

THE CONCEPT OF CHILD ADOPTION IN NIGERIA AND ITS LEGAL EFFECT UNDER THE CHILD'S RIGHTS ACT, 2003

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ABSTRACT

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. Many reasons account for child adoption, some of which are, orphaned children due to death, or disappearance of parents and infertility among couples. This article while utilizing doctrinal research approach discovered that many do not understand the effect of child adoption, thereby relegating its effects to mere temporary relationship like child fosterage, custody and guardianship of children without more. This article found that by the statutory provision and judicial pronouncements; upon the grant of an order of adoption, the rights, duties, obligations and liabilities of the adopted child move permanently from the natural parents and vest in the adoptive parent and *vice versa*. It is noted that the effect of adoption includes the rights of the child to take up the family name of the adoptive parent as his/her surname henceforth and the right to inheritance. The concept of child adoption is not without challenges ranging from resistance by many customary laws and religious practices and beliefs, prohibition of inter-state and inter-country adoption and the tendency of exploitation. The article recommends among others that for it to amount to adoption, same must be properly documented and registered. Also, the CRA should be amended to give room for inter-state or inter-country adoption.

Keywords: Child, Child Adoption, Child Fostering

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INTRODUCTION

Adoption is a common practice all over the globe from time immemorial, however, the customs or laws and incidence of adoption varies from place to place as well as at different periods. It was customary for the society to care and nurture children who has no parent or whose biological parents cannot care for them.

There are practices which involves the transfer of children from one person to another for a number of reasons in Africa and Nigeria in particular. One of the practice is the situation where a girl-child may be given to or accompany a married sister upon marriage to her matrimonial home for the sake of taking care of her as a younger child. In some cases the younger girl-child may accompany a married sister to her matrimonial home for the sake of baby-sitting (child minding).ⁱ In most cases such a younger girl-child may never return to her parents again, the elder sister or brother as the case may be, takes over the duties and responsibilities of the girl even including giving consent to her marriage on behalf of their parents.

In many legal systems today, adoption is a creation of statute. It was unknown to English Common Law as well as under Islamic Law.ⁱⁱ The law regulating adoption vary from State to States in Nigeria, it may be perfected in line with statutory provision as well as the practice under customary law, which must be in accordance with the provision of the law. It is worthy to note however, that before the enactment of the Child's Rights Actⁱⁱⁱ (CRA) in Nigeria, various States of the Federation enacted their adoption laws.^{iv} Most of these adoption Laws of the various States are substantially similar in their provision with little significant differences.^v Upon the enactment of the CRA and the various Child's Rights Laws by most of the States in Nigeria, the various adoption laws hitherto in existence before the enactment of the CRA seems to have been unified as a single statute, more so, that the CRA proclaim itself as the supreme law on any matter with respect to the rights of the child,^{vi} adoption and fosterage inclusive.

The CRA enjoins every State Government and the Federal Capital Territory Abuja to establish and maintain a service designated to meet the need of the child who has been or may be adopted as well as making provision for the protection of the rights of the parent/guardian and persons who has adopted or may adopt a child.^{vii} The process of adoption is often initiated with an application usually made to the court in a prescribed form, which is usually accompanied with the birth certificate of the applicant. Where the applicant(s) is/are married couple, their

certificate or sworn declaration of marriage; two passport photographs of each applicant and other documents and information as the court may require, shall be filed.

Upon the receipt of the application for adoption, the court shall thereafter order an investigation to access the suitability of the applicant as a prospective adopter as well as the situation of the child to be adopted. It is the responsibility of a Child Development Officer, a Supervision Officer and any other person the court deem fit to undertake the investigation,^{viii} although, the CRA did not provide the procedures as to how, what or who should be investigated.

CONCEPTUAL CLARIFICATIONS

Child Defined

The word 'child' is defined as an un-emancipated person under the age of majority.^{ix} The age of majority is the status of one who has attained the age (usually 18) at which one is entitled to full civic rights and considered legally capable of handling one's own affairs.^x At common law, a person who has not attained the age of 14 is a child.^{xi} A child is a young human being or person who is not yet an adult in order to take responsibility. Children are distinguished from adults who are fully grown persons; who are legally responsible for their actions.^{xii}

There are two principal factors for determining the age of maturity, first, the age limit usually reckoned with the time of birth and secondly, the maturity factor, at which a person can be said to be capable of handling his affairs and taking responsibility for his actions and inactions. However, various laws in Nigeria define the word child in different ways for particular purposes. The Children and Young Persons Law^{xiii} states that a 'child means a person under the age of fourteen years.' It went further to define a 'young person' to mean '...a person who has attained the age of fourteen years and is under the age of eighteen years.'^{xiv}

The CRA^{xv} defines the word child to mean 'a person under the age of eighteen years.' Many states of the Federation of Nigeria in their own Child's Rights Laws,^{xvi} also adopted the age limit of eighteen years as provided by the Child's Rights Act (CRA). However, in contradistinction, *Akwa-Ibom* State Child's Rights Law defines a child to be a person below the age of sixteen.^{xvii}

In all, the Convention on the Rights of the Child, defines a child to mean... 'every human being below the age of eighteen years unless under the law applicable to the child, majority is attained

earlier.^{xviii} In spite of the divergence above, this article therefore defines a child to mean a person who has not attained the age of eighteen irrespective of culture, religion, race or place of origin.

