AN OVERVIEW OF THE CHILD RIGHTS ACT, 2003

BY

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PAPER PRESENTED
AT THE ALL NIGERIA JUDGES’ CONFERENCE OF THE SUPERIOR COURTS,

ORGANIZED
BY
THE NATIONAL JUDICIAL INSTITUTE

DATE: 15 – 19 NOVEMBER, 2021

VENUE: NATIONAL JUDICIAL INSTITUTE, ABUJA
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OBJECTIVES

This paper seeks to provide for the rationale, structure and contents of the Child Rights Act; identify challenges in its adoption by some states; articulate measures for promoting Judicial excellence in the administration of Justice / Child Justice in Nigeria.

♦ The Rationale

First, the Nigerian constitution, under Chapters four and two on Fundamental Human rights and on fundamental Objectives and Directive Principles of State Policy respectively, is not child rights specific. Second, the various State Children and Young Persons Laws are largely Juvenile Justice Administration biased and not necessarily child's rights and responsibilities specific, as well as not being UN Convention on the Rights of the Child / AU Charter on the Rights and Welfare of the Child (CRC/OAU) friendly in terms of modern conceptions/principles of Juvenile Justice Administration.

Hence the rationale for the promulgation of the Child rights Act, 2003. This Act seeks to set out the rights and responsibilities of a child in Nigeria and provides for a system of child Justice administration, and the care and supervision of a child, amongst other things.

♦ Structure of the Child Right Act (CRA), 2003

The structure of the Child Rights Act has been informed by the mandate to draft a legislation which incorporates all the rights and responsibilities of children, and which will consolidate all laws relating to children into one single piece of legislation, as well as specify the duties and obligations of government, parents and other authorities, organisations and bodies in relation thereto.

Within the context of such a mandate, therefore, the Act has been divided into twenty-four parts and eleven schedules. The various parts address broadly rights and responsibilities, protection and welfare of children, duties and responsibilities of government, institutions for children, as well as other miscellaneous matters. The schedules for their own parts deal with rules and regulations, procedures and specified forms for applications and/or for decisions.
Contents of the Act

In terms of contents, the Nigerian Child Rights Act borrowed a leaf from the UN CRC and the OAU Charter in respect of the guiding principles for the promotion and protection of the rights of children.

Under sections 1-2 (Part I), the CRA provides that the best interest of the child shall be of primary and paramount consideration in all actions to be undertaken whether by an individual, public or private body, institutions or service, court of law or administrative or legislative authority. Further, the Act provides that necessary protection and care shall be given to the child for his/her well-being, taking into account the rights and duties of the child's parents, legal guardians and other bodies legally responsible for the child.

Part II (Sections 3-20) of the Act provides for the rights and responsibilities of a child in Nigeria. Accordingly, it entrenches the following fundamental rights for the child, namely, the rights to survival and development, to a name, to freedom of association and peaceful assembly, to freedom of thought, conscience and religion, to private and family life, to freedom of movement, to freedom from discrimination, to dignity of the child, to leisure, recreation and cultural activities, to health and health care services, to parental care, protection and maintenance, to free, compulsory and universal primary education, as well as encouragement of the child to attend and complete secondary education.

Responsibilities of a Child and Parent

The Child Rights Act provides that subject to age, ability and other legal limitations, every child in Nigeria shall work towards the cohesion of his/her family and community; respect his/her parents and elders at all times and assist them in case of need; serve the Federal Republic of Nigeria by placing his/her physical and intellectual abilities at service; contribute to the moral well-being of the society; preserve and strengthen social and national solidarity, the independence and integrity of Nigeria, the solidarity and achievement of Nigerian, African and World unity, peace, security, freedom, equality and Justice for all persons; and to relate with other members of the society, with different cultural values in the spirit of tolerance, dialogue and consultation.

The duty to provide the necessary guidance, discipline, education and training for the child in one's care in order to secure the necessary assimilation, appreciation and observance of the child's responsibilities mentioned above, lies on every parent, guardian, institution, persons and authority responsible for the care, maintenance,
upbringing, education, training, socialization, employment and rehabilitation of the child.

♦ **Protection of a child against discriminatory, harmful and exploitative practices**

Part III (sections 21-40) of the Child Rights Act provides for the protection of the rights of the child through the prohibition of: child marriage, child betrothal, infliction of tattoos and skin marks, exposure to use, production, trafficking, etc of drugs and psychotropic substances, use of children in any criminal activity, abduction and unlawful removal and transfer of a child from lawful custody, forced, exploitative or hazardous child labour, including outlawry of employment of children as domestic helps outside their own home or family environment, buying, selling, hiring or otherwise dealing in children for the purpose of hawking, begging for alms, prostitution, unlawful sexual intercourse, other forms of sexual abuse and exploitation prejudicial to the welfare of the child.

