ASSESSING AND ADDRESSING THE BESST INTEREST OF A CHILD IN FAMILY COURT: A PAPER PRESENTED BY CHIEF MAGISTRATE MERCY TONEY ENE (DCR), THE ADMINISTRATIVE CHIEF MAGISTRATE, COURT 1 CALABAR, CROSS RIVER STATE, AT THE BIENNAL ANNUAL NATIONAL WORKSHOP ON CHILD PROTECTION AND CHILD JUSTICE ADMINISTRATION HELD AT ANDREW OTUTU OBASEKI AUDITORIUM, NATIONAL JUDICIAL INSTITUTE, ABUJA FROM 19TH- 21ST OF AUGUST, 2024.

PROTOCOL: It is indeed a great honour and privilege to be invited to serve as a Resource Person for the 2024 National workshop for Family Court Judges, Magistrates, Prosecutors, Social Welfare Officers, Assessors, Family and Gender Unit Officers of the Nigerian Police Force. I am deeply humbled, because seated in this hallowed hall are seasoned and eloquent gurus/ specialist in the field of Child Justice Administration, but it pleases God to locate me, the least of all, for this cause I remain very grateful.

My most esteemed gratitude and appreciation goes to the Administrator of this great citadel of knowledge, His Lordship, Hon. Justice Salisu Garba Abdullahi, for finding me worthy, and giving me a rare and distinct privilege to present this paper. The title of this paper is very important and apt, and considering the Crop of dignitaries here gathered, all stakeholders in this area; as well as the general theme of the workshop, BUILDING EFFECTIVE SYNERGIES ON CHILD JUSTICE AND CHILD PROTECTION, it is certain the goal of our gathering shall be achieved.

Finally, permit me my lord to place on record my foremost appreciation, reserved for this moment, it goes to the Almighty God. I thank Him for the journey mercies granted to all distinguished participants and Resource Persons to this workshop. To Him alone be all the praise. I am sure that the time we will spend here in the three days will be worthwhile and a fulfilling experience. Once again I welcome us all.

**INTRODUCTION:**

A discuss on ‘the Best interest of a child’ is about the entire gamut of the Child Justice System. The Concept of the BEST-INTERST-OF-THE-CHILD connotes and comprises all that is necessary in life to ensure that the rights of a child as a human being is safeguarded and promoted in line with the International Bill of Right.[[1]](#footnote-1)

The child justice administration is a process designed for the protection of the child’s rights as envisaged under the relevant legal instruments,[[2]](#footnote-2) for the sole purpose of ensuring the wellbeing of every child. This range from identifying the key concepts involved, the stakeholders and their roles/responsibilities, available instruments/statutory provisions, and the means to attaining same, including case management. It also entails the necessity for collaboration and synergies amongst stakeholders, bearing in mind that the attainment of Best Interest of a Child is tantamount to the attainment of peace and development of the larger society. The imperative of the axiom ‘Children are the future of the society’ can never be overemphasized.

I shall now proceed to appraise the basic components of our discourse as herein identified, though it is by no means exhaustive. These include:

* Who is a child

The Child’s Rights Act, 2003 defines a child as any person under the age of 18 years[[3]](#footnote-3). This means any person who is yet to attain this age of adulthood cannot by any classification, whether culturally, traditionally, legally or on religion, be so identified. In saying this, I am minded of the fact that being a matter of legislation, some states in Nigeria do have concern regarding age of maturity, may vary the age in their local enactment to suit their intent. Nevertheless, the provision of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) is very clear on who is a child. This provision prevails and renders any other enactment null and void to the extent of its inconsistency with the Constitution.

In view of the importance of Child Justice on the overall development of any society, there has been a growing consciousness and advocacy for the promotion and safeguarding of the child’s best interest in line with the United Nations Convention on the Rights of the Child, 1989, which provides thus: “In all actions concerning children, whether undertaken by public or private social welfare institutions, court of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” In the same vein, responding to International concern in this regard, domesticating the above treaty (UNCRC), the National Assembly, Federal Republic of Nigeria on 31/07/2023 enacted the Child Rights Act and clearly provides similar provision to the United Nations Convention on the Child’s Right. That provision has been replicated in the Child’s Rights Law of various states in Nigeria.

Accordingly, every child is recognise, respected and protected as a right holder, with non-negotiable right to protection. Every child has his or her dignity and is a unique and valuable human being with an individual personality, distinct needs, interests, privacy and has right to participation in what affects him or her.

* ‘BEST INTEREST OF A CHILD’, WHAT DOES IT REALLY MEAN

The concept of best interests of a child is one of the most important if not the most important concept in the treaty UNCRC. It is also a concept that generates more questions as to what really is meant by ‘Best Interests of a Child’. There are concerns as to absence of a generally acceptable definition of the term, ‘Best Interest of a child’; whether there are legal standard for making a life-changing decision on a child; how objective and measurable are the standards, if any, for assessing and addressing same? Thus, the subject of best interest of a child has been an issue of more academic analysis than any other concept in the child’s rights context. Many distinguished scholars have tried to define it or create a list of factors that are central when defining what is or is not in the best interest of a given child. But there is no consensus on a comprehensive definition that is workable for different purpose, and in every situation without exceptions, where a child’s interests is at stake, and in practice, it is difficult to apply.

