

PROTECTING THE RIGHT OF A CHILD: THE ROLE OF THE MAGISTRATE COURT.

By

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INTRODUCTION

Nigeria took the important step of domesticating the CRC into a national law: a draft Child Rights Bill was passed by the National Assembly in July 2003. The Act was informed by the mandate to consolidate all laws (including national and international laws) relating to children into a single piece of legislation that specified the rights and responsibilities of children, as well as the duties and obligations of government, parents, other authorities, organizations and bodies towards children.¹ This is a bid to meet its international obligation for signing the Convention on the Rights of the Child (CRC) in 1991 and African Charter on the Right and Welfare of Children (ACRWC) in 1986.

In Nigeria, since the Child Rights Act was passed into law, only 26 states² have both passed and given gubernatorial assent to Child Rights Laws in their states. This means that millions of children in 10 States in Nigeria still do not have the appropriate legal framework for the protection of their rights. Also, millions of other children in States that have passed the law are not being cared for as they should because the laws have not been fully implemented.³

OBJECTIVES

The aim of this paper is to provide participants with knowledge and skills on how to protect the right of the child in their courts by implement the Child Rights Act (CRA), the Children and Young Person's Act (CYPA) and other relevant laws effectively and to handle children's cases in the Family Court accordingly. It is also aimed at understanding among participants of the aims, objectives and overriding principles for handling cases in the Family Court, including principles from domestic and international law. This paper will also

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²Abia, Akwa Ibom, Anambra, Bayelsa, Benue, Cross River, Delta, Ebonyi, Edo, Ekiti, Enugu, FCT, Imo, Jigawa, Katsina, Kogi, Kwara, Lagos, Nassarawa, Niger, Ogun, Ondo, Osun, Oyo, Plateau, Rivers, Taraba

³Op cit.

facilitate understanding of the requirements of the Child Rights Act on the role of the magistrates in the Family Court and also to provide technical knowledge and concrete examples of best practices for the Family Court.

CHILDREN IN CONFLICT WITH THE LAW

The key concepts in international and regional standards in dealing with cases where children are in conflict with the law are as follows:

- The focus is on the goals of rehabilitation and reintegration
- A separate juvenile justice system
- Development of separate Courts
- Child-friendly practices
- Diversion
- Establishment of a minimum age of criminal responsibility.

Separate system of juvenile justice

International standards and norms require that States develop a separate system for the administration of juvenile justice. This means that children below the age of 18 must be dealt with through a separate system of practices and procedures compared to adults in the criminal justice system. There have to be specialised systems, structures and personnel that are designed to handle cases involving children in a child-friendly, appropriate manner. A separate system of juvenile justice is particularly important in protecting the best interests, welfare and dignity of the child and in promoting the goals of rehabilitation and reintegration, which must be the central goals of a child-friendly justice system. One component of a separate juvenile justice system is the establishment of separate courts for juveniles.

Establishing separate courts

The CRC Committee, which is the international body that monitors implementation of the UNCRC, has recommended that States “establish juvenile courts either as separate units or as part of existing regional/district courts.”⁴ However, because it is clear that this will not always be possible or practicable, the Committee has suggested States can “ensure the appointment of specialized judges or magistrates for dealing with cases of juvenile justice.”⁵

Therefore, establishment of Children’s Courts can mean the development of entirely separate Court buildings for children, **or** the designation of Court

⁴ CRC Committee: General Comment No 10, 2007, para 93.

⁵ CRC Committee: General Comment No 10, 2007, para 93.

buildings during a specific day/time per week for children's cases using specialised judges.

One of the issues for children attending court is that the process can feel very formal and intimidating. This means that there are problems with the implementation of the CRA in Nigeria so that many states don't have dedicated Family Court buildings or a Family Court as such and even in those that do, the set-up of the court may be inadequate. There are, however, ways in which a judge or magistrate can arrange a court hearing to make it as child-friendly as possible. These practical steps should be considered in all cases where children are involved whether as victim, witness or defendant and in criminal and civil proceedings.