♦ **Additional Child Protection through Civil and Welfare Proceedings.**

Part IV (sections 41-49) of the Act provides for additional protection through civil and welfare proceedings.

♦ **Protection of Children in need of care and protection from physical or moral danger**

Part V (Sections 50-52) of the Act empowers a child development or police officer or any other authorised person to bring a child in need of care and protection before a court for a corrective order, if he has reasonable grounds for believing that the child is an orphan or is deserted by his relatives, neglected, ill-treated or battered by his parent or guardian or custodian, or found destitute, wandering, homeless, or surviving parent undergoing imprisonment, mentally disordered, or otherwise severally handicapped; or found begging for alms, in company of a reputed/common thief or prostitute, or otherwise beyond parental control or exposed to moral or physical danger.

♦ **General Care and Supervision Orders**

Part VI (Sections 53-62) of the Act Provides for the making of care and supervision orders which are designed to place children in need of care and protection in the care of a designated person, appropriate authority or state government for the purpose of safeguarding or promoting the welfare of the child. The Supervision Orders may include Education Supervision Orders.
♦ **Use of Scientific Testing in Determining Paternity or Maternity of a Child.**

Part VII (Sections 63-67) of the Act empowers the Court to give direction or order for the use of scientific tests, including blood tests, to ascertain whether the tests show that a party to any civil proceedings is or is not the father or mother of that person.

♦ **Possession and Custody of Children**

Part VIII (sections 68-81) of the Act deals with possession and custody of children, within the context of the acquisition of parental or quasi-parental authority over children.

♦ **Guardianship, Wardship, Fostering and Adoption**

Part IX (Sections 82-92) of the Act provides for guardianship of children, which is also another way of acquiring parental responsibility for the child. The parents of a child shall have guardianship of the child and, in the event of the death of a parent, the surviving parent shall be the guardian of the child. Where the parents of a child are not fit to be guardians of a child jointly or severally, the court shall, on application of a member of the family of an appropriate authority, appoint a person to be a joint guardian with the parent(s) of the child.

Part X (sections 93-99) of the Act deals with wardship, which is a device by which a child is made a ward of court, notwithstanding that the child continues to remain with his parents or under the supervision of a child development officer or some other authority.

Part XI (Sections 100-124) of the Act provides for fostering of children who are abandoned by their parents, or where an orphaned child is deserted by his relatives, or voluntarily presented by his relatives for fostering, or where neglected or ill-treated by the person having care and custody of him; or has a parent or guardian who does not or cannot exercise proper guidance over him; or is found destitute or is found wandering, has no home or settled place of abode, is on the streets or other public place, or has no visible means of subsistence.

Part XII (Sections 125-148) of the Act provides for adoption, with the establishment of adoption service nationally and clear specifications for the mechanisms and procedure for adoption, including a well articulated in built monitoring mechanism, which has led to restrictions on inter-state adoptions. The adopted children have been conferred with the full rights of children, including inheritance rights. A child may therefore be adopted if the parent(s) or guardian consents to the adoption; or 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.

♦ **Establishment of the Family Court, Child Minding, Day Care Centres and Allied Homes**

   The CRA provides for the establishment of the family Court, Child Minding, Day Care Centres and Allied Homes under parts XIII to XIX (sections 149-203).

♦ **Child Justice Administration**

   Part XX (sections 204 -238) of the Act has provided for Child Justice Administration, which will now replace the Juvenile Justice Administration, which has been in existence for several decades in Nigeria. The provisions in this part now prohibit the subjection of any child to the criminal justice process, and guarantees the due process to any child subjected to the Child Justice system under the Act at all stages of investigation, adjudication, and disposition of the child. In this regard, the Act has sought to apply the principles contained in the UN Standard Minimum Rules for the Administration of Juvenile Justice (otherwise known as the Beijing Rules) in Child Justice Administration in Nigeria.

   Among other provisions, the Act has prohibited the use of capital punishment for children (this in practice amounts to only a one year extension from the present prohibition level of 17 years to 18 years), the use of imprisonment (which has involved raising the prohibition age from 14 years now to 18 years), and the use of corporal punishment (this is a novel provision, as no such prohibition previously existed under the old Children and young persons Legislations). The Act additionally frowns at the imposition of death penalty and use of institutionalisation for children, pregnant and expectant mothers.

♦ **Child Rights Implementation Committees**

   Part XXIII (Sections 260-271) of the Act provides for the establishment, membership procedures, and functions of the Child Rights Implementation committees at the national, State and Local Government levels.

