorporate all forms of international human right regime on behalf of children i.e economic, civil, cultural, political and social rights.

<sup>7</sup> Childs Rights Convention 1990 in accordance with Article 49 also see the Nigerian Childs Rights Act 2003

<sup>8</sup> Article 6 and 24 of the CRC 1989

- b. **Developmental Rights**<sup>9</sup>; These means that children must be exposed to all beneficial skills, resources, and initiatives necessary for their full development and growth. These include recreation, education and other beneficial experience
- c. **Protection Rights**.<sup>10</sup> These include all the obligations on adults to ensure that children are not subject to activities that are against their general welfare and best interest. Children should therefore not be exposed to any form of discrimination, sexual, physical and psychological abuse or exploitation. Children must be protected from all forms of cruelty, neglect and victimization. Provisions on the protection rights of children prefer the availability of efficient child welfare and criminal justice systems, for the enforcement of related rules.
- d. **Participation rights**<sup>11</sup> These are in total, the civil and political rights of children to be recognized as living entities, in a typical human society. They include the child's right to a basic form of identity through a name, access to biological parents and background details, to be consulted and considered in beneficial programmes. Protection rights encompass the Children's right to physical integrity, adequate information, privacy, freedom of association, expression and the liberty to question detrimental decisions made on their behalf. Children are entitled to that freedom to express opinions and to have a say in matters affecting their social, economic, religious, cultural and political life.

The above listed are the basic categories of children's rights which remain indivisible, interdependent, interrelated and of equal importance. In addition, primary stakeholders in the enhancement, promotion and enforcement of the above stated rights of children have been recognized as<sup>12</sup>;

- a. Children-when they are capable of deciding for themselves
- b. The home- through parental/guardians responsibilities to provide for their children
- c. The society-This includes all immediate personas, non-governmental organizations, institutions, practices, cultures and values that influence the child and its primary custodians.
- d. Government-through her local, national and international policies on child care as enforceable within her territories.

## 2. Debates on the Universality or Relativity of Children's Rights

Notwithstanding the efforts of stakeholders as described, cultural relativists are concerned about the origin of most international agreements on children. Their conclusion is that universal principles for children are often instigated by western cultures. Relativists express reservations against the perceived cultural imperialism under the guise of universalism. Their perceptions on the UN declarations on children are based on the reservations that,

...today the problem is complicated by the fact that the Declaration must be of world-wide applicability. It must embrace and recognize the validity of many different ways of life. It will not be convincing to the Indonesian, the African, the Chinese, if it lies on the same plane as like documents of an earlier period. The rights of Man in the Twentieth Century cannot be circumscribed by the standards of any single culture, or be dictated by the aspirations of any single people. Such a document will lead to frustration, not realization of the personalities of vast numbers of human beings<sup>13</sup>.

The above, being the background to the international dilemma in philosophies, the ideological discordance is further manifested through the immediate establishment of an African version of the CRC 1989, that is the African Charter on the Right and Welfare of the Child 1990. ACRWC 1990 expressly referred to the inability of the UNCRC to provide for the peculiar interests of African Children. Irrespective of the content of the initial universal document, the African Charter equally recognizes children rights;<sup>14</sup>taking into consideration the virtues of their cultural heritage, historical background and the values of the African civilization which should inspire and characterize their reflection on the concept of the right and welfare of the child<sup>15</sup>.These varying ideas have influenced the laws of African state members who belong to both the UN and AU child rights constituencies.

---

<sup>9</sup> 9,15,23,28 and 31 Ibid.

<sup>10</sup> Article 2,3,19,32,33,34,36,38,40

<sup>11</sup> 7,8,12,13,14,16,17,30,42

<sup>12</sup> Article 3,45,14 and 18 of the Childs Rights Convention 1989

<sup>13</sup>Executive Board, American Anthropological Association 1947 'Statement on Human Rights' in *American Anthropologist* 49(4) 539-543

<sup>14</sup> African Charter on the Rights and Welfare of the Child. 1979.

