

PAPER DELIVERED BY  
**HON. JUSTICE NGOZIKA U. OKAISABOR, Ph.D., FCI Arb,  
FIDRI, FICMC**

DURING THE  
**NATIONAL WORKSHOP FOR AREA/SHARIA/CUSTOMARY  
COURT JUDGES**

BY  
**NATIONAL JUDICIAL INSTITUTE  
18<sup>TH</sup>-22<sup>ND</sup> MARCH**

THEME:  
**IMPROVING THE QUALITY OF JUSTICE DELIVERY IN THE  
LOWER COURTS**

TOPIC:  
**ADOPTION, GUARDIANSHIP AND FOSTERING: PRACTICE  
AND PROCEDURE – CUSTOMARY LAW PERSPECTIVE**

# ADOPTION, GUARDIANSHIP, FOSTERING: PRACTICE AND PROCEDURE - CUSTOMARY LAW PERSPECTIVE<sup>1</sup>

## INTRODUCTION

I must express my profound appreciation to the Administrator of the National Judicial Institute, Hon. Justice R.P.I. Bozimo, OFR and the Institute in its entirety for the honor in according me the privilege to present this paper at the National Workshop for Area/Sharia/Customary Court Judges.

A common adage **“as innocent as a child”**. It is imperative to note that with this adage, the child is unaware of his birth into the world. His survival is dependent on a person other than himself and usually it is the parent that rears the child until majority when he is able to take care of himself.

This natural trend of being raised by a parent is the norm in any society but owing to certain factors and unforeseeable circumstance, voluntarily or involuntarily, this crucial personality is unavailable for the innocent child. In the absence of this natural cause of life, the features of adoption, fostering and guardianship intervenes in the rearing of such a child. Either of these features is a *sine qua non* in the formative stage, from childhood to adulthood. The objective of this paper is to look into the impact of these aspects of raising a child, the practice and procedure associated with Adoption, Guardianship and Fostering with the objective of examining these child raising concepts viz-a-viz the Customary law perspective.

Baramian FJ as he then was in **OWONIYI Vs. OMOTOSHO (1961) ALL NLR 304** described Customary Law as “a mirror of accepted usage among a given people” Custom in law is the established pattern of behavior that can be objectively verified within a particular social setting. A claim can be carried out in defense of “what has always been done and accepted by law”.<sup>2</sup>

---

<sup>1</sup> Being a presentation by HON. JUSTICE NGOZIKA U. OKAISABOR, Ph.D. at the National Workshop for Area/Sharia/Customary Court Judges organized by the National Judicial Institute, Abuja 18<sup>th</sup> – 22<sup>nd</sup> March, 2019

<sup>2</sup> <https://en.m.wikipedia.org>

Customary law is the Traditional common rule or practice that has become an intrinsic part of the accepted and expected conduct in a community, profession or trade and is treated as a legal requirement.<sup>3</sup>

“In the real sense, what is obtained under customary law is guardianship or foster parenting. Traditionally, children are regarded as the gift of God bestowed on a couple or family, and so parents are reluctant to part with their child or to lose all parental rights and obligations.”<sup>4</sup>

The Child’s Rights Act mirrors the provisions of the Adoption Law in various states as well as the Child’s Rights Law which has been enacted in many states.

“Customary Adoption” is defined as the cultural practice in which a child is raised by a person who is not the child’s biological parent, according to the customary laws of the family’s community. By contrast, legal adoption is granted by the Court”.<sup>5</sup>

In 2003, Nigeria adopted the Child’s Rights Act to domesticate the Convention on the Rights of the Child. The United Nations Convention on the Rights of the Child (UNCRC) is an international Human Rights treaty that grants all children and young people (aged 17 and under) a comprehensive set of rights. So far twenty-five out of thirty-six states have enacted the Child’s Right Law. As at 2016 the following states were listed as yet to domesticate the Child’s Rights Act: -

1. Adamawa State
2. Bauchi State
3. Borno State
4. Gombe State
5. Kaduna State
6. Kano State
7. Katsina State
8. Kebbi State
9. Sokoto State
10. Yobe State
11. Zamfara State

---

<sup>3</sup> Businessdictionary.com

<sup>4</sup> <https://iiste.org>

<sup>5</sup> <https://nelliganlaw.ca>

## **1) DEFINITIONS – ADOPTION/GUARDIANSHIP/FOSTERING**

**ADOPTION:** is a process whereby a person assumes the parenting of another usually a child from the person's biological or legal parent or parents and in so doing, permanently transfers all rights and responsibilities along with **FILIATION** (which is the legal relationship between parent and child)<sup>6</sup>

Adoption has also been defined as the process by which the legal relationship between a child and his natural parents is severed and reestablished between the child and a third party or parties.<sup>7</sup> This could be by way of Court order vesting the rights of parents and duties of a child in the adopters by an application.