Set-up of the Court

Some positive steps that can be taken to make the setting more child friendly are:

- The child sits next to his/her parents and defence advocate for support and comfort
- The entire arrangement is around a table, rather than in a formal dock/courtroom setting
- The prosecution and defense sit opposite each other, preventing the child from sitting directly opposite the prosecutor
- The Social Welfare Officer and clerk sit opposite the magistrate, positioned in a 'neutral' position, i.e. not on either 'side'
- The prosecution witness sits next to the prosecutor, not directly opposite the child
- If the prosecution witness is a child, the Court personnel may agree that it is best to have the child testify from behind a screen, or from a witness box
- No uniforms or formal court attire
- Inquisitorial (not adversarial) process
- Avoid formal and/or confusing language
- Magistrate to help the child to present his/her case and to understand proceedings
- Interpreter provided for children
- Legal representation/ guardian ad litem to be provided to assist children

- Proceedings held ‘in camera’ – which includes in closed courtrooms and other rooms

Proceedings held in confidence and participants/ the press prevented from publishing identifying information.

Promotion of Child participation

- A child shall sit with his or her parents, guardians or carer
- A child shall be able to speak with his or her representative at any stage during the case
- In order for the child to participate actively and effectively, he or she must be able to understand the proceedings, which should be explained clearly by the Magistrate.
- The Court should ensure that the child understands the language used in Court.
- The Court should protect the child from intimidating questioning
- Participation should be supported by having breaks, ensuring that a session lasts for no longer than an hour at most without a break. Hearings should be conducted at convenient times, for example before or after school.
- If it is felt that the child is too young to participate, based on assessment of the individual child, the Magistrate should stop proceedings and adjourn subject to a determination of whether a fair trial can be delivered.
- The court environment is also essential in facilitating participation.

Determining the best interests of the child

The best interests of the child are paramount in all cases involving children according to Section 1 of the CRA. This reflects the importance of the best interests of the child in weighing up decisions relating to children in court that is set down in the CRC and the ACWRC. This is the principle that should guide all judicial decisions involving children. The CRC Committee issued guidance on what this principle means in practice in its General Comment No. 14 (of 2013) on the right of the child to have his or her best interests taken as a primary consideration which provides useful legal analysis of the relevant provisions in the CRC.

➤ ***Finding out the wishes and feelings of the child***

- Can you ask the child directly? What does he/she say?

- What do his/her parents, guardians or carers say the child wishes/feels (be cautious as to whether this is accurate)?
- What do his/her guardian ad litem or other representative say the child wishes/feels (be cautious as to whether this is accurate)?
- ***Hearing from those who know the child***
 - What do the child's parents, guardians or carers have to say would be in the child's best interests?
 - What does the child's Social Welfare Officer have to say would be in the child's best interests?
 - What does the child's guardian ad litem have to say would be in the child's best interests?
- **What do you (the Magistrate) think about the needs/interests of the child?**
 - Take into account the needs of the child, considering the age/gender/culture and any other factors including disability or developmental delays.
 - Consider experience, but also the individual needs of the child.
 - Take into account any risks and concerns over proportionality.
 - Bear in mind the practical consequences of your decision – e.g. does additional information mean delays in the proceedings and what impact will this have on the child.

Diversion

The international juvenile justice framework strongly advocates for the use of alternative interventions, known as “diversion,” to prevent children from entering judicial proceedings. Diversion measures can be implemented by social welfare, police, prosecutors or even the judiciary to ‘divert’ a child from the formal judicial process, often into a community-based project that provides psycho-social support to children and families to address behaviour that places a child at risk of offending. There are provisions in the CRA for diversion and these will be explored later in this paper.

The age of criminal responsibility.

International standards are clear that there must be an age below which children are not considered criminally responsible for their actions. At the same time, the international standards are also clear that “every person under

the age of 18 years at the time of the alleged commission of an offence must be treated in accordance with the rules of juvenile justice.”⁶

It is very important at this point to remind us that there states that are yet to adopt the CRA. Therefore, Nigerian states can be divided into CRA states and Non-CRA states for the purpose of child protection.

CRA States: Family courts

Non-CRA States: Juvenile courts

- Under section 6(1) of the CYPA a juvenile court for the purpose of the hearing and determination of cases relating to children and young persons is constituted by a magistrate either sitting alone or with any other person appointed by the Chief Judge of a State (such persons are referred to as assessors). Many States of the Federation do not have permanently constituted juvenile courts. In most cases designated magistrates’ courts exercise the jurisdiction to hear juvenile cases on an ad hoc basis.
- Magistrates hear cases involving juveniles outside the normal courtrooms or outside normal court sessions either in the courtrooms or in their chambers. This is to protect the privacy of the young offenders and to protect them from the effects of stigmatization that may result from a public trial.
- **Section 6(2) of the CYPA** provides that a court, when hearing charges against children or young persons shall, unless the child or young person is charged jointly with any other person not being a child or young person, sit either in a different building or room from that in which the ordinary sittings of the court are held or on different days or at different times from those at which the ordinary sittings are held. However, under the CRA a child cannot be tried together with an adult.