<sup>15</sup>Preamble to the African Charter on the Rights and Welfare of the Child. 1979.The treaty unlike the CRC addressed the specific issues relating to African children including harmful cultural practices, impacts of armed conflicts, responsibilities of children to their parents, guardians and, communities, apartheid among others

Most of these countries navigate multiple child care ideologies, including their own generally unwritten indigenous laws.

### **3. Sectional Theories and Conceptions on the Relativity of Cultural Values**

Despite the high powered anti-campaigns against relativism, the main argument of the relativists still centers on tolerance. The relativists insist that insinuating that other cultures suppress the rights of children in any form amounts to intolerance. Among the conservatives are those who support the authenticity of indigenous customs over foreign interventions:

#### **The Historical School of Law**

These theorists emphasize that laws have no universal validity, but only apply solely to the area which created it. To Savigny, law cannot be created by a law giver but can only evolve from the history and through the spirit of the people (Volkgeist). This school emphasizes that the common will of the people is made manifest from their history and no sovereign can make any effective law if such law is against the spirit. He advocated that developed laws can only happen when jurists and lawyers create the technical rules which are guided by the history and objective reflections on the receiving society<sup>16</sup>

#### **Sociological School of Law**

Sociological law theorists opined that the concept of universality of reasoning in making laws is incorrect. According to Ehrlich (1862-1922) an Austrian Jurist, the center of the gravity of legal development lies not in legislations nor in juristic science nor in judicial decisions but in the values that are prominent within a society. He identified the two driving forces of laws of any society as being in its legal history and jurisprudence/the living (active) law of the people. To him 'living law' reflects the values of a society, its inner order and the cultural pattern of their rules. Sociologists advocate that it is the task of the legislators and judges to ensure that positive laws do not contradict the living laws in order not to create gaps. In other words it is their view that positive laws must reflect the social opinion, inner feelings and set up, in order to be effective<sup>17</sup>.

#### **The Revisionists**

Revisionists<sup>18</sup>, perceive the nature of customs as fluid. They opined that the description of customary law as old, indigenous and impenetrable is untrue. To this contemporary school, customary laws are the aggregate of individual norms, some of which can easily be shown to be of recent origin, instead of a conceptual whole. To them customary laws are so called because they are made up of norms which are constantly changing in response to societal dictates while their continuity is as validated and legitimated by the acceptance of the binding nature on the subjects.

#### **Modern Child's Right Activists**

Radical child's rights activists acclaim that, in reality, many societies have used cultural relativism as justification for limiting the applications of the Universal Declarations on Children<sup>19</sup>. To them, constant appeal to cultural distinctiveness reflects the cynical manipulations of barbaric, archaic, or even mythical cultural structures. According to Donnelly (1989)<sup>20</sup> on issues of rights, 'either we tolerate everything, and keep hands off, or we fight intolerance and conquer....'<sup>21</sup> In addition, the Vienna Declaration and Programme of Action at the Vienna World conference 1993 reiterates the unrelenting commitments of assenting countries to universal ideals on children rights;

all human rights are universal indivisible, interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner on the same footing and with the same emphasis. While the significance of national and regional particularities and various

---

<sup>16</sup>F C Savigny, on *Vocation of Our Age*(1814)

<sup>17</sup>F Boas & E Ehrlich, *Fundamental Principles of the Sociology of Law*(1912R Pound, *Introduction To The Philosophy Of Law* (1922)

<sup>18</sup>O Layonu, 2012. *Aspect of the Nigerian Legal System: Customary Law(as tradition) in a Modern Society*)A Public Lecture delivered at the Faculty of Law Lecture University of Ibadan.pg 18