Child Adoption

Child Adoption is the creation by judicial order of a parent-child relationship between two parties who usually are unrelated; it is the relation of parent and child created by law between persons who are not parents of the child. Adoption creates a parent-child relationship between the child and the adoptive parent with all the rights, privileges and responsibilities attached to that relationship.^{xix} Adoption is the process by which the legal relationship between a child and his natural parents is severed and re-established between the child and a third party (ies).^{xx} The significance of adoption therefore, is the creation of legal relation of parent-child between persons who are not so related by nature or blood affinity. Adoption proceeding usually effect a new status of relationship, which disconnects the adopted from his natural parents.

The concept of adoption is closely related with other concepts like guardianship, fosterage in relation to the custody of the child. However, they differ from adoption in the sense that adoption permanently severe the relationship of the child from his natural parents, while guardianship or fosterage are temporary. Adoption is an irrevocable and lifelong decision of importance to the future of the child and the adopter or family.^{xxi} Adoption involves the permanent transfer of all parental duties, rights and responsibilities from the natural or biological parent to the adopter, whereas fosterage is most often temporary and may not be a complete transfer of rights.

Child Fostering

Fosterage in relation to the child means the taking over of the responsibilities another person's child by taking the child into ones home for a period of time, without attendant implication of becoming the child's legal parents. It is to give care or to nurture the growth and development of another person's child in form of a parent.^{xxii} A child may be placed in a foster care funded by the child warfare program by providing substitute care for one reason or the other. The Government may decide to provide foster care for abused and neglected/abandoned children,

who are so removed from their parents by the order of the court. On the other hand, parents or guardians may voluntarily place their children for foster care temporarily for some reasons.^{xxiii}

Although, there could be fostering by court order, fostering does not create permanent relationship between the child and the foster parent. The incidence of child fosterage does not admit of the adopted child the right to inheritance and does not take up the surname of the fostered parents.

JUSTIFICATIONS FOR ADOPTION

There are situation where parent may be unable to take care of their children, as such, children are sent off to other well-to-do families, whether related or not, in order to secure the life and future of the child. At other times, fostering and adoption may be a way of forming links among kindred and to create bond among extended families.^{xxiv} Fostering or adoption may serve as a means of redistribution of children from families with too many children to families with few.^{xxv} Children may be adopted or fostered to provide company or labour, especially for infertile and older women.^{xxvi} A fertile woman may give a child to a sterile woman or an older woman who has no younger child, the gift is usually seen as a great benevolence. In this sense, adoption serves to adjust the imbalance of natural maternity. Under customary practice of adoption, ties with the natural parents are not however, broken. According to Wegh,^{xxvii}

A child adopted in babyhood, must be taught who its natural parents are, and incest prohibition are defined through them. They receive visits and gifts from the child and they must be informed, if not consulted, when the child is married.

The bond between the adopted child and the adopter is some ways stronger than the bond between the child and its natural parents. The relationship possesses the character of a sacred gift. The adopted child does not leave his adopted parent. Where the adoptee returns to the natural parent, both the natural and adoptive parents must do everything possible to return the child to his adoptive parents.^{xxviii}

Another reason for adoption in the past and in recent times is associated with famine, incidence of war, outbreak of diseases ravaging a particular society. It is observed that the past three to four decades, Africa has experienced societal disruptions. Several African Countries fought both internal and external wars, experience famine as a result of drought and many other epidemics. As a result, economies of many African nations broke down, resulting in high level of unemployment and famine or poverty. This situation led to the displacement of hundreds of thousands who flee from their homes. The present global pandemic (Covid 19) may necessitate the adoption of children whose parent died as a result of the global outbreak of Corona-Virus popularly called Covid 19.