Legal representation and parental involvement

- Article 40(2)(b)(iii) of the CRC provides that:

“The child has the right to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians.”

⁶ CRC Committee: General Comment No 10, 2007, para 37.

- Article 17(2)(c)(iv) of the African Charter on the Rights and Welfare of the Child states that the accused child shall have the matter determined as speedily as possible by an independent tribunal.
- The Constitution provides that every accused person is entitled to defend himself either in person or with a lawyer of his choice.
- Section 155 of the CRA enshrines the right of a child to be represented by a lawyer at court: “A child has the right to be represented by a legal practitioner and to free legal aid in the hearing and determination of any matter concerning the child in the court.”
- The parents or guardian of a child who is charged with a criminal offence shall attend all stages of the proceedings and be entitled to participate except where the court is of the opinion that it is not in the best interests of a child for his or her parents to attend. The court may, where necessary, make an order to enforce attendance by parents.
- Under the CYPA a juvenile may be represented by a lawyer. If he is not, the court must allow his parents or guardian to assist him in the conduct of his defence including in the cross-examination of witnesses (section 8).

The most worrisome issue is that many children in conflict with the law haven't had contact with their parents from the time of their arrest. Often, the contact details of their parents are on mobile phones that are confiscated when they are arrested and they don't know the numbers to contact their parents or have the money to pay to use public phones to make contact. Child offenders often commit minor property crime such as theft of small goods due majorly to deprivation and poverty. These offenders are usually out of school and their parents are illiterate. Their status also explains their absolute lack of knowledge about the provisions of the CRA. These members of society need to be supported with efficient legal aid services.

Deprivation of liberty

Section 35 of the Constitution generally prohibits the deprivation of liberty. This is not with exceptions. International standards require that detention pending trial should be used as a measure of last resort and for the shortest period of time possible. Implemented in Section 212 of the CRA.

Conditions of detention

- Prohibition on torture and ill treatment in Constitution extends to children in detention.
- Section 11 of the CRA prohibits physical, mental, emotional or sexual abuse.

- International law prohibition on torture or other cruel, inhumane or degrading treatment or punishment (UNCRC, ACRWC, ICCPR, CAT, ACHPR etc (NB extends to corporal punishment). Also Section 2 of Anti-torture Act, 2017 list a number of acts that constitutes torture.
- Detention separate to adults
- Special conditions of detention
- Access to Court/length of detention
- Police Bail

211. Detention pending the trial

(1) Detention pending trial shall—

(a) be used only as a measure of last resort and for the shortest possible period of time;

(b) wherever possible, be replaced by alternative measures, including close supervision, care by and placement with a family or in an educational setting or home.

(2) While in detention, a child shall be given care, protection and all necessary individual assistance, including social, educational, vocational, psychological, medical and physical assistance, that he may require having regard to his age, sex and personality.

(3) Where the Court authorises an apprehended child to be kept in police detention, the Court shall, unless it certifies—

(a) that, by reason of such circumstances as specified in the certificate, it is impracticable for him to do so; or

(b) in the case of an apprehended child who has attained the age of fifteen years, that no secure accommodation is available and that keeping him in some other authority's accommodation would not be adequate to protect the public from serious harm from the child, secure that the apprehended child is moved to State Government accommodation.

(4) Classification in the place of detention pending trial shall take account of the social, educational, medical and physical characteristics and condition of the child, including his age, sex and personality.

- Police detention may therefore be utilised only in very restricted circumstances.

To protect the right of a child, the magistrate is expected to ask himself the following questions whenever a child is brought before him/her.

- *What is your experience of implementation of s.211 CRA?*
- *What steps do you take if you believe the police may not have acted in accordance with these provisions?*
- *What practical things do you do to ensure the best interests of the child following arrest?*
- *Do you make enquiries about the conditions in which a child is being detained when they are brought before you?*
- *What steps could you take if you believed a child may have been unlawfully arrested or detained?*
- *In what circumstances would you deny a child bail?*

A magistrate must satisfy him/herself that the above questions are answered before taking a decision on whether to order for remand or not.