<sup>19</sup>This is the position in the Northern parts of Nigeria majorly dominated by Muslims. Islamic nations that deny equal rights for men and women and adhere to Sharia and certain traditional practices: Yemen, Iran, Pakistan. 'The Government of the Islamic Republic of Iran reserves the right not to apply any provisions or articles of the Convention that are incompatible with Islamic Laws and the international legislation in effect. See 'www.unicef.org/iran Children's Rights is Everyone's Responsibility, says UNICEF Iran Representative on CRC Anniversary. retrieved On 12/1/2015

<sup>20</sup>J Donnelly, *Cultural Relativism and Universal Human Rights, Human Right in Theory and Practice* 109 at 118-21(Jack Donnelly ed 1989)

<sup>21</sup>J Steward (1948) 'Comments on the Statement of Human Rights' in *American Anthropologist* 50(2) 351-352 Franz Boas 1963 [1911] *the Mind of Primitive Man* New York: Collier Books. page 149,

historical, cultural and religious backgrounds must be borne in mind, it is the duty of states, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.<sup>22</sup>

Nonetheless all sectional theories on cultural values still posit that emphasis on universal principles encourages the improper imposition of sophisticated ideas on developing societies. To them the truth of a proposition of law depends on the context, theoretical frame and instrumental method, through which the proposition is expressed and on the person, groups, or culture who interprets the proposition. In other words, that no system of truth is more valid than another one and that there is no objective standard of truth or supreme/divine source of absolute truth. The relativists advise that in order to understand other cultures a researcher should leave his or her own cultural biases and attempt to understand beliefs and behaviors of others in their local contexts. No cultural standard is so sound that it should be used for the assessment of other cultures. They concluded that different groups, cultures, communities or biological species, have varying sets of harmonizing concepts. For example, it is often argued that modern Western cultures count individualism, autonomy, and personal dignity as key values, where certain other cultures see group solidarity or placating the gods as more important<sup>23</sup>. While the latter may take meekness, humility, and submissiveness to the group as virtues, the former emphasizes heroism and pride. Such differentials in philosophies are parallel. In a society with both, one is bound to subjugate the other without necessarily being compatible. On the unending debate, Sonia Harris-Short (2003) opined that, these backgrounds of largely theoretical debates concerning the use and potential abuse of cultural relativism remain a common and formidable argument. Furthermore, that existing dynamics, simply reflect inherent limitations and weaknesses of the international regime, in which the voices of the local and particular are effectively silenced<sup>24</sup> Although the influence of indigenous cultures on the implementation of universal children's rights remains the crux of the issue, the right of persons to assert their cultures is still as protected under international Law.<sup>25</sup>

#### **4. Indigenous Conceptions on Child Care in Africa: The Yoruba Customary Law System**

A prominent attribute of countries that operate multiple laws, is the existence of conflicts in legal jurisprudence. Often, this exists as a result of clashes in ideals that are peculiar to persons of different cultural allegiances. For example, instruments influenced by modern Western cultures tend to promote children's rights granted to promote individualism, autonomy, gender equality, feminism and personal dignity among others. On the other hand, receiving cultures especially in Africa manifest generally unwritten child care heritage that emphasizes group solidarity, patriarchy, spiritual divination and their oral philosophies among others<sup>26</sup>. Among Yoruba People, nature of care is not right based. Rather it is on the presumption that parents as primary care givers are divinely vested with natural instincts (based on love and affection) required to nurture the children within their peculiar environments. Such instincts are also driven by recognized natural attributes such as; *oro omo (obligations to the child)*, *osu mesan* (nine months of pregnancy and discomfort), *ojo ikunle Abiamo* (delivery or labour pain), *eje ti iya da le omo lori* (the fluids and blood the mother must have shed during delivery), among others. While no institution is established to enforce parental obligations, irresponsibility, lack or defaults of parents are subject to larger societal ridicules. Yoruba generally navigate the onus of child care based on some common values which are generally not written. Nonetheless, Yoruba non-human right constituents on child care fits into the CRC (1989) and ARCWC (1990) categorization on children's rights (survival, protection, provision and participatory). Not only this, the culture services further spiritual and philosophical activities that have sustained its own positive heritage. Unfortunately, many of such spiritual and philosophical activities cannot be pre-empted by formal right based regimes. The above description however, does not exclude the fact that the referenced culture has its inadequacies within contemporary dictations.