Diseases like, Acquired Immune Deficiency Syndrome (AIDS) ravaged most Sub-Sahara African Community. It was estimated that about 14.8 million children in Sub-Sahara Africa lost one or both parents to AIDS^{xxxix} and the children became orphans. In such situation, adoption is the utmost option in order that some of the children mostly affected are given opportunity to grow and develop in a home and family unit.^{xxx}

Today, unwanted babies by unmarried young mothers who cannot keep or take good care of their babies or babies whose putative father are either unknown or cannot be traced, even where known, who do not want the baby and are unwilling to take care of the baby become automatic subject of adoption. Lately there is a twist to the fortune of the unwanted babies leading to the emergence of '*baby factories*' in Nigeria where human new-born are commercialized in the manner of agricultural products in the open market.^{xxxi} Many *baby factories* operate under the guise of orphanages to perpetuate the crime and human rights violation.^{xxxii} Adoption laws and practice is in dire need at this moment for the protection and promotion of the rights of the child.

Infant babies of insane mothers who have no relatives available to provide care for the babies are recommended for adoption by doctors.^{xxxiii} In order to protect children who are in danger of harm, they are usually, placed in foster care where the State would temporarily assume guardianship *in loco parentis*. The idea is that the child would ultimately be reunited with his parents when the situation improves. Parental rights may be totally revoked in situations where reintegration of the child with the parent will not be in the best interest of the child. For example, where a parent is found to have been habitually assaulting or abusing the child (physically or sexually), parent who works in brothels and places that pose negative effect on

the morals of the child or parents who are drug addict and other social vices; may be denied the rights to custody of the child. In general children who are in danger of harm may by order of the court be taken out the custody of their parents or guardians for the safety of the child.^{xxxiv} In a situation like this adoption may be the proper option in the best interest of the child because it offers permanent parental and family support to the child.

PERSONS WHO MAY ADOPT AND BE ADOPTED

Persons who may make application for adoption must fall within the precinct of the law, a person who is/are:

- (a) Married couple or unmarried persons may apply for an adoption order; where an application is by a married couple, each of them must have attained the minimum age of twenty five years and there is an existing order authorizing them jointly to adopt a child.
- (b) A married person may by consent of his/her spouse been first sought and obtained be granted an order to adopt.
- (c) A single person who has attained the age of thirty five (35) may be granted an order of adoption provided that the child to be adopted is of the same gender as the adopter. He/she must be at least twenty one (21) years older than the child to be adopted.^{xxxv}

The court may make adoption order in respect of the following classes of children:

- (a) Children whose parents or guardians consents to the adoption; or
- (b) Children abandoned, neglected or the child who is persistently abused or ill-treated.
- (c) Also where there are compelling reasons in the interest of the child that adoption is the best option.^{xxxvi}

The term abandoned, neglected or abused child may seem too ambiguous. It usually refers to situations where a child or baby is abandoned by a parent or care giver with the intention of permanently separating from the child.^{xxxvii} It suffices to say that a child may be placed for adoption, where he has no parent or a guardian or has been abandoned by his guardian or parent after reasonable inquiries and the parent/guardian cannot be found.

The age of persons to be adopted may begin from zero to less than 18 years. However, adoptions of adults are permitted in other jurisdictions. For example in Malaysia, a child is

defined under Adoption Act^{xxxviii} as ‘an unmarried person under the age of twenty one ...’ This definition under the Adoption Act of Malaysia is a serious divergence from the CRC,^{xxxix} it therefore means that in Malaysia a person who is 20 years and above may be adopted so long as the person is unmarried.

A sole applicant for an adoption order must not be less than thirty five years of age and the child to be adopted is of the same sex or gender with the applicant.^{xl} This may forestall the possibility of sexually abusing the adopted child. Although, with the rise of gay and same sex marriage today, a lot needs to be done to forestall the possibility of sexually abusing adopted children by their adoptive parents. In the case of joint applicants, none of them must be less than twenty-five (25) years old and must be at least be twenty one (21) years older than the child. The applicant, or in the case of joint application, both or, at least one of the spouse and the adopted child must be resident in the same state.^{xli}

Applicants for adoption order must have been resident in the State where the application is made for a period of at least five years penultimate the application; the same rule applies to joint applicants. It must be noted that the applicant or where it is joint application, both of them must be citizens at Nigeria.^{xlii} The implication of the above provision is that a Nigerian woman married to an alien (husband) cannot present a joint application for adoption with the foreign husband because the foreign husband is not a citizen of Nigeria.^{xliii} It seems there is a way out, at best the wife who is a Nigerian may by sole application seek an adoption order in respect of any child, while the consent of the foreign husband may suffice to grant and adoption order in favour of the woman, all things been equal.^{xliiv}