Sentencing

Any sentence should be proportionate to the child's circumstances and the circumstances of the offence, should be the least restrictive option, and only used as a last resort for the shortest appropriate period of time.⁷ The CRA prohibits the imprisonment of a child, the corporal punishment of a child and the imposition of death penalty on a child. Therefore, there is an obligation on the States to create alternatives to detention. Such alternatives may include, for example, pre-trial fit persons initiatives whereby children are assigned to the care and supervision of fit persons, rather than facing pre-trial detention, or could include the range of diversion options (but applied post trial) or community-based rehabilitation programmes for children who have been convicted at trial. The judge's role is crucial in making sure this part of the CRA is implemented in practice.

⁷Article 37, UNCRC.

The obligations to limit detention pre and post-trial and to provide appropriate alternatives to detention take into account the considerable disadvantages to the child, and the community, of pre and post-trial detention.

- Children in detention can have greatly reduced access to education, leisure and healthcare services, which can hugely limit their development and reintegration into the community, and their ability to contribute to society in the future
- Children in detention are often at risk of rights violations, including long delays, and violence, as they are often held alongside convicted children or adults.
- Children in detention are removed from society and it can often be extremely difficult for them to reintegrate into their communities upon release – non-custodial/alternative measures are often far more successful in rehabilitating the child.

- **Proportionality**

The principle of proportionality is extremely important and is a central tenet in making sentencing decisions.

Before determining what order to make following a finding of guilt, the court should take into consideration the seriousness of the offence or offences and any mitigating factors associated with the offence or personal to the child.

- **Investigation before disposal of case**

Section 219 of the CRA provides that before a case, other than that involving a minor offence, is finally disposed of by the court, the appropriate officer (a Social Welfare Officer) must properly investigate the child's background, living situation and the circumstances in which the offence was committed. This officer then informs the court of all relevant facts relating to the child.

- **Discretion**

The CRA provides that a person who makes a determination in respect of child offenders shall exercise discretion at all stages of the proceedings and shall be trained to exercise discretion judiciously:

CRA section 208. Use of discretion

- In view of the varying special needs of children and the variety of measures available, a person who makes determination on child offenders shall exercise such discretion, as he deems most appropriate in each case, at all stages of the proceedings and at the different levels of child justice administration,

including investigation, prosecution, adjudication and the follow-up of dispositions.

- Every person who exercises discretion shall be specially qualified or trained to exercise the discretion judiciously and in accordance with his functions and powers.

The court should consider the following methods of dealing with child offenders:

- Dismissing the charge;
- Discharging the child offender once he has entered into a recognisance;
- Placing the child under a care order, guidance order and supervision order;
- Sending the child to an approved institution or accommodation under a corrective order;
- Ordering the child to pay a fine or undertake community service;
- Ordering the child to have counselling;
- Ordering the child's parent or guardian to pay a fine, give security for the child's good behaviour or enter into a recognisance to take proper care of him and maintain their control over him;
- Making a hospital order for the child to have treatment;
- Making an order for the child to be placed in foster care or live in a community or educational setting.
- Conditional discharge order and supervision order (CRA section 242)
“Where a child is charged with an offence, other than homicide, and the court is satisfied that the charge is proved, the court may make an order discharging the child on the condition that he enters into a recognisance to be of good behaviour and to appear to be further dealt with when called upon at any time for a period not exceeding 3 years. The recognisance shall contain a condition that the child offender be under supervision (known as a supervision order).”
- Institutional order (CRA section 223)

Placement of a child in an approved accommodation or Government institution shall be a disposition of last resort and may only be made if there is no other way of dealing with the child.

Under section 14 of the CYP A, where a child or young person is found guilty, the juvenile court has at its disposal a wide range of disposition measures aimed at furthering the main objective of juvenile justice, namely the welfare

of the child rather than the punishment of the child. The courts are prohibited from using the words “conviction” and “sentence” in relation to children and young persons dealt with by the juvenile courts.⁸

Diversions

For offences that are not serious, the police, prosecutor or any person dealing with a case involving a child offender has the power to dispose of the case by means of settlement rather than by formal trial. It is important to remember that adjudication before the court shall be used as a last resort.

‘Diversions’ happens when a child who is accused of a criminal offence has his or her case dealt with without recourse to judicial proceedings or a trial. There are a number of different options for diversion, ranging from a simple apology to referral to a specialised diversion project. Diversion doesn’t necessarily require formal structures as an alternative to the criminal justice system. Particularly in cases involving minor offences, it may be appropriate to dismiss charges early on if the alternative is for a child to spend long periods in custody.

A judge can use her discretion to divert a child from the criminal justice system at any stage when a child in conflict with the law appears before her. If a child can be diverted from the criminal justice system at an early stage, this is likely to be in the best interests of the child and judges should bear this in mind at preliminary hearings involving children in conflict with the law.