Adoption is the creation of a parent-child relationship between the adopted child and the adoptive parents with all the rights, privileges and responsibilities that attach to that relationship though there may be agreed exceptions. Universally, a decree of adoption confers legitimate status on the adopted child.<sup>8</sup>

### **GUARDIANSHIP**

A guardianship is a legal relationship created when a person or institution named in a will or assigned by the Court to take care of minor children or incompetent adults sometimes called conservatorship.<sup>9</sup>

A GUARDIAN is one who has the legal authority and duty to care for another person or property especially because of the other's infancy, incapacity or disability.

A legal guardian is a person who has the legal authority (and the corresponding duty) to care for the personal and propriety interests of another person, called a ward.<sup>10</sup> Guardians are typically used in three situations such as Guardianship of an incapacitated senior, due to old age or infirmity; Guardianship for a minor and guardianship for developmentally challenged.

---

<sup>6</sup> NWAOGUGU – FAMILY LAW IN NIGERIA

<sup>7</sup> Section 2 of the Bendel State Adoption Edict, 1979, No. 5 of 1979

<sup>8</sup> BLACKS LAW DICTIONARY, EIGHT EDITION, BRYAN A. GARNER

<sup>9</sup> EN.M.WIKIPEDIA.ORG

<sup>10</sup> BLACKS LAW DICTIONARY, EIGHT EDITION, BRYAN A. GARNER

**GUARDIAN** – A guardian is one who has the legal authority and duty to care for another person or property, especially because of the other’s infancy, incapacity or disability. A guardian may be appointed for all purposes or for a specific purpose.<sup>11</sup>

**NATURAL GUARDIAN:** A minor child’s parent is the child’s natural guardian.<sup>12</sup>

**FOSTERING:** is a relationship involving parental care given by someone not related by blood or legal adoption.<sup>13</sup>

Some Countries have FOSTER CARE which is a federally funded child-welfare program providing substitute care for abused and neglected children who have been removed by Court Order from their parents or guardians’ care or for children placed by their parents in the temporary care of the state.<sup>14</sup>

Foster Care is a system in which a minor has been placed into a ward, group home, or private home of a state certified care giver, referred to as a Foster Parent or with a family member approved by the state. The placement of the child is normally arranged through the government or a social service agency.

## **2) SIMILARITIES/DISSIMILARITIES**

The resonating factor in the three concepts is that one person is responsible for the well being and interest of another be it **ADOPTION, GUARDIANSHIP OR FOSTERING**. The underlying principle is that a particular person is to play a role of ensuring the protection, development and interest generally of another. The implications of adoption are however more far reaching than the other two in the sense that Adoption raises the adopted on the same legal pedestal as the natural children of the adopter. Whereas, FOSTERING and GUARDIANSHIP are restricted to a particular phase on the life of a person. Fostering comes to an end upon the attainment of majority whereas GUARDIANSHIP may be for the purposes of representing the interest of a person during proceedings or on account of mental infirmity or physical impairment.

---

<sup>11</sup> Community Law Centre O.A

<sup>12</sup> BLACKS LAW DICTIONARY, EIGHT EDITION, BRYAN A. GARNER, P 681

<sup>13</sup> ibid

<sup>14</sup> ibid

### **3) PRACTICE AND PROCEDURE**

#### **(A) UNDER ADOPTION**

A person who is desirous of adopting a child must go to social welfare office in the state the child is to be adopted. I will be looking at some of the provisions of the Child's Rights Act as a template for statutory provisions on Adoption, Guardianship and Fostering.

The Child's Rights Act, Cap C 50 Laws of the Federation of Nigeria, Vol 5, 2004 **(hereinafter CRA)** Section 1 provides that "in every action concerning a child, whether undertaken by an individual, public or private body, institutions or Service, Court of law, or administrative or legislative authority, the best interest of the child shall be the primary consideration"

Section 14 (1) (a)(b) CRA provides; "Every child has a right to parental care and protection and accordingly no child shall be separated from his parents against the wish of the child except: -

- (a) For the purpose of his education and welfare or
- (b) In the exercise of a judicial determination in accordance with the provisions of this Act, in the best interest of the child.