---

<sup>22</sup>Vienna Declaration and Programme action, UN GABOR World Conference on Humanity, 40<sup>th</sup> Session, 22<sup>nd</sup> Plenary Meeting, Part 1, 5 UN Document A/CONF.157/24(1993)

<sup>23</sup>See generally D Hartland, TO Elias, P Bohanna, & W Bascom, *Ifa Divination communication between gods and men in West Africa* (Bloomington, 1969) p 121; B Idowu, *Idols in Yoruba Belief* (London 1962), p 154, B Idowu, *On the nature of African Customary Laws*.

<sup>24</sup>International Human Right Law; Imperialist, Inept and Ineffective? Cultural Relativism and the UN Convention on the Rights of the Child. *Human Rights Quarterly* Vol 25 No 1 Feb 2003.

<sup>25</sup>Article 27 of the Universal Declaration of Human Right 1948, International Covenant on Economic, Social and Cultural Right 1966, International Convention on the Elimination of all Forms of Racial Discrimination 1965, Article 31(2), 29(1) Convention on the Right of the Child 1989, Declaration on the Rights of persons belonging to ethnic or national, religious and linguistic minority 1992.

<sup>26</sup>See generally Hartland et al, *Ifa Divination communication between gods and men in West Africa* (Bloomington, 1969) p 121; Idowu, *Idols in Yoruba Belief* (London 1962), p 154; Idowu, *On the nature of African Customary Laws*.

### Parental Obligations to Provide

Among the Yoruba, the presumed breadwinner of the home is the man. As the husband, he is expected to maintain his wife and children. However subject to few exceptions, while financial maintenance includes the provisions of necessities, a typical Yoruba father refrains from indulging children with irrelevancies. Restraint in financial exposure is expected to teach the children the scarcity and essence of money, which means that money needs to be earned. In most situations children are equally made to work in order to earn and understand the economic value of money. In polygamous homes, the father is expected to dissipate any amount as he deems fit or can afford. However, in cases of inadequacies or irresponsibility of the father, the mother augments or provides requisite funds accordingly. The father can expend personally and/or give the mother funds for appropriate use on behalf of the child. Although perceived as improper, in homes where the father earns less than the mother, the mother and the child are free to fend for themselves. However, such a father is generally perceived as an irresponsible. The basic financial dues over the child includes the money for the procurement of the basic needs of the child including food, medical and health care provision, accommodation, clothing, School fees among others. The child is expected to live in his father's house<sup>27</sup>.

Furthermore, both parents control how the child spends his/her time<sup>28</sup>. This also includes the father's discretion to allow the child to permanently or temporarily live with other persons especially family members. Mothers are generally accountable to the fathers on the whereabouts of their children. Subject to contrary agreements between parents, the father determines the faith of the child until its maturity<sup>29</sup> or afterwards. The father is believed to be the religious head of his home, by which all practices including the names and identity of the family should reflect his religious code. Where both parents practice different religions, while the father is the most prominent in the household, the mother's nurturer roles could influence the child's religious preference, unless this tendency is expressly prohibited by the father. Also, the mother mostly represents her infant in day to day activities<sup>30</sup>, as she serves the child's spokes persons and receives compliments on its behalf. Apart from circumstances that deserves patrilineal interventions or issues that are very important to the status of the child, the mother generally observes and assists her child in matters beyond the child's capacity. Both parents may serve as the child's guardian ad litem and in fact operate the child's finances till the child's maturity. The mother's liability for the child's wellbeing and good conduct is strict and unending. Although failure to raise a good child is of both parents, but more fault is especially put on the mother.