CHILD VICTIMS AND WITNESSES

The international framework for children who are victims and witnesses in criminal cases focuses on child-friendly procedures rather than structures.

The key components of international best practice norms revolve around the provision of special protection measures for children and the establishment of a child-friendly environment, in order to provide specific rights that are set out in the UNCRC and other guidance, especially the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime. These are:

- The right to be treated with dignity and compassion, to be informed, to be heard, right to safety, right to assistance, right to privacy, right to protection from hardship, and right to reparation and right to rehabilitation.

Possible special protection measures that can help to create a child-friendly environment might include:

⁸section 16 of the CYPA; section 213(2) of the CRA.

- the use of screens, video-link evidence and trained adults to help support a child to give testimony;
- child-friendly questioning techniques; and
- child-appropriate physical environments and practical considerations such as timing and duration of court sessions (which should not be too long or onerous for children).

The Overlap Between Criminal Law and Child Protection

Juvenile justice is an integral part of the national development process of any country. The juvenile justice system encompasses not only juvenile courts and rehabilitation centres but the whole process of juvenile justice including prevention, rehabilitation and reintegration. Most offences by children are minor and first-time offences, and only persistent or serious offenders should enter the formal court system.⁹

Often children who find themselves in conflict with the law are themselves victims of abuse or extreme poverty. Children may steal in order to feed themselves and others. They may abuse others because of the way they have been treated in their home or other environment. Children in conflict with the law may have been abandoned by their parents or run away from home because of fear of abuse. It is important to bear in mind that cases involving children in conflict with the law may also require steps to be taken to protect the child.

The best interests of the child should be the primary consideration of a court and this may require taking into account the child's wider circumstances, no matter the reason they find themselves in court. In relation to adoption, for example, the CRA provides at Section **139**:

Adoption when corrective order is in force

(1) A child may be adopted notwithstanding that a corrective order is in force in respect of the child.

(1) On the application for an adoption order being made in a case under subsection (1) of this section and on being satisfied that the adoption would be for the welfare and best interest of the child concerned, the Court shall suspend the corrective order so as to enable the applicant to have the child in his case for a period of at least three consecutive

⁹ Justice for Children in Afghanistan series: The Role of Social Workers in Juvenile Justice: Issue 1 August 2008

months immediately preceding the date of the adoption order.

CHILDREN INVOLVED IN CIVIL PROCEEDINGS

In civil proceedings, children have the right of access to justice, which means the right to accessible, available, adaptable and acceptable justice systems that facilitate justice for children. For example, if children may only access justice through a 'next friend', it is important that such adults are available to children. Similarly, children should be provided with a lawyer or intermediary to assist their case, or their involvement as a witness in a civil case.

The four underlying principles governing the rights of the child apply equally in civil proceedings:

- The right to non-discrimination (Article 2)
- That the best interests of the child shall be a primary consideration in all matters affecting children (Article 3.1)
- The right to life, survival and development (Article 6)
- The right to be heard (Article 12)

The CRC Committee has issued general comments which clarify what these principles mean in practice. These include:

- General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (Courts):

27. The Committee underlines that "courts" refer to all judicial proceedings, in all instances – whether staffed by professional judges or lay persons – and all relevant procedures concerning children, without restriction. This includes conciliation, mediation and arbitration processes.

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29. In civil cases, the child may be defending his or her interests directly or through a representative, in the case of paternity, child abuse or neglect, family reunification, accommodation, etc. The child may be affected by the trial, for example in procedures concerning adoption or divorce, decisions regarding custody, residence, contact or other issues which have an important impact on the life and

development of the child, as well as child abuse or neglect proceedings. The courts must provide for the best interests of the child to be considered in all such situations and decisions, whether of a procedural or substantive nature, and must demonstrate that they have effectively done so.

- General Comment No. 12 (2009) on the right of the child to be heard sets out specific obligations with regard to judicial and administrative proceedings:

Divorce and separation

51. In cases of separation and divorce, the children of the relationship are unequivocally affected by decisions of the courts. Issues of maintenance for the child as well as custody and access are determined by the judge either at trial or through court-directed mediation. Many jurisdictions have included in their laws, with respect to the dissolution of a relationship, a provision that the judge must give paramount consideration to the “best interests of the child”.