Section 14(2) Every child has the right to maintenance by his parents or guardians in accordance with the extent of their means and the child has the right in appropriate circumstances to enforce this right in the family court.

Section 126 of the Child's Rights Act prescribes the application process for adoption as follows: -

- (a) For married couples, their marriage certificate or a sworn declaration of age of each applicant.
  - (b) Two passport photographs of each applicant
  - (c) Medical certificate of fitness of the applicant from a government hospital.
- Such other

**(d)** Documents, requirements and information as the court may require for the purposes of the adoption.

**Subsection (2)** provides that on receipt of the application, the court shall order an investigation to be conducted by

**(a)** Child development officer

**(b)** A supervising officer

**(c)** Or such persons as the court may determine

**Subsection (3)** provides that the Court in reaching a decision relating to the adoption of a child, shall have regard to all the circumstances first consideration being given to the need to safeguard and promote the welfare and the best interest of the child throughout the childhood of that child.

### **CATEGORY OF PERSONS WHO MAY APPLY**

Section 129 prescribes the category of persons who may apply for an adoption order. Such as

**(a)** A married couple where

I. Each of them has attained the age of twenty-five years and

II. There is an order authorizing them jointly to adopt a child.

**(b)** A married person if he has obtained consent of his spouse as required under Section 132

**(c)** A single person if he has attained the age of 35 years provided the child to be adopted is of the same sex as the person adopting.

**(d)** In all cases specified in Paragraphs (a) (b) and (c) of this section, the adopter or adopters shall be persons found to be suitable to adopt the child in question by the appropriate investigating officers.

### **RESTRICTIONS**

The Court is also placed with some restrictions in the making of adoption orders.

**(a)** Section 131, prescribes that in the case of joint application, one of the applicants is not less than 25 years old and at least 21 years older than the child.

**(b)** The applicant or in the case of joint application both or at least one of them and the child are resident in the same state.

- (c) The applicant has been resident or in the case of joint application, both of them have been resident in the state in which the application is made for a period of at least, five years
- (d) The applicant is a citizen or in the case of joint application, both applicants are citizens of Nigeria.
- (e) The child 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 made
- (f) The applicant has at least twelve months before the making of the order, informed the social welfare officer of his intention to adopt the child.

### **CONSENT**

Section 128 prescribes that the Court shall not make adoption order unless the parents or guardians of a child consents or in circumstances where the child is abandoned, neglected or persistently abused or ill-treated and there are compelling reasons in the interest of the child why he should be adopted.

Section 132 of the Child's Rights Act prescribes consent in the making of adoption order as follows: -

- 1) Where a married person is the sole applicant for an adoption order, the Court may if it thinks fit, refuse to make the order if the consent of the spouse of the applicant to the making of the order is not first obtained.
- 2) Where it appears to the Court that a person other than the parent or relative of a child has any right or obligation in respect of the child under an order of the Court or any agreement or under customary law, the Court may, if it thinks fit, refuse to make the adoption order if the consent of that person is not first obtained.
- 3) The child development officer on an application for an adoption order in respect of a child, shall prepare a report to assist the Court in determining whether a person who is not a parent or relative of the child has any right or obligation in respect of that child and whether the consent of that person ought first to be obtained.



It is to be noted that the Court may dispense with any consent required under this Section if the Court is satisfied that the person whose consent is required cannot be found or is incapable of giving his consent or is withholding his consent unreasonably. It is to be noted that under **Section 132(5)** of the Child's Rights Act in giving a consent under this Section, it may not be necessary for the person giving the consent to know the identity of the applicant for the adoption order.

It is imperative to note that under **Section 132(7)** of the Child's Rights Act, consent cannot be unreasonably withheld after consent has been given. It provides thus "while an application for an adoption order is pending in any Court, no person who has given his consent to an adoption order to be made in respect of a child shall withdraw the child from the Court and possession of the applicant without the leave of the Court and the Court shall have regard to the welfare of the child in considering whether or not to grant leave.