An application for adoption shall not be granted unless the child in respect of the adoption order has been in the care of the applicant for a period of at least three consecutive months immediately preceding the date on which the order is to be made. Also, the applicant must have at least twelve months before the making of the order, informed the social welfare officer of his intention to adopt the child.^{xlv} Where a sole applicant for an order of adoption is married, the court may refuse to exercise the discretion to grant the order unless the consent of the spouse of the applicant is first sought and obtained.^{xlvi} Also, the court may require that the consent of person(s) other than the parent or relative of the child who appears to the court to have any right or obligation in respect of the child under an order of the court or any agreement or under

customary law, to be first sought and obtained where necessary. Otherwise, the court may refuse to grant the application for the order of adoption.^{xlvi}

The requirement of consent, may be given either unconditionally or subject to some condition, especially with respect to the religious persuasion in which the child is expected to be brought up in line with the wishes of the parents or guardian of the child.^{xlvii} However, it may not be necessary for the person whose consent is required to know the identity of the applicant for an adoption order. Although lack of consent may vitiate a pending application for an adoption order, nonetheless, it is not in all cases that consent may be required. Where it is satisfied that the person whose consent is required cannot be found or incapable of giving consent or where a person is unreasonably withholding consent, the court may dispense with the requirement of consent and thereafter proceed to granting an order of adoption. Interestingly, the incidence of adoption is not a common practice or a welcome practice in Nigeria. Socio-cultural, religious practices and the value system of Nigerians seems to be the origin of the clog against adoption practices in Nigeria. For example an act of adoption is seen as or a pointer to infertility of couples, this is viewed with great scorn and stigmatization in Nigeria.^{xlviii} For instance, in the South Eastern Nigeria, the complex ethno-religious beliefs and practices constitute great threat to adoption practice. The culture of the people do not view or accept adopted children like those of the natural children of the adopter. Adopted children are treated as bastards and out-cast,¹ consequently, they are discriminated against, maltreated and force to accept that they do not belong to the family they called their come.

One other factor against child adoption in Nigeria is the myth or belief that adopted children are usually those birthed by drug addicts, convicts, lunatics, prostitute and imbeciles. Where the adopted child is already fixed into a negative class of persons, anyone associating with such will be stigmatized and laughed to scorn, disrespected and looked down upon.

LEGAL EFFECTS OF ADOPTION

Adoption of a child is a process by which the legal relationship between the child and his natural parent is severed and same re-established between the child and third a party.^{li} Upon the grant of the application for adoption, the rights, duties, obligations and liabilities of the parents of the child legally and naturally terminates and vests in the adopter. The Law provides:

1. On an adoption order being made:
 - (a) All rights, duties obligations and liabilities including any other order under the personal law applicable to the parent of the child, or any other person in relation to the future custody, maintenance, supervision and education of the child, including all religious rights, right to appoint a guardian and to consent or give notice of dissent to marriage, shall be extinguished; and
 - (b) There shall vest in, and be exercisable by and enforceable against the adopter;
 - (i) all rights, duties, obligations and liabilities in respect of the future custody, maintenance, supervision and education of the child; and
 - (ii) all rights to appoint a guardian and consent to give notice of dissent to marriage of the child, as would vest in the adopter as if the child were a natural child of the adopter, and in respect of those matters, the child shall stand to the adopter in the relationship of a child born to the adopter.^{liii}

The implication of the above is that there is a total cessation of the rights, duties and responsibilities of the natural or biological parent in totality and same vest in another, the adoptive parent who is now the parent of the child in all ramifications. Where a husband and wife are joint adopter of a child, they are jointly responsible for the custody, care, maintenance, education and health care of the child as well as the right of access to the child. It must be reiterated that the above incidence of adoption is not totally acceptable by most customs and traditions as well as religious practices of many in Nigeria. Socio-cultural factors and the value system of most people in Africa is that blood bond cannot be severed even at death, as such, whatever may be the situation an adopted child cannot be totally alienated from its biological parents.

In all respect the adopters stand to and for each other in the same relationship as they would have stood where the adopted child is their natural child and in respect of all matters. The child also shall stand to the adoptive parent in all relationship like a child born to the adopters. The adopter has the right to change the name of the adopted child to be called and addressed by the