52. For this reason, all legislation on separation and divorce has to include the right of the child to be heard by decision makers and in mediation processes. Some jurisdictions, either as a matter of policy or legislation, prefer to state an age at which the child is regarded as capable of expressing her or his own views. The Convention, however, anticipates that this matter be determined on a case-by-case basis, since it refers to age and maturity, and for this reason requires an individual assessment of the capacity of the child.

Separation from parents and alternative care

53. Whenever a decision is made to remove a child from her or his family because the child is a victim of abuse or neglect within his or her home, the view of the child must be taken into account in order to determine the best interests of the child. The intervention may be initiated by a complaint from a child, another family member or a member of the community alleging abuse or neglect in the family.

54. The Committee’s experience is that the child’s right to be heard is not always taken into account by States parties. The Committee recommends that States parties ensure, through legislation, regulation and policy directives, that the child’s views are solicited and considered, including decisions regarding placement in foster care or homes, development of care plans and their review, and visits with parents and family.

Adoption and kafalah of Islamic law

55. When a child is to be placed for adoption or kafalah of Islamic law and finally will be adopted or placed in kafalah, it is vitally important that the child is heard. Such a process is also necessary when step-parents or foster families adopt a child, although the child and the adopting parents may have already been living together for some time.

56. Article 21 of the Convention states that the best interests of the child shall be the paramount consideration. In decisions on adoption, kafalah or other placement, the “best interests” of the child cannot be defined without consideration of the child’s views. The Committee urges all States parties to inform the child, if possible, about the effects of adoption, kafalah or other placement, and to ensure by legislation that the views of the child are heard.

CHILDREN INVOLVED IN CHILD PROTECTION PROCEEDINGS

The UNCRC requires States to support the family unit (Article 3(2) and 18), to support parents and families to provide an appropriate environment for their children (Articles 27 and 3(2)) and to protect children from all forms of violence, abuse, exploitation and neglect (Articles 19 and 32-36).

In order to implement these provisions, most States establish a child welfare system and a child protection system, which help to prevent all forms of violence, abuse, exploitation and neglect.

Where the system identifies that a child is at risk of suffering or has suffered from violence, exploitation, abuse or neglect, the State may initiate child protection proceedings, through which it can ‘interfere’ with the family relationship. This is provided for under Article 9 of the Convention, which allows for judicially reviewable interventions.

It is up to the welfare officer to ensure that children are protected, but if the powers under the Children’s Act are not sufficient to protect the child, an application should be made to the Children’s Court (family Court).

Assessment Orders and Emergency Protection

The CRA provides that courts may issue Child Assessment Orders (section 41 CRA) or Emergency Protections Orders (section 42 CRA) on the application of a State government or other appropriate authority¹⁰ **where there is reasonable cause to suspect that a child is suffering or likely to suffer significant harm.**

The type of order appropriate in a particular case will **depend on the facts of the case and the court has a degree of discretion** to decide which type of

¹⁰ Defined in Section 277 CRA

order it should issue in a particular case. Both types of order have a **maximum duration of 9 days** under the law (sections 41 and 43 CRA). An emergency protection order can only be renewed once for a maximum period of 7 days.

Sections 41 and 42 CRA provide that if a child has sufficient understanding to make an informed decision, they can refuse to submit to an assessment. Under an assessment order a child may only be kept away from home in accordance with directions specified in the child assessment order; if it is necessary for the purpose of the assessment; and for such period or periods as may be specified in the assessment order. Where a child is to be kept away from home, the order shall contain such directions as the Court thinks fit with regard to the contact that the child must be allowed to have with other persons while away from home. Before an application for an assessment order, the applicant should take all reasonably practicable steps to inform people who may be affected by the order of the hearing. This should include the child, the parents or others with parental responsibility and people who have care of the child or contact orders.

Where an applicant for an emergency protection order doesn't know the child's whereabouts, **Section 46 of the CRA allows the Court to issue an order to another person to disclose information** about where to find the child

(2) No person shall be excused from complying with a requirement under subsection (1) of this section on the grounds that complying might incriminate him or his spouse of an offence, but a statement or admission made in compliance with the requirement shall not be admissible in evidence against either of them in proceedings for an offence, other than perjury.

The Court can also issue an order allowing the applicant to enter and search premises to locate the child at risk:

(3) An emergency protection order may authorize the applicant to enter premises specified by the order and search for the child with respect to whom the order is made, and the Court may, if satisfied that there is reasonable cause to believe that there may be another child on those premises with respect to whom an emergency protection order ought to be made, make an order authorizing the applicant to search for the other child on those premises.