### **GUIDELINES**

**Section 133** of the Child's Rights Act gives guidelines preceding the making of adoption order – it requires the Court under Section 133(a) to satisfy itself before making an adoption order that consent required under Section 132 which has not been dispensed with has been obtained; it requires that persons giving their consent understands the nature and effect of the adoptive order for which the application is made and for this purpose relevant adoption Service shall provide adequate counselling for the parties involved in the adoption, see Section 133 (c) CRA the order, if made, shall be for the welfare and best interest of the child due consideration for this purpose being given to the wishes of the child having regard to his age and understanding.

In contemporary times, adoption is popular amongst single parents who are married to foreigners. In most instances, most foreign countries grant citizenship on account of marriage to such single parents without any right of citizenship to such child. Most couples who are married to foreigners opt to adopt such child in Order that such child can enjoy the benefits of the foreign spouse in the event that the couple relocate to the Country of the foreign spouse.

## **JURISDICTION**

In some states, both the High Court and Magistrate's Court have jurisdiction to make adoption orders where the juvenile resides while in some states only the Magistrate's Court has jurisdiction in adoption matters.

## **INTERIM ORDERS**

The Court may on an application for an adoption order, postpone the determination of the application and make an interim order giving the custody of the child to the applicant for a period not exceeding two years on such terms and conditions as the Court thinks fit for the maintenance, education and supervision of the welfare of the child and otherwise.

## **APPEALS**

By virtue of Section 138 of the Child's Rights Act appeal shall lie to the Court at the High Court from the Magistrate level in respect of a decision on any application for an adoption order, other than a decision to postpone the determination of the application for such an order and make an interim order.

Section 138(2) CRA – where the High Court exercises original or appellate jurisdiction, appeal shall lie to the Court of Appeal.

Adoption when the corrective order is in force or where maintenance order is in force: - Section 139 of the Child's Rights Act provides that a child may be adopted notwithstanding that a corrective order is in force in respect of the child. However, under Section 139(2) CRA the Court may suspend the corrective order to enable the applicant to have the child in his case for a period of at least three consecutive months immediately preceding the date of the adoption order.

In Section 140, a child may be adopted notwithstanding that a maintenance order is in force.

## **(B) GUARDIANSHIP: PRACTICE AND PROCEDURE**

The Provisions for guardianship under the Child's Rights Act particularly on the practice and procedure is very encapsulating.

There are various types of Guardians envisaged under the Child Right's Act such as:  
- Legal Guardian (Section 82) and guardian ad litem (see Section 89) contemplated under the Child's Rights Act.

The status of guardianship in either of the two scenarios is usually by application to the Court.

Section 89(2) CRA provides that guardian ad litem shall be appointed in accordance with the Rules of Court and be under a duty to safeguard the interests of the child in the manner prescribed by those Rules where the ward is not represented by a Legal Practitioner or the Court is of the view that it is in his best interest that he should be so represented. In this circumstance the guardianship will efflux at the end of the litigation process whereas in the case of a legal guardian, the guardian may have parental responsibility which is for a longer duration or in the case of adults or mentally challenged who lack the capacity to take decisions. Guardianship may be by appointment by a Court or by a person who is desirous of becoming a guardian.

The application is usually made to the Court and the Court in the exercise of its discretion and having the overriding interest of a child may grant the guardianship order on terms (Section 84 CRA)

The Court on its own by virtue of Section 84(2) CRA may in the cause of a trial in the instances where one of the natural parents dies may appoint a guardian.

Instances where guardianship may arise: -

- (1) Where a child is a destitute
- (2) An orphan
- (3) A guardian appointed by a testator in his will

Usually consent is required from a guardian before the order is made (Section 85)

The appointment of a guardian can be revoked by application by the natural parents or where the court finds it expedient to do so. See Section 86 of the Child's Rights Act.

In the event of a dispute amongst joint guardians over the wellbeing or interest of a child, either of the parties can file an application to Court for directions. See Section 88 of the Child's Rights Act.

### **(C) FOSTERING – PRACTICE AND PROCEDURE**

Applications for obtaining a fostering order is made and requires that the applicant shall not be less than 25 years and must be a citizen of Nigeria. He must have passed a medical test and must be able to show financial capability. There must be an age difference of 21 years between the child to be fostered and the applicants (Section 104 CRA). Where the applicant is married there must be consent of the spouse (Section 103 CRA). The applicant must be of the same sex with the child. There must be certificate of fitness (Section 104 CRA). The Act sets out the category of children that can be fostered (See Section 101 CRA)

- (a) Abandoned
- (b) Orphan
- (c) Destitute
- (d) Fond wading and has no home of settled place of abode.