name of the adopter. This is made possible because the adopted child is legally entitled to inherit the estate or property of his adoptive parent upon death.^{liii} The law recognizes and treats the adopted child as a child born to the adopter. In *Aduba v Aduba*^{liv} the respondent who was the plaintiff at the trial High Court in Imo State was received and accepted by a couple Mr and Aduba Ohagwan Nwacmere and Mrs Felicia Nwugo Aduba from the Ministry of Health and Social Welfare in 1972. Aduba Ohagwan Nwaemere married two wives, Felicia Nwugo Aduba and Ihuoma Aduba; Felicia Nwugo Aduba was the first wife, she had a son for Mr. Aduba Ohagwan Nwaemere who died at a very young age; but she has other female children. The second wife Ihuoma Aduba had many male children, including the appellants. After the death of the only male child of Felicia Nwugo Aduba, she and her husband Aduba Ohagwan Nwaemere adopted the respondent in 1972, which was documented in 'Exhibit F' as tendered in court. Upon the adoption, the respondent was given the name of the family Aduba as his surname and was absorbed as one of the children of the family, he was trained, and nurtured by Mr Aduba Ohagwan Nwaemere and his wife Mrs Felicia Nwugo Aduba as their son and he grew up with the other children into adulthood. In 1990, the said Titus Aduba (the adopted son) got married and gave birth to his own children, who equally were treated as the grandchildren of Aduba Ohagwan Nwaemere and no body challenged his status as a member of the family of Aduba Ohagwan Nwaemere until the death of both parents. After the death of Aduba Ohagwan Nwaemere and his wife Felicia Nwugo Aduba, the Appellants, started objecting to the membership of the respondent as a member of Aduba Ohagwan Nwaemere family. They excluded the respondent from the share of the estate of their father late Aduba Ohagwan Nwaemere; as such the respondent challenged them at the trial court and won, the declaration of the trial high court that the respondent is an adopted son of the late Aduba Ohagwan Nwaemere and his wife late Felicia Nwugo Aduba as such, entitled to inherit the estate of late Aduba Ohagwan Nwaemere. Dissatisfied with the judgment of the trial court the Appellants appealed to the court of appeal Owerri Division; the court of appeal held per Mbabe JCA in a lead judgment thus;

I think this case is at the root of national public policy and constitutional rights of persons/citizens in our jurisprudence. Where a child taken from an orphanage or social welfare department, is adopted or received and integrated into a family setting and given a name or allowed the name of

the family of the adaptor(s), or person who shows love and benevolence to the unfortunate child, he should not and cannot be left at the vice or mercy of the other children/relations of the adaptor(s), be they biological children or other beneficiaries of the estate of the adopter (s). It would be wrong, in my view, to remind and play back the sad and ugly circumstances of the child's birth, taunt, mock and discriminate against him, and subject him to ridicule, just because somebody wants to deny him the benefit(s) of the estate of his adopter.^{lv}

In fact, in matters of adoption, even where the disposition of property is done before the date of adoption order, reference to the 'child' or 'children' of the adopter, shall unless the contrary is proved includes a reference to the adopted child. This is because the law regard that a person related to the adopted child in any degree shall unless the contrary intention is proved or appeared from other facts, shall be construed as a reference to the person who would be related to him in that degree if he were the natural child of the adopter and were not the child of any other person.^{lvi}

For the court to hold that a person entitled to share the estate of a supposed adopter, it must be shown or proved that there was an actual adoption as required by law. In *Olaiya v Olaiya*,^{lvii} the court held that '*proof of adoption is essential for the adopter and the adopted person or any other person for the purpose of devolution of property on the intestacy.*' In the above case, the plaintiff alleged that there was an adoption of two children Sarah and Emmanuel, by herself and her late husband Solomon Kayode Olaiya. The first respondent married late Solomon Kayode Olaiya sometime in 1963 under the Marriage Act, in England, they later relocated to Nigeria, first in Kano and later to Lagos, they lived together and according to the 1st respondent, they adopted two children, Emmanuel O. Olaiya and Sarah O. Olaiya until the husband died intestate in 1981. The 2nd and 3rd respondent (are brothers of late Solomon Kayode Olaiya) took over the estate of late Solomon Kayode Olaiya and they started managing same without commuting with the 1st respondent (Mrs. Cornelia T. Olaiya). The action of the 2nd and 3rd respondent angered the 1st respondent who thereafter took out a Writ at the High Court of Lagos State against the 2nd and 3rd respondent seeking among other declarations that:-

The 1st respondent (Plaintiff) along with the children of late Solomon Kayode Olaiya; Emmanuel O. Olaiya, Sarah O. Olaiya and Remilekun Olaiya are the exclusive beneficiaries of the estate of the said late Solomon Kayode Olaiya who died intestate in 1981.