♦ **Miscellaneous Matters.**

   Finally, Part XIV (Sections 272-279) of the Act variously provides for service of documents, supremacy of the provisions of the Act over those of all other laws relating to children in cases of inconsistency, interpretation and citation of the Act.
(B) **Challenges in the adoption of the CRA, 2003 in some States**

The CRA, 2003 had been adopted by 26 States of the Federation, while the remaining ten States have bills pending for passage at various stages: - Adamawa, Bauchi, Borno, Gombe, Kano, Kebbi, Jigawa, Yobe, Sokoto and Zamfara.

♦ The first challenge is that of reflecting local peculiarities, in the process of drafting and passage of the Bill, that are cultural or customary or religious in character.

♦ For example, prohibition of child trafficking, street hawking, child and forced marriages, child begging and destitution, amaljirici system and the right to education, girl-child education, adoption of a child etc.

♦ The second challenge is of political will to promote and protect the best interest and welfare of the already vulnerable, marginalised, disadvantaged and discriminated child.

   ♦ The problem here is lack of coordination and harmonious working relationship between the main line ministries of women affairs and Justice on the one hand, and between the state legislatures and the ministries on the other, in some states.

♦ The third challenge is that of collaboration and cooperation between the state governments and the civil society groups in promoting and protecting children’s rights in our respective states.

   ♦ The Problem here is lack of identification and appreciation of the limits of each other and the complementary role of the other in addressing the best interest and welfare of the child.

(C) **MEASURES FOR PROMOTING JUDICIAL EXCELLENCE IN THE ADMINISTRATION OF JUSTICE / CHILD JUSTICE IN NIGERIA**

I. Strategic implementation of the National Policy on Justice, 2017 (adopted by all Justice Sector Stakeholders and Approved for implementation by the Federal Executive Council on 20th November, 2019): - The 74 pages policy framework took cognisance of other relevant Justice sector policies, particularly, the National Judicial Policy, April 2016, Nigerian Judiciary Information Technology Policy, National Policy on Prosecution, 2013 / 2014,
and the National Security Policy, 2014, and seeks to support and promote their objectives.

The Justice Sector Policy’s goal is for “a Justice system that inspires public confidence, keeps society secure and safe, provides a conducive environment for smooth social interactions an a flourishing economy”. This is consistent with the guiding principles enshrined in the preamble to, and Section 17(1) and (2) (a) – (e) of, the Constitution of the Federal Republic of Nigeria, 1999, (as amended) relating to equality, non-discrimination, freedom and justice; as well as section 14(2)(b) of the same constitution on the primary purpose of government (to promote the security and welfare of all people).

In terms of territorial scope, the Justice Policy applies across the federation, at both the federal and state levels, with eight guiding principles as follows:

- Respect for the Rule of law;
- Protection of fundamental human rights;
- Independence and impartiality of the Judiciary;
- Fair and speedy dispensation of Justice;
- Transparency and accountability in the Justice processes;
- Recognition of legal pluralism;
- Federalism and adherence to the federal character principle;
- Separation of powers along with checks and balances.

Its subject matter scope covers 17 thematic issues and a part on implementation, monitoring and evaluation.

II. Effective Monitoring and Evaluation of the extent of implementation of / compliance with the National Judicial Policy, April 2016, relating to Judicial officer’s appointment, discipline, education, training, code of conduct; and matters relating to Judicial performance, access to Justice, case flow management, Judicial administration and court management, Judicial independence, transparency and anti-corruption, collaboration with relevant stakeholders and miscellaneous matters.

III. Observance of Due Process of law in the Administration of Child Justice

Section 210 of the CRA provides that the legal status and fundamental rights of the child, set out in Part 2 of the Act, shall be respected in the administration of
the Child Justice system set out in part 20 of the Act, and in particular, the following basic rights: -

a) The presumption of innocence;
b) the right to be notified of the charges;
c) the right to remain silent;
d) the right to the presence of a parent or guardian;
e) the right to legal representation and free legal aid.

Sections 213 – 235 of the CRA, provide for Adjudication matters relating to Child offenders, including Jurisdiction of the court to try child offenders; rights to fair hearing and compliance with Due Process; guiding principles in adjudication; parents, guardians to attend court; child Justice procedure in court; remands and committals to State Government accommodation; social inquiry report on the background and conditions of the child; power of the court to order parent or guardian to pay the fine, compensation or costs awarded against the child, unless the court feels otherwise; restriction on imposing imprisonment or corporal punishment or death penalty on child offenders, except in cases of treason, murder, robbery, manslaughter or grievous bodily injury caused to another, the court may order detention of such a child; methods of dealing with child offenders, etc.