It is wondered what the status of an unwanted child. The challenge remains that the Act seeks to make provision for applicants who have prospects of fostering a child. However, those who have no applicants have their faith in the limbo. One would have expected that there is a provision put in place by the state like "HOMES" or REHABILITATION CENTRES where such children who are not privileged to have foster parents would suitably be catered for in such a way that their deprivation can be made up by the state.

Where a child is by customary law or any other circumstances is under the upbringing of another person consent of such a person under whose care he is

under customary law must be sought and obtained before such application may be made by a prospective applicant.

The applicant must be resident in the same state and such applicant must be of unquestionable integrity. The order of the Court will include inter alia the maintenance, care, education and the general welfare and the best interest of the child.

Interim orders may be made by a Court on an application for fostering by way of postponement, the determination of an application to serve as a probationary period where the Court deems it fit. A Court may also order that such a person may be under the supervision of the Court. Such order may be revoked by the Court if the foster parent fails to comply with any condition imposed on him by the interim order imposed on him by the Court.

Section 122 CRA provides that a Register known as the Fostered Children Register shall be maintained where entries may be compiled of the fostering orders made by the Court.

Aside from the provisions under the CRA, it is noteworthy to state that there are non-governmental organizations operating Fostering Centers which in some cases have all the likes of a Motherless Babies Home or Orphanage. Some have demonstrated genuine philanthropic objectives, while some have been found to have been established for questionable purposes. A typical case is the discovery of Baby Factories where teenagers are pregnated or come in pregnant and their babies are voluntarily or sometimes involuntarily taken away from them for a fee such babies are commercial centers for buying children. The government have on moral grounds clamped down on such institutions. Regretfully, the faith of such babies as well as their mothers are unknown as it is not known to this presenter whether the government has facilities for rehabilitating such mothers and babies.

#### **(4) THE CUSTOMARY LAW PERSPECTIVE**

The concept of guardianship, adoption and fostering as hitherto stated has all the western colorations as are statutorily defined. Nonetheless, these concepts are

also known in customary laws albeit not in a formalized and regulated manner as replicated in the Child's Rights Act.

As noted, these concepts appear alien in the form defined above but de facto we have similar concepts under our customary laws and practice which are not as structured as the above.

### **(a) ADOPTION UNDER CUSTOMARY LAW**

Adoption is unpopular under customary law while guardianship is common under customary law, where parents of a child are financially handicapped to fund a child, most members of the extended family render assistance in raising the child within their immediate family which oftentimes is between blood relations.

Adoption under customary law may be found as informal depending on the custom of the locality of the adopter and adoptee. Under customary law we have formal and informal adoption adoptions. Under the Ishan Native Law and Custom (OKOJIE, C.J, ISHAN NATIVE LAW AND CUSTOMS; IN RE MARTIN: MARTIN Vs. JOHNSON AND HENSHAW (1936) WACA, 91, 92 adoption may be effected either by a meeting of the families of the prospective adopters and the infant to be adopted of which a formal transfer of parental rights and obligations is effected with the approval of both families. Another instance, a meeting of the elders of the adopters' family is organized in which the adopter announces his intention to adopt a person and thereby make him his heir. This requires a formal consent of the family and a ceremony to initiate the adopter into the family.

**INFORMAL ADOPTION:** This is very predominant under customary law whereby an adopter takes the child of a relative or an orphan and raises the child. In this arrangement the child disconnects and loses any contact with the biological parents as he grows into maturity. One way interprets this scenario as FOSTER-PARENTING metamorphosing into adoption.

In some customs in Plateau State, where a youth lives with an uncle over a long period of time, he will be integrated into the family of the uncle and where the marriage is funded by the Uncle the youth becomes a permanent member of the uncle's family. However, in a scenario where the biological father or brothers fund

the marriage, then he is obligated to return to his patrilineal home. Some customs such as in Okirika, Rivers State adoption, adoption of a sister's son is often encouraged due to the matrilineal inheritance of property. (WILLIAMSON K.J Changes in the Marriage System of Okirika Ijo, Africa Vol XXXII (1962)

Under customary law, adoption overlaps with guardianship. Informal adoption may be seen where a widowed or divorced remarries and brings in with the consent of the new husband her child from the previous marriage into the new home. The child is informally adopted by the step-father and oftentimes bear the last name of the step-father. This is often times observed where the child has no relationship with the patrilineal family.