To the contrary, the 2nd and 3rd respondents contended that their brother, late Solomon Kayode Olaiya had only one biological daughter Miss Remilekun Olaiya and that to the best of their knowledge their late brother never at any point adopted Emmanuel O. Olaiya, Sarah O. Olaiya. In deciding the issue the Supreme Court held:

You cannot pick children anyhow. Since Emmanuel and Sarah are not biological children of the plaintiff and her late husband's, evidence of adoption was material. Proof of adoption is essential both for the adopter and the adopted person or any other person for the purpose of devolution of property on the intestacy... the burden of proof rested on the plaintiff/respondent who substantially asserted the affirmative of adoption of Sarah and Emmanuel. ... if she could tender a certified true copy of the marriage certificate between her and the deceased husband it was strange that she was unable to tender any documentary evidence establishing the adoption or offering any acceptable evidence to that effect...^{lviii}

In the face of the failure to prove the adoption of Sarah and Emmanuel beyond question, therefore the order of the trial court which included them as co-beneficiaries of the estate of the deceased Solomon Kayode Olaiya, with the appellant and the 1st respondent is set aside; that is, the beneficiaries of the estate of late Solomon Kayode Olaiya, are Mrs. Conelia T. Olaiya (1st respondent) and Miss Remilekun Olaiya. On the whole, for there to be adequate proof of adoption, there must be available evidence beyond question, to substantiate the actual adoption, preferably the 'Adopted Children Register'^{lix} or a certificate of adoption to that effect.

It is interesting to know that what people refer to as child adoption under customary law and other social practices in the real sense of does not qualify as adoption. The situation where an individual takes over, care for and housed destitute children or orphaned children even from

infancy up to adulthood does not in the strict legal sense qualify as child adoption. It may at best be regarded as custody and guardianship or foster care.

The legal effect of adoption bears the similitude of an agricultural practice known as *grafting*; grafting is an agricultural practice whereby the budding of another tree or other plant is inserted into another plant for it to continue to grow and bear fruits on the stem of another mother plant. It is the insertion or implantation of a shoot of one plant into another plant, thereby causing the new plant to reproduce through grafting.^{lx} For it to amount to child adoption, there must be a change of parentage and a change of identity in form of picking up a new surname permanently and to formalize as well as declaring publicly by registering same in the child adoption Register. Anything less or contrary, makes the relationship with the child a mere fosterage or guardianship only without more, that is why the court in *Olaiya's* case held that the facts of the relationship with the two children cannot qualify as child adoption as required by law.

FINDINGS AND CONCLUSION

In this article it is found that child adoption is a global practice regulated by statute, it involves the permanent transfer of the child from its biological parents to an adoptive parent who may not be related to the child by blood. In Nigeria, only persons who are under the age of 18 years and are unmarried can be adopted under the CRA. Many reasons necessitates adoption order amongst which are; infertility, famine, war and outbreak of diseases and epidemic and pandemic like is presently ravaging the global community since November 2019 which allegedly originated from China, popularly known as Covid 19 (Corona Virus pandemic). Children who lost both or one of their parents may become orphaned and as a result of any of the above situations; may become subjects of adoption in the absence of any other better alternative. It is also found that infants of insane mothers who have no relatives, unwanted babies of unmarried young mothers who cannot take care of their babies and whose putative fathers are unknown may be subjects of adoption. Children who are in danger of harm, abandoned and street children may be placed for adoption.

It is found that in cases of a sole applicant for adoption order, same must be persons of the same sex or gender with the prospective child for adoption. It is concluded that this provision

seeks to forestall the possibility of using adoption as a mechanism for giving out a child which may result to sexual exploitation or the likes.

It is found that an applicant for adoption order must be made by persons resident in the state at least for five years immediately penultimate the date of the application. The above provision seeks to guard against child trafficking, by ensuring that a child is not handed over to unfamiliar persons or strangers under the guise of adoption.

Inter-country adoption is prohibited under the CRA, as such, where in the case of joint application for adoption the husband is found as a non-Nigerian (foreigner), it is discovered that an alien or foreign husband cannot present a joint application for adoption alongside his wife who is a citizen of Nigeria. This is because the husband is not a citizen of Nigeria and the wife cannot by marriage confer citizenship on an alien husband under the Constitution of Nigeria.^{lxi} The only situation out of the situation is that the Nigerian wife may make application as a sole applicant whereas, the consent of the alien husband can be sought and obtain in order to facilitate an adoption order in favour of the wife. But where the husband is a Nigerian citizen, the above complication may not arise as long as the husband has the innate capacity to confer the citizenship of Nigeria on the alien wife.^{lxii}

Statutorily, upon an application for adoption order the rights, duties, obligations and responsibilities of the child which hitherto vests in the natural or biological parents of the child automatically shifts and vests in the adoptive parents inclusive of right to inheritance from the adoptive parents. It is concluded that most customs and traditions as well as religious inclinations of many persons in Nigeria does not admit of such drastic turn around by cutting off the adopted child from its root and vesting it in another family which in most cases has no blood tie with the adopted child. For example, adherents of Islamic religion do not believe in the total alienation of the child from its natural parents in favour of the adoptive parents. In view of the above, the practice of child adoption seems an aberration among people and communities that does not admits of its legal effects and consequences.