**Ex 1- *Omo to dara ti baba, eyi ti ko dara ti iya*** e-a good child belongs to the Father, the bad to the mother. Nonetheless, the father is held liable for the child's extreme misconduct, criminal or tortuous charges. Social misbehavior is often addressed as a dent on the father's family worth, name and image. On the physical health and appearance of the child<sup>31</sup>, the mother plays the major role of ensuring that the child is fed and clothed. The significance of feeding the child is emphasized by the proverb;

**Ex 2-*Bi ebi ba ti kuro ninu ise abuse buse***-So far a poor person is able to feed, his remaining concerns have become insignificant. Right from infancy the mother breastfeeds the baby and by instinct, respond to her child's demands. She is the one to cater for the physical welfare of her husband and their child. It is believed that the overall appearance of a child/family is a reflection of mother's temperament. She is vested with the discretion to dissipate resources in economical ways that all the same sort family welfare needs. She gives the first aid treatments, and monitors the child's total health. Her primary protective foresights restrain the child from harms that may occur due the child's immaturity. For healing of ailments, Yoruba parents rely on self-help, then professional care offered by *Onisegun Ibile*<sup>32</sup> (traditional herbalists). Sometimes they have to resort to neighbors who are health workers in hospitals/ clinics, the finally visit the hospital in extreme circumstances. The mother also plays a major role in sustaining the spiritual welfare of the child.<sup>33</sup> She is believed to be spiritually bonded to the child than the father. She mostly intercede for the child during religious rituals and she has a powerful influence on the destiny of the child. Yoruba's attach the mother's praying powers to her nakedness, breast, uterus, and pains among others. The mother must ensure that her child is spiritually protected from the repercussion of its own immaturity and the efforts of evil forces.<sup>34</sup> On the child's emotional and mental development, both parents

<sup>27</sup> Custodial obligations

<sup>28</sup> Participatory rights of the child

<sup>29</sup> Religious obligations

<sup>30</sup> Child's representation

<sup>31</sup> Physical maintenance

<sup>32</sup> A Onisegun analyses the symptoms and look for both the physical and spiritual cause and resolution of the issue. Healing procedures include introduction of special diets, use of herbs, spiritual birth, making incisions on the sick child

<sup>33</sup> Spiritual warfare

<sup>34</sup> A Wande (1977), *Awon Oju Odu Mereerindinlogun*, University Press PLC Ibadan 2014 p 46

should train a child who performs his duties<sup>35</sup> and chores with mental and emotional alacrity. 'Foolishness' is the state of lacking mental and emotional alacrity;

**Ex 3-***Danidani ki bani lagba kekere ni ti bani lo-* Stupidity does not begin at adulthood, it starts gradually from childhood.

**Ex 4-***A bimo ko gbon a ni ko ma ku, ki ni o n pa eniyan bi aigbon-* Why restrain a foolish child from injury/death, what kills other than foolishness. While every home loathes imbecility, a smart child is a source of pride to the family. The child should be ingrained with the ability to delay, withstand or avoid unwarranted pleasure. An emotionally mature or stable child is focused, capable of restraint and is disciplined enough to prefer only healthy desires. *Amumora* (endurance) is extolled, being the ability to withstand pain or discomfort. A male child is in fact expected to be capable of more *Amumora* than his female counterpart.

### Education<sup>36</sup>

Yoruba conception of Education is basically into four categories;

**Formal Education (Eko ile-iwe):** This is the form of education which the Yoruba perceives as western. It connotes that the child must attend a school and learn to read and write in order to meet up with contemporary demands. The willingness of parents especially the father, to send their children to school is usually instigated by the satisfaction that after formal schooling, the child would be better off than his/her uneducated peers and be able to repay requisite financial obligations and cater for his family. Formal education entails all full time and compulsory academic curriculum as mandated by the government and tutored by teachers and other school officials.

**Religious Education:** This relates to the Child's exposure to divine/spiritual denominational<sup>37</sup> rules and mandates. It is a duty shared by parents and requisite religious institutions. It is believed that a God fearing child loathes unholy attitude and alliances. A child is guided according to the caretaker's religious doctrines, and he/she is expected to live in God's will in order to evade eternal damnation.