In Yoruba custom, a quasi-adoption culture known amongst some Yoruba is the "OMO IYAWO" practice "OMO IYAWO" literally means the Bride's child which can be likened to a Bride's maid or page boy that accompany the Bridal train unlike the situation where the page boys and the Bride's maid role ends at the wedding ceremony, the "OMO IYAWO" accompanies the bride to Groom's home. They are raised like the biological children of the newly weds and assume the status of the elder siblings of the children of the young couple. The "Omo iyawos" are culturally regarded as the ones who have brought "luck" of the fruits of the womb to the bride.

The "OMO IYAWOS" may be raised by the couple up till adulthood and in some cases their "younger siblings' products of the couple accompany adult Omo Iyawo to her marital home.

The responsibility of parenthood is usually assumed by the newly wed couple the full approval of the natural parents of his "OMO IYAWO" under such circumstance, the children are fostered in the same manner as their own children and as they grow in age, they acquire skills of their adopted parents for instance where the adopted father is a welder, mechanic, Islamic scholar etc. or where the adopted mother is a tailor, trader etc. such children at an early age imbibed the training or acquire the skills of either parents. It is however not compulsory that the adopted

child takes up the trade of his acquired parents, with the advent of civilization, he may opt to progress in his or her educational pursuit and take up white collar jobs.

Though this mode of adoption is not formalized, it was quite a popular practice amongst the Yoruba tribe, however due to economic constraints and its attendant strain on young educated couples who raise their natural children with modern culture and education, the tradition is now dwindling. Besides, their children may or may not bear the names of their parents and are not legally entitled to claim a right of inheritance although in some cases such children are “settled” usually at the time of their marriage. The adopted parents assume marital expenses and furnish her or him with the essentials of setting up the matrimonial home based on the adopted parents’ financial capacity. The relationships are of a lifetime.

Under customary law, the process of adoption seems to overlap with guardianship as many people may wonder what the determining factor for adoption under customary law is. There is no specifies timeframe under which the adoptee may reside under the care of the adopter. Oftentimes the two concepts overlap. The concept of adoption may be deciphered from various factors such as the length of the relationship or the financial investment in raising the child by the adopter.

The distinguishing factor may be that adoption lasts for a long period of time while guardianship lasts for a shorter duration. This may be criticized in the sense that in the absence of a specified period of time, it becomes impracticable to determine which of the relationships it could be categorized under.

Besides, the relationship may be so protracted that the adoptee loses contact or relationship with his natural parents and totally finds himself absorbed as a full member of his adopter’s family.

### **CRITERIA FOR ADOPTION**

Under customary law there are no specific laid down terms and conditions as seen under the statutory adoption as to the age bracket for adoption. However, infants are commonly adopted but adults may also be adopted.



### **CONDITIONS FOR ADOPTERS**

Under customary law, only men can adopt because men determine the inclusion of a child as a member of the household both in patrilineal and matrilineal society. This may sound discriminatory to the female gender. However, it is noteworthy to mention here a culture known amongst the Calabars where the affluent women usually a spinster in her menopausal age sponsors a marriage between a willing male member of her family on the understanding that children born out of such wedlock are ascribed as her own children under customary law. She is looked upon as the father figure or grandma in the western parlance. She takes total responsibility of the upkeep of such union and their natural parents. She is at liberty to pass on her inheritance to such children.

### **CONSENT**

Under customary law, the adopter is not under any obligation or is he mandated to obtain the consent of the biological parents for the adoption of an infant who is incapable of expressing himself. However, such consent will not be dispensed with where a child is able to express himself in informal adoption to enable both families have a cordial relationship and if the child decides to return to the biological parents the adoption terminates. In case of polygamy in a family setting of the adopter, the consent of the wife that would play the role of a mother is usually sought.

### **ADOPTION AND ITS ATTENDANT CONSEQUENCES**

- (1) Under customary law, the adopted child bears the name of the adopted father and is regarded as his legitimate child.
- (2) The adopted child cannot intermarry with the children of the adopter as it would be regarded as incestuous.
- (3) Under customary law, the child succeeds along with the other legitimate children of the adopter but unlike statutory adoption permanent severance between the biological parents and adopted parents is not alien. There is also no definitive rule that deprives the adopted child from inheriting from his biological parents and his adopted parents.