RECOMMENDATIONS

In view of the findings above, the following recommendations are made:

1. The article recommends that the CRA should be amended to give room for inter-state or inter-country adoption because with or without the legal prohibition of inter-state or inter-country adoption the rationale for the prohibition is still apparent and is still perpetuated in greater proportion. Allowing inter-state or inter-country has its advantages to the social wellbeing of the adopted child and will equally lessen the burden on Nigeria's economy.
2. For any form of child care-giving to amount to adoption there must be proper documented and registration processes. It is recommended that every prospective adopter should be educated on the need for proper documentation and registration of their intended adoption.
3. Adoption procedures and order is faced with lots of challenges related to the customary and religious belief that are contrary to the laws on adoption. Also, the people view adopted children with scorn and contempt; they are regarded as outcast, it is recommended that the people must be educated on the need for adoption and the reason to embrace its practices in Nigeria.
4. It is recommended that stiff punishment should be awarded against persons who take advantage of exploiting or abusing the adopted child as a greater breach of trust.
5. In addition to the requirement of a person to be resident in the state at least five years immediately penultimate the date of the application for adoption, which provision seeks to guard against child trafficking under the guise of adoption, it is equally recommended that the actual origin and nativity of the intended adopter must be traced through to a defined location and address, as well as requiring a form of surety before an order of adoption is made.

ENDNOTES

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- ⁱ SF Wegh, *Child Adoption: a Cross Cultural Perspective* (Gesnewx Press Ltd, Jos 2014) p 21
- ⁱⁱ OI Jajudeen, 'Adoption Practice in Nigeria: An Overview' (2013) (19) *Journal of Law, Policy and Globalization* 7
- ⁱⁱⁱ Child's Rights Act Cap C50 LFN, 2004 (was passed into law by the National Assembly on 31st July, 2003) (Hereinafter CRA).
- ^{iv} Adoption Law of Eastern Nigerian No. 12, 1965, adopted and applicable to Anambra, Imo and Rivers States. Bendel State Adoption Law No. 5, 1979, Cross -River State Adoption Law No.7 1981, Ogun State Adoption Law No.3 1983, Oyo State Adoption Law No.4 1985 and Lagos State Adoption Law 1968 etc.
- ^v EI Nwogugu, *Family Law in Nigeria* (Revised edn Heineman Educational Books (Nig) Plc. 2001) p.313.
- ^{vi} CRA s 274(n3)
- ^{vii} *Ibid* s125
- ^{viii} *Ibid* s 126 (1) & (2)
- ^{ix} BA Garner, (ed) *Black's Law Dictionary* (10th edn Thomson Reuters; 2014) 290
- ^x *Ibid* 1098; CRA (n3) s 277
- ^{xi} BA Garner, (ed) (n9) 290
- ^{xii} Sally Wehmeier, (ed) *Oxford Advanced Learner's Dictionary* (Special Price edn Oxford University Press, 2001) 16
- ^{xiii} Children and Young Persons Law Cap C25 Laws of Lagos state 2004, s 2 (Hereinafter CYPL) It began with the Children and Young Persons Ordinance introduced into Nigeria by the British Colonial Government. The Ordinance was later re-enacted as the Children and Young Persons Act (CYPA).
- ^{xiv} *Ibid*
- ^{xv} CRA (n3) s277
- ^{xvi} Kogi State Child Rights Law, 2009 s273, Benue State Child Rights' Law 2008, s2
- ^{xvii} Akwa-Ibom Child's Rights Law, 2008 s277
- ^{xviii} The Convention was adopted by the General Assembly Resolution 44/25 Annex to the Resolution UN Doc A/44/ (1989). The Convention was adopted on 21st Nov.1989 and came into force on 2nd Sept. 1990, one month after the twentieth state ratified it, in accordance with article 49(1). (hereinafter CRC) Art 1
- ^{xix} BA Garner, *Black's Law Dictionary* (n9) p.58
- ^{xx} EI Nwogugu *Family Law in Nigeria* (Revised edn. Heineman Educational Books (Nigeria) Plc. 2001) p.312
- ^{xxi} OC Chukwu, 'Adoption of Children in Nigeria under the Child's Rights Act' www.lq wz.byu.edu/.../chukwu. Accessed on 30/07/2020
- ^{xxii} BA Garner, *Black's Law Dictionary* (n9) Pg 771
- ^{xxiii} *Ibid*.
- ^{xxiv} Judith Gibbons, 'Adoption and Fostering: Traditional and Contemporary Child Welfare Strategies in Sub-Saharan Africa' <https://www.researchgate.net/publication/25683541> accessed on 31/03/2020. Citing E. Goodi, *Parenthood and Social Reproduction: Fostering and Occupational Roles in West Africa* (New York, NY Cambridge University Press).
- ^{xxv} Judith Gibbon *Ibid*
- ^{xxvi} *Ibid*
- ^{xxvii} SF Wegh, *Child Adoption: A Cross Cultural Perspective* (Gesnewx Press Ltd, Jos 2014) p.23; quoting M Etienne, 'Case For Social Maternity: Adoption of Children' [1979] (IV)(3) *Dialectical Anthropology* 237-242.
- ^{xxviii} SF Wegh, *Ibid*
- ^{xxix} UNAIDS, 'UNAIDS Reports on the Global AIDS Epidemic 2010' http://www.unaids.org/globalreport/Global_report.htm accessed on 20/07/2020
- ^{xxx} CRA, ss 8(1), 14 and 16.
- ^{xxxi} SE Kabo, 'Baby Factories in Nigeria: A New Phase of Human Trafficking and Human Rights Violation in Nigeria' Proceedings of the *International Conference on Law, Order and Criminal Justice* held in Kaula Lumpur, Malaysia between 19th -20th Nov. 2014 Pp. 129-131; SS Huntley, "The Phenomenon of 'Baby Factories' in Nigeria as a New Trend in Human Trafficking" (2013) *International Crimes Database Report*, ICD Brief 3, October 2013 10-11.