Care and Supervision Order: Summary

Sections 56-59 of the CRA lay out the requirements for issuing care and supervision orders and educational supervision orders. Section 56 of the CRA establishes the need to provide reasonable contact with parents and others where a child is in care reinforcing the importance of family contact in the

best interests of the child. In addition, Section 59 of the CRA establishes the power of Court to direct an investigation in any proceedings where question of welfare of child arises:

- (1) *Where, it appears to the Court in proceedings in which a question arises as to the welfare of a child, that it may be appropriate for a care or supervision order to be made with respect to that child, the Court may direct the appropriate authority to undertake an investigation of the child's circumstances.*
- (2) *Where the Court gives a direction under this section, the appropriate authority concerned shall, when undertaking the investigation, consider whether it should*
 - (a) *apply for a care order or a supervision order with respect to the child; or*
 - (b) *provide services as assistance for the child and his family; or*
 - (c) *take any other action with respect to the child.*
- (3) *Where the appropriate authority undertakes an investigation under this section and decides not to apply for a care order or supervision order with respect to the child concerned, the appropriate authority shall inform the Court of:*
 - (a) *its reasons for so deciding;*
 - (b) *any service or assistance which it has provided, or intends to provide, for the child and his family; and*
 - (c) *any other action which it has taken or proposes to take, with respect to the child.*
- (4) *The information referred to in subsection (3) of this section shall be given to the Court before the end of the period of eight weeks, beginning with the date of the direction, unless the Court otherwise directs.*

Guardians Ad Litem

The CRA establishes the framework for the Court to appoint a guardian ad litem in proceedings as well as the need for the Ministry to establish panels of persons from which guardians ad litem can be appointed.

The appointment of a guardian ad litem can provide a crucial protection for the right of the child to express his or her own views in proceedings. This can be particularly important in care, child protection and family proceedings where the child's views may not be the same as his or her representative and independent legal representation for the child is crucial to protect the best interests of the child.

The CRA provides as follows:

89. Appointment of guardian ad litem

- (1) *The Court may, for the purpose of any specified proceedings, appoint a guardian ad litem for the child concerned to safeguard the interests of the child, unless it is satisfied that it is not necessary, to do so.*
- (2) *The guardian ad litem shall-*
 - (a) *be appointed in accordance with the Rules of Court; and*
 - (b) *be under a duty to safeguard the interests of the child in the manner prescribed by those rules.*
- (3) *Where*
 - (a) *the child concerned is not represented by a legal practitioner; and*
 - (b) *any of the conditions mentioned in Subsection (4) of this section is satisfied, the Court may appoint a legal practitioner to represent the child.*
- (4) *The conditions under which an appointment may be made under Subsection (3) of this section are that*
 - (a) *no guardian ad litem has been appointed for the child;*
 - (b) *the child has sufficient understanding to instruct a legal practitioner and wishes to do so;*
 - (c) *it appears to the Court that it would be in the best interest of the child for him to be represented by a legal practitioner.*
- (5) *A legal practitioner appointed under or by virtue of this section shall represent the child in accordance with the Rules of Court.*
- (6) *Notwithstanding any enactment or rules of law to the contrary, the Court may take account of*
 - (a) *any statement contained in a report made by a guardian ad litem who is appointed under this section for the purpose of the proceedings in question; and*
 - (b) *any evidence given in respect of the matters referred to in the report, in so far as the statement or evidence is, in the opinion of the Court, relevant to the question which the Court is considering.*

The CRA provides for the establishment of panels of persons from which guardians ad litem may be appointed (section 90)

- (1) *The Minister may by regulations provide for the establishment of panels of persons from which guardians ad litem appointed under this section shall be selected.*

- (2) *The regulations may, in particular, make provisions-*
 - (a) *as to the constitution, administration and procedures of the panels;*
 - (b) *requiring two or more specified Local Governments to make arrangements for the joint management of a panel;*
 - (c) *for the defrayment by the State Government of expenses incurred by members of panels;*
 - (d) *for the payment by the State Government of fees and allowances to members of panels;*
 - (e) *as to the qualifications for membership of a panel;*
 - (f) *as to the training to be given to members of the panels;*
 - (g) *as to the co-operation required of specified Local Governments in the provision of panels in specified areas; and*
 - (h) *for monitoring the work of guardians ad litem.*

- (3) *Rules of Court may make provisions as to the*
 - (a) *assistance which a guardian ad litem may be required by the Court to give to it;*
 - (b) *consideration to be given by a guardian ad litem, where an order of a specified kind has been made in the proceedings in question, as to whether to apply for the variation or discharge of the order;*
 - (c) *participation of guardians ad litem in any review, of the kind specified in the Rules of court, conducted by the Court.*

CRA Section 91 provides for the right of the *guardian ad litem* to have access to records.