**NORTHERN PERSPECTIVE** – it is imperative to note that Islamic Law does not recognize adoption but provides for foster parenting. Under the Islamic system, there exists a practice where children and teenagers are asked to live under their Islamic scholars for an unspecified period. They later return to their parents after the Islamic scholar satisfies himself that such a child has been trained in Islamic culture. This practice is prevalent in the Islamic system.

**(b) GUARDIANSHIP UNDER CUSTOMARY LAW**

Guardianship usually entails the exercise of some parental rights especially as regards custody, control and maintenance of an infant, it is important to note that cases of guardianship is very common under customary law while adoption is not common. Many a times what may be regarded as adoption under customary law may be guardianship.

**(c) FOSTERING UNDER CUSTOMARY LAW**

Due to the accepted extended family system in Nigeria, many children are fostered under customary law by families who can provide discipline to an irate child or mentoring to a child who needs to be psychologically balanced. In some cases, fostering may overlap with guardianship. In Igbo land, where a child is very disobedient to his parent, the parent may choose to place such a child in the care of an elder sister or elder brother who is a disciplinarian and such child may be fostered in becoming a professional in the society and productive. An example is a family relation who became one of the best medical doctors.

**(5) OBSERVATION - CUSTOMARY LAW PERSPECTIVE**

Section 110 (CRA) provides for rights and duties of foster parents – once a fostering order has been made it suspends any other right inclusive of customary rights that may exist.

This invariably brings to extinction any customary right after adoption orders have been made.

## **(6) OBSERVATIONS/RECOMMENDATIONS**

As laudable as the Child's Rights Act appears on paper for an efficient, effective and proactive administration of guardianship, fostering and adoption may be,

(1) there is an imminent need for the Minister to set up a panel of guardians and update it from time to time, to enable the Courts in the exercise of their discretion in appointing guardians to nominate suitable and persons of integrity to be Court appointed guardians.

(2) It is noted here, that the specific Minister that is seised with this responsibility is referred to as Minister. It is presumed that the Minister under reference is the Minister of Women Affairs but it is not expressly stated as this may give room to passing the buck from one ministry to the other. This situation does not augur well, having regard to the vulnerability of the underaged persons who are usually the subject matter of guardianship. There is thus an imminent need for the Minister to make regulations regarding the monitoring, payment for services rendered by guardians, role of local governments, qualification of membership needs to be enacted in order to give the functioning or operation of guardianship etc. the efficacy and control it deserves.

similar expectations are also required from the Chief Justice of Nigeria in enacting the attendant regulations for giving into effect the roles and responsibilities prescribed under the Child's Rights Act.

(3) In view of the proliferation of orphanages and homes for orphans and destitute in the country, it is needful for regulations to be put in place so that minimal standards for the development and wellbeing of such children should be regulated.

(4) In addition, licenses permitting the establishment of such institutions should be issued, subject to compliance with laid down rules Regulations. The permission should be updated from time to time.

(5) There should be a defined institution for social welfare and services for the youth. The situation where reference is made to a Minister under the Child's Rights Act to assume some of these roles gives cause for concern considering

the vulnerability of the child and particularly as adoption, guardianship and fostering comes to play at a very formative stage of the upbringing of the youth.

- (6) It is imperative that the attendant infrastructure and specialized personnel are put in place for the effective and efficient operation and administration and child related matters are established. The reference to the Minister will not suffice. The specific ministry that is charged with the duties and functions and enacting regulations for complementing the Child's Rights Act should be well defined.
- (7) The focus of the Act is to persons desirous of adopting, guardianship, fostering should not be the sole objective of the Act. Undoubtedly, there still remains a large population of indigent children, displaced children, orphans, etc. who have no one applying for their adoption. There is need for Foster Homes, Orphanages, Motherless Babies Homes to raise deprived children in a near family a quasi-family environment.

## **CONCLUSION**

In conclusion, the statutory provisions under the Child's Rights Act that prescribes the concept of Adoption, Guardianship, and Fostering are alien to our own indigenous customary laws as it relates to Adoption, Guardianship and Fostering. In so far as the informal modes of child upbringing are not repugnant to natural justice, equity and good conscience, I reason that it should remain as it is customarily practiced and preserved. It is feared that an attempt to westernize it as prescribed under the Child's Rights Act may put the adopter under customary law with the constraints and regulations attached to it and invariably, may discourage the adopter from proceeding to carry out any of the concepts.