- xxxii Aloy and Emeka, 'Baby Factory Burst in Imo State' <www.nairaland.com/618077/world-baby-factory-busted-imo> accessed on 9/06/2018 retrieved on 09/06/2018. Until recently, the Ayodele Omosuyi Natural Clinic in Ugwuaku, Okigwe in Imo State was believed to be the solution ground for baby-seeking habitué. But behind the high fenced walls, all manner of the absurd takes place, away from the prying eyes of the public and the Law. See also: 'Nigeria Baby Farm; Girls Rescued by Abia State Police' <www.bbc.co.uk/news/world-africa-13622679> accessed on 9/06/2018. It was reported that the Nigeria Police raided a hospital in the South-Eastern City of Aba and rescued 32 pregnant girls allegedly held by a human trafficking ring.
- xxxiii Ogun State Adoption Law no.3, 1983 s 3.
- xxxiv CRA s 42
- xxxv CRA s 129
- xxxvi A. Bajpai, *Child Rights in India: Law, Policy and Practice* (2nd edn. Oxford University Press 2009) p 40; CRA s128.
- xxxvii A Moh'd, *Protection and Adoption of Abandoned Children in Malaysia*. (SS Graphic Printers 2007) p 26
- xxxviii Malaysia Adoption Act 1952, s2
- xxxix CRC (n18)
- xl CRA (n3) s129(c).
- xli *Ibid* s131 (1).
- xlii *Ibid* s131 (1)(d)
- xliii Constitution of Federal Republic of Nigeria 1999 (hereinafter CFRN as amended) s 26 (2) (a) it is Nigerian male only as oppose to the woman that can confer Nigerian citizenship on his foreign woman-spouse.
- xliv CRA (n3)s132 (1)
- xlv *Ibid* s131(1) (e) & (f)
- xlvi *Ibid* s132 (1)
- xlvii CRA s132 (2)
- xlviii CRA ss132 (4) & 127
- xliv O Omayemi, AA Aderinto, 'Child Adoption Investigation in Nigeria: Challenges and Options' [2019](15)(2) *The Nigerian Journal of Sociology* 97
- ¹ OA Ojelabi, PE Osamor, BE Owumi, 'Policies and Practices of Child Adoption in Nigeria: A Review Paper' [2015](6)(1) *Mediterranean Journal of Social Sciences* 79.
- li EI Nwogugu (n20)
- lii CRA (n3) s 141(1)(a)&(b)
- liii CRA (n3) s 141 (3)
- liv (2018) LPELR. 45756 Suit No. CA/OW/90/2012 delivered on 12th Oct., 2018. www.lawpavilion-personal.com accessed on 4th April 2020.
- lv *Aduba v Aduba* (supra) (n54) p. 26 - 27
- lvi CRA s141 (4): see also *Aduba v. Aduba* (supra) (n54).
- lvii (2002) 8 NWLR (pt 782) 652 at 670
- lviii *Olaiya v Olaiya* (supra) (n57) per Ogwuegbu JSC at p. 670 paras G – 11 & 671 para A.
- lix CRA S. 142 (1) & (2)
- lx. www.Dictionary.com accessed on 25/07/2020 A bud, shoot or scion of a plant inserted in a groove or the stem of another plant, whereby it continues to grow together.
- lxi CFRN (n43) s 26(2)(a)
- lxii *Ibid*