Foster care

The CRA creates an extensive framework for fostering children in Nigeria and The Key provisions under this section are Sections 100-124, CRA

Establishment of a Fostered Children's Register by the Chief Registrar is provided under Section 112 of the CRA. While, Sections 113 and 121 provided

for the requirement of ongoing visits by child development officers to fostered and privately fostered children to ensure their welfare.

Procedure:

- *a person may foster a child by making an application to the court within the jurisdiction in which the person and the child reside at the date of the application (section 100)*

Requirements under Section 101: *“a child who may be fostered under this Act includes a child who-*

- (a) is abandoned by his parents; or*
- (b) is an orphan and is-*
 - (i) deserted by his relatives, or*
 - (ii) voluntarily presented by his relatives for fostering, or*
 - (iii) voluntarily presents himself for fostering, where no relatives of his can be found; or*
- (c) has been abused, neglected or ill-treated by the person having care and custody of him; or*
- (d) has a parent or guardian who does not or cannot exercise proper guidance over him; or*
- (e) is found destitute; or*
- (f) 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; or*
- (g) is voluntarily presented by his parents for fostering.”*

The power of the Court to make a foster order are found in Section 102 CRA:

- (1) Subject to the provisions of this Act, the Court may, on receipt of the application for fostering make an order authorising the application to foster the child.*

Restrictions on fostering

- Only a married couple can jointly foster (s102(2))
- The number of children who may be fostered is limited to three unless there are exceptional circumstances (Section 103 CRA)
- A fostering order shall not be made by the Court unless:
 - the applicant or, in the case of a joint application, each of the applicants is not less than twenty five years old and, is at least twenty one years older than the child to be fostered;

- the applicant and the child are resident in the same State;
- the applicant is a citizen of Nigeria;
- the applicant has the means to maintain the child;
- the applicant is a person of unquestionable integrity; and
- the applicant is certified by a medical officer to be physically and mentally fit; and
- A fostering order shall not be made in favour of a sole applicant who is unmarried, unless the applicant has attained the age of thirty-five years and the child to be fostered is of the same sex as the applicant.

It is important to note that the Court is able to make interim orders under s107 CRA.

It can 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, as a probationary period, on such terms and conditions as the Court thinks fit as regards provision for the maintenance, education and supervision of the child and otherwise. In such circumstances the *child shall be under* the supervision of an officer appointed by the Court; and shall not be taken out of the State without the prior consent of the court. The same consent requirements apply.

The CRA provides for Rules of Court as regards the practice and procedure of the Court in respect of the fostering of children. Notably, specific provisions are to include that:

- proceedings are held in camera in determining the application in the Court;
- to exclude or restrict the jurisdiction of any court where a previous application made by the applicant in respect of the same child has been refused by that or any other court, and
- the principle that a report for the assistance of the Court in determining whether or not the fostering order will be in the overall interest and welfare of the child having regard to the ability of the applicant to maintain, care, for and educate the child.

Appeal: to the High Court level from the Magistrates court level in respect of a decision on an application for a fostering order other than a decision to postpone the determination of an application for the order or to make an interim order.”

It is also important that participants understand that there are rights and duties conferred on foster parents (Section 110 and 111 CRA)

- Essentially, a foster parent takes on the rights, duties, obligations and liabilities as if the foster child had been born to them.

Adoption

For the purpose of better understanding of the issue of adoption under the CRA please read Sections 124- 148 of the Act focusing particularly the following:

- Investigation
- Decision Making
- Restrictions on Adoption (the Child)
- Persons who may adopt
- Further Restrictions
- Consent
- Conditions Precedent
- Terms and Conditions
- Interim Orders
- Rules of Court
- Appeal

Conclusion

State Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.¹¹

The focus on the rehabilitation of juvenile offenders is reflected in Article 17(3) of the African Charter on the Rights and Welfare of the Child, which states that, "the essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her reformation, re-

¹¹Article 40(1) of the CRC

integration into his or her family and social rehabilitation”. Additionally, the African Charter on Human and Peoples’ Rights stipulates that, “punishment consisting of deprivation of liberty shall have as an essential aim the reform and social re-adaptation of the prisoners.”¹²

¹² Generally see Training Manual for Magistrates and Judges of the Family Court Nigeria, 2005 by the UNICEF in collaboration with the NJI