**Apprentice /Trade learning:** This is an informal form of education that is common among persons with very low income level or minimum academic exposure. Linking a child up with a master of trade is often regarded as an alternative for a child who finds it difficult to cope with academic demands from formal schools. Learning a regular trade or vocation is perceived as cheaper and capable of making the child equally as successful as his formally educated peers. In the contemporary economic situation of scarcity in white collar jobs, it is believed that apart from school work a child should also be exposed to other vocational initiatives in addition to formal education. A child's creativity, success or dexterity in unsalaried exposures is indeed described by many as the most reliable and independent way to unlimited financial breakthrough.

**Ex 5.** *Atelewo eni ki tan eni je-* a person's dexterity in his/her hand-work can not disappoint

**Ex 6.** *Ise re omo alaseje, owo re omo ala se la-* A job feeds the worker however his trade makes him successful.

**Home training (eko ile):** This is the informal form of education that can only be inculcated into the child from home. Home-training is described as the first and original means of instilling *iwa rere* (good character) in the child. It is the most eulogized form of education amongst Yoruba. The duty to give a child good home training starts from the mother to the father and immediate family members. It is believed that the child's learns more from his/her environment, especially while watching the attitudes and actions of adults-

**Ex 7-***Esin Iwaju ni teyin wo sare-* A horse at the back conditions its race, according to the speed of the one in front

Refusing to home-train a child is regarded as an inherent deficiency which would that family to embarrassments.

**Ex 8-***Omo osan ni ko popo ba iya e-* An orange fruit causes its tree to be clubbed

**Ex 9-** *Ati kekere lati pe eekan iroko, to ba dagba tan apa o ni ka-* An iroko tree must be trimmed in its early years because it becomes untamable unreachable at maturity

Home training makes the child self-sufficient. A child with good home training is discerned through his respectful attitude to his family members and all other persons. A properly trained child possesses the traits of an *Omoluabi*. It is strongly believed that an *Omoluabi* would no problem prospering in his/her other endeavors, including his

---

<sup>35</sup> Emotional development

<sup>36</sup> APPENDIX 3.2

<sup>37</sup> This can be Islamic, traditional or Christian in approach

education, career and marital life. On the other hand, untrained children are categorized into two conditions namely, *Abiiko* (born and not trained) and *Akoogba* (trained but has not heeded). Both terms are used for recalcitrant children that have gone beyond parental control. It is believed that although the parents bear the brunt for not training their direct offspring, it is possible for a child to fall out of societal expectation due to his own refusal to abide and heed to proper guidance.

### Social Development

The 'human character' is a relevant concept in Yoruba philosophies on communal living, interaction and development. All Yoruba religions emphasize the concept of *Iwa Rere* (good attitude/behaviour).<sup>38</sup> It is believed that a child's attitude, approach and manner of response to situations/circumstances, determines its progress or retardation amongst his peers, elders and the community as a whole. A child that would be accepted by the society must consciously refrain from interacting with persons or in issues that are morally unjustifiable. That a child is socially accepted means he/she is an Omoluabi (a child that is birthed by the lord of character). In all undertakings, an Omoluabi reflects Courage, Hard work, Endurance/Patience/discipline, Kindness, goodwill, Truthfulness, Humility, respect, integrity, diplomacy, ability to decipher, contentment, good communication skills, patriotism, wisdom, diplomacy, willingness to learn and heed to correction.

### Socio-cultural Obligations towards children

**The assessment and other rites-** Traditionalists emphasise that the most important aspect of child care is that upon the birth of a child, the parents are supposed to consult Ifa. It is the Ifa Priest (Babalawo or Iya Nifa) that predicts and give directions as to the name the child should be given, the process of care, the 'dos and donts' as regards the child's progress and destiny. Also, there are exists other practices in various family clans to confirm the paternity of children.