IV. Promoting the best interest and well-being of the child: - Is it the only consideration?

In Child Justice Administration, the combined effect of sections 1 and 214(2)(b) of the CRA is that the “best interest and well-being of the child shall be the primary, and of paramount, consideration in all actions / decisions by Justice sector actors, including courts of law”. This is supported by a trend of case law in Nigeria, especially on matters relating to custody and guardianship of a child, consistent with the provisions of sections 69 – 92 of the CRA. (See Odusote v. Odusote (2012) 3 NWLR pt. 1288, p.478 at 487; Buwanhot v. Buwanhot (2011) FWLR pt. 566, p. 552 at 563; Oduche v. Oduche (2006) 5 NWLR pt. 1039, p.297, CA; Alabi v. Alabi (2007) 9 NWLR pt.1039, p.309; Charity Okafor v. Paul Okafor (2016) LPELR 40264). The Court of Appeal held interalia, that although the best interest and welfare of the child is the first and paramount consideration, IT IS NOT THE SOLE CONSIDERATION. Other relevant factors such as the conduct, income and accommodation of the parties must also be taken into account by the courts: - (Obajimi v. Obajimi (2012) ALL FWLR pt.649, p.1168).

• **TIPPEA Act, 2015**: Sections 46 – 47 and 61 – 65 of the Act provide for the protection of the Rights of Victims of Human Trafficking, especially, children and women.

• **VAPP Act, 2015**: Section 38 of the Act provides for the protection of the Rights of Victims of Sexual and gender-based Violence applicable to victims of human trafficking.

The Act criminalises the following sexual and gender based violence affecting children and women: - rape, female genital mutilation/ female circumcision, abandonment of children, harmful traditional practices, incest, indecent exposure, etc (Sections 1-26 VAPP Act).

• **ACJA 2015**: Sections 160, 452, 260 – 262 and 264 – 265 of ACJA relevant to child offenders in the Administration of Criminal Justice.

• **Determination of age of a defendant**: Sections 264 and 265 provide guidelines for determining the age of a defendant where age is in issue. Age is to be determined by the court by reference to the apparent physical appearance of the person concerned or by taking evidence in accordance with the provisions of the Evidence Act, the Child Rights Act or any other law in force.

Even where the age is not accurately determined, it shall not invalidate an order or judgment of the court based on the presumed age of the defendant. (Section 264 (3)).

• **Explanatory Notes on parts 43 – Child offenders**: Section 452 (1) provides that where is child is alleged to have committed an offence, the provisions of the Child Rights Act shall apply (section 451 (1)). This means that the provisions of the Child Rights Act shall govern the trial of child defendants in criminal proceedings. A child is defined by the ACJA as a person who has not attained the age of eighteen years.

Oputa, JSC in *Modupe v. The State* (1988) 9.S.C 1 at 5-6 Paras. 40-5 provided some guideline for resolving any doubt as to the age of a defendant when age is an issue: " Where a court is in doubt as to age of the accused, it cannot proceed to make an estimate in vacuo but must make due inquiry as to the age of the person and for that purpose may take such evidence as may be forthcoming at the time or at the time to which the inquiry may be adjourned'. That decision was based on section 368.
Criminal Procedure Act which is in *pari materia* with section 264 of the ACJA.

However, when a child offender is being considered for the grant of bail, the provisions of the ACJ Act shall apply (section 452 (2)). Section 160 of ACJA provides for the recognizance by parent or guardian of a child. It should be noted that under section 35 (1) of the *Nigerian Correctional Services Act 2019*, young offenders shall not be kept in adult custodial facilities.

- **Members of the public may be denied access to court proceeding under sections 232, 258, 260 – 262 of the ACJA**: Under sections 258, 259 and 260 the judge or presiding magistrate may exclude the public at any stage of the hearing on grounds of public policy, decency or expedience. Similarly, where a witness aged eighteen or below is called as a witness in any proceedings bordering on decency or morality, the court may exclude any persons who are not members of officers of the court or parties to the case, their legal representatives or others directly concerned in the case. Under section 258 and section 261, representatives of newspapers or news agency may be specifically excluded for the proceedings. Furthermore, infants other than those in the arms of parent or guardian are prohibited from being present in court during trial unless they are the defendants or witnesses.

(D) **CONCLUSION AND THE WAY FORWARD**

In conclusion, it is evident from the above analysis that States governments have the legislative power to modify certain provisions of CRA,2003, in order to reflect local peculiarities in a constitutional federalism, provided the best interest and welfare of the child will remain of paramount importance.

- Need to embark upon a widespread and aggressive awareness campaign among all stakeholders in respect of the rationale and contents of the CRA and state obligations to promote and protect children’s rights.

- Need to intensify collaborative and cooperative network in order to provide strategic plan of action for both the passage and the gradual implementation of the law in our respective states.

- Need for state governments to demonstrate fairly, consistently and honestly their political will to protect children in our society using law and committing reasonable budgetary allocations to match governments’ promises.
REFERENCES