**Naming the Child.** The naming ceremony is for the purpose of attaching a means of identity to the child. Naming rituals present the manners by which the child would be addressed. Except in extreme situations of illegitimacy where the child is disowned by the father or the father is unknown, the child is expected to bear the fathers surname. There are also other considerations on the names to be given to the child as follows;

- i. **Amutorunwa**, names that are automatically attached to the child considering the occurrences at its delivery. Especially the status of its birth.
- ii. **Abiso**-the name given to the child by its parents and others relevant persons<sup>39</sup>
- iii. **Oriki**. the traditional name attached to the child for ancestral rituals and traditional references.
- iv. **The religious name**-that is when parents especially Muslims or Christians in customary law marriages name their children after a fancied character in their religious books.

The father and the eldest male member of the parent's family play a lead role during the ceremony, where the child is formally introduced to the community and other persons in attendant. In some cases, new parents are spiritually advised to refrain from holding large naming ceremonies. It is believed that the name a child is called affects its personality.

**Circumcision:** Circumcision of the child's genitals is a cultural and societal requirement which respondents could not lay any historical foundation for. Indigenous persons are aware of the contemporary restrictions on female circumcisions<sup>40</sup>. However, the essence of circumcising both the male and female child is to remove excess skins and in order to render the genital areas neater and less subject to infection. The form of circumcisions varies from communities but it is believed that some communities for example the *Ijebu tribe* irrespective of the contemporary ban on female circumcision never had the culture of circumcising female children. Female circumcision is described as optional and subject to parent's cultures, especially the father. It is also common opinion that female circumcision restrains the tendency in girls to indulge discretionarily crave for sexual reliefs.

### Punishment<sup>41</sup>

The child is supposed to be reprimanded for improper acts or attitude. Parent's reaction to his /her misbehavior, is often determined by the level of the impropriety of that action. Mothers due to more exposure to their children tend to chastise them more than the father. The father's wrath is hence reserved for severe cases of misconduct. It is believed that the essence of punishment is a germane part of child care. Punishment is not meant to hurt the child but to train it. It is common opinion that children inherently possess wild tendencies and they can only be tamed with canes and whips;

<sup>38</sup> A poem written by Joseph Folahan Odunjo (1904–1980), a Nigerian writer and educator.

<sup>40</sup>Harmful traditional Practices Affecting The Health and Welfare of Women and Children 2005,Chapter 60 Laws of Ondo State 2006

<sup>41</sup> APPENDIX 3.3

**Ex 10.** *Aya omode ni were di si, ore ni yo lejade*- children are naturally crazy/mad and can only be tamed with canes

Respondents however described nature of corporal punishments as follows;

- a. Starting from oral warnings, by which if the child does not heed, the child may be scolded and beaten. The caretaker may apply other methods which include starving the child of necessities or luxuries.
- b. While administering physical punishment, the guardian should ensure that the child is aware of his/her misconduct that warrants the punishment.
- c. Corporal punishment can become ineffective, if children become hardened or become used to the abuse inflicted by constant physical pain.
- d. Corporal punishments may be inflicted in levels-. It starts when an infant is lightly slapped with the hand, to the use of slim canes for young ones, and includes the severe beating and canning of teenagers and older children. Designated object for inflicting pains are canes (pankere) or horse whips (koboko) among others.
- e. There is an implied delegation of the duty by parents to other persons as regards the discipline of a child who has misbehaved in public.

**Ex 11-***Omo ti a ko ko ni le ita ni yo ti kogbon wa*- A child not trained at home is bound to be taught by outsiders. Corporal punishment may be imposed by the family, other adults in the community, schools and other prominent disciplinarian or military organizations.

- f. No matter how hurt they were children should appreciate their parent's corporal manner of reflecting love and ensuring that the child refrains from unacceptable behavior. It is believed that a child that refuse to heed after being disciplined often pave ways towards their own destruction.

**Ex 12.** *eni ti a ba n bawi to warunki yo parun lojiji ni*-a child that despises counsels is set to perish

- g. Corporal punishment should not be applied on a child when the guardian is extremely provoked. There is the common perception that child punishment must be in moderation. If a care taker decides to chastise a child exactly according to its misdeeds, he could end up killing or disabling him/her.

**Ex 13.** *Ogede dudu o ya abupon, omo buruku o ya alupa*- You cannot ripen a banana by cutting it off in anger, the same way you are not expected to beat a child to death in the bid to train it

## **5. Conclusion and Recommendations**

This study adopted a multi-culturally sensitive<sup>42</sup> approach in the examination of varying child care principles. The resulting demarcations were in two parts; That one that represents the formal, universal and right based regimes and the other part which is indigenous, informal and relative to conceiving cultures. A focus on Yoruba customary law affirms notions that all cultures irrespective of their distinct methods adhere to a similar and natural outline for child care. For example, the Yoruba unwritten tendencies effectively reflect the exact child care concerns of the CRC 1989 and ACRWC 1990. However, the unwritten constituencies of customs are able to accommodate philosophical concepts beyond the coverage of formal treaties. Example of concepts which are underestimated in treaties include, (a) the indigenous approaches to (b) education, (c) social development, (d) womanism and (e) child work among others. This research also reveals generally abusive circumstances that have been unjustifiably presented as attributes of the whole ethnic group, especially by persons who are not familiar with the applicable customary law. For example, many incomplete studies still present unfounded generalization about Yoruba customary law and rituals, female circumcision, child labour, and corporal punishment and others. It is worthy to note that, indigenes have also insisted that globalization which has encouraged the discard of many traditional methods of child care has led to the current situation of juvenile delinquencies, high STD rate, unemployment and violence among youths.

This study therefore posits that no system can be entirely bad, while another is entirely proper. These limitations justify why written laws also allow omnibus clauses that allow all practices that favour the child while also prohibiting all harmful ones. The goal should hence be on how to channel the varieties in the legal systems through a single framework. Multiculturalism, as a choice in international policies involves the recognition of the diversity in cultural groups in order to present same as relevant identities in the process of positive transition. It is in the hearts of current international discourse that the respect for such diversities is necessary for the success of International Laws.<sup>43</sup> This intermediate approach is presumed as capable of assisting in the process of balancing

---

<sup>42</sup>Dealing with the social questions or problems though a focus on the cultural and environmental factors rather than on the personal characteristics of the issue.

<sup>43</sup>Declaration of the Principles of International Cultural Co-operation, Article vi Document 14 UNESCO 1966, Preamble to the Universal Declaration on Cultural Diversity UNESCO, 2 Nov 2001, Article 2(1) Convention on the Protection and Promotion of the Diversity of Cultural Expressions, adopted 20 October 2005 (entered into force 2007)



in between the receiving cultures and the introduced international standards. This would also encourage recent campaigns for progressive interactions amongst the distinct laws with similar jurisdiction. Multiculturalists recommend cooperation of varying laws for the benefit of the nation as a whole. Although ideological clashes are resolvable by judicial institutions, there is the need to prevent the further frustration of foreign ideas by irresolvable institutional conflicts. The appropriate respect for individual cultures has consequently been identified as the possible panacea to the reduction of the need to choose between cultural allegiances and national choices. The above does not suggest however, that the study agrees with the relativists on the essence of tolerance. This work aligns itself with the position that 'either we tolerate everything, and keep hands off, or we fight intolerance and conquer...'<sup>44</sup> This will also be with the goal of finding out the parts of the Yoruba cultures which are not sustainable in a modern society and replacing them with new ways. However, the study will not insinuate that such changes should entail a total eradication/abdication of the existing culture for entirely new concepts. It is to enable a definite posture for Yoruba Customary Law within a modern child right's protection Framework.

---

<sup>44</sup>J Steward (1948) 'Comments on the Statement of Human Rights' in *American Anthropologist* 50(2) 351-352; F Boas 1963 [1911] *The Mind of Primitive Man* New York: Collier Books. page 149,