The best interests of a child have traditionally been seen as an interpretative legal principle, a fundamental subjective right, and a procedural rule. Whenever a decision is to be made that will affect a particular child, or group of children, the decision making process includes an evaluation of the possible impact (positive or negative) of that decision on the child or children concerned. In order to assess and address such effectively, there must be procedural guarantees as safeguards, including the right of the child to express his or her own views or opinion, establishment of such facts, qualified professionals, follow-ups etc.

Indeed, the concept has been described as being to some extent vague and sometimes leading to misunderstanding and confusion because of its flexibility, which makes it applicable to different situations. There is also concern on the need to ensure a balance in the threefold legal nature of the child’s best interests, being that, it is partly a fundamental right, a legal principle and a procedural rule. There and many questions raised globally, in the quest for interpretation and clarification on the import/essence of the term inserted in the child’s Rights Treaty of 1989, by the United Nations.

Without doubt the concept of ‘best interest of a child’ is at the heart of the UNCRC, hence its inclusion,[[4]](#footnote-4) though it has generated so much controversy. Expectedly, 20 years after the enactment of the treaty, at a conference[[5]](#footnote-5) to mark the 25th anniversary of the UNCRC with the Human Rights Day, in an attempt to address the concern on quest for a definition of the term, the Belgian authorities and council of Europe placed emphasis on the role in dealing on best interest of the child, as well as developing the normative provisions concerning the concept, specifically, the deontological, ethical and procedural rules relating to it. However, the Conference failed to give a clear cut definition.[[6]](#footnote-6)

In the same vein, the US government interpretation of the concept merely provide qualifications thus , ‘’… best Interest determinations are generally made by considering a number of factors related to the Child’s circumstances and the parents or caregivers circumstances and capacity to parent, with the child’s ultimate safety and wellbeing the paramount concern”[[7]](#footnote-7).

The above qualifying statement leaves one still uncertain as to a definition of the term ‘Best Interest of the Child’, though the qualifying words gives a guide on how to go about determining what is best interest of each child. It is a fact that every family is different. There is therefore difficulty in having a universal notion of what is ‘the Best Interest ’concept. This account for the flexible qualifiers as shown in the qualifying statement of the US government aimed at meeting the individual need of each child or group of children in relation to the demand of UNCRC, as well as the child’s overall development. However, there is a consensus that the best interest of a child concept though indeterminate, is very crucial for children’s rights protection.

Clarifying the concept of Best interest of a Child, and its implementation, in practice is important for children’s human rights in general. There is need to initiate and encourage discussion in this regard so as to share knowledge and enhance understanding of the concept. The imperative of engaging stakeholders, continuously to ensure that the concept is genuinely seen as a primary consideration in their daily work cannot be over emphasise; as should be equipped with the necessary tools to effectively assess and address the child’s best interest. This will enhance decision making that respect children’s human rights.

Thus, the idea of best interest of the child is an adaptable concept embracing various, constantly evolving questions, and indeterminate legal concept to be determined on case by case basis. However, it should be clearly established that it is on no account a discretionary concept. For instance, the assessment and determining of the best interest of ten different children should prompt the assessors to make ten different decisions; this is because no two children are exactly the same, even given the same circumstances and same situation. On the other hand, assessment and determination of one child’s best interest by ten assessors individually, in adopting a decision, they should arrive at the same result. The means that though child best interests are an indeterminate legal concept, their assessment and determination should be founded on objective criteria, here in is the essence of the concept. It is intended to ensure both the full and effective attainment of all rights secured by the UNCRC, as well as the overall development of the child. This is to say that the child’s best interests are not just what is best for a child, but what objectively secures for the child, both the full and effective realization of all the rights secured in the Convention and his or her overall development. But what are the elements, factors or circumstances that must be taken into consideration in assessing, and how to address same in making a decision? This brings us to our focus for today.

ASSESSINS AND ADDRESSING THE BEST INTEREST OF THE CHILD BY THE FAMILY COURT

The Child’s Rights Act provides for the establishment of the family court. [[8]](#footnote-8) It is a friendly court and the physical set up is designed in a way that depicts comfort and friendliness. The Officers and personnel of the family court as well as parties concerned should understand the peculiarity of the court as a special court in its own category. The court proceedings should be devoid of the regular terms and procedures. For instance, in questioning a child for information in a case of rape, indecent assault etc., care should be taken on avoiding questioning in a manner that could ridicule or embarrasses the child. Interrogating a child requires special tact and techniques in order to get the truth from the child. It requires patience too. Any wrong approach may affect the process adversely, as the child may become withdrawn and refuse to open up. This is where the role of social workers comes in. The Social Welfare Officers are relevant stakeholders, and must collaborate with the court, by ensuring that necessary information about the child is made available to the court. ie. the Social Welfare Report. The Report is necessary to enable the court take appropriate decision that would ensure the best Interest of the Child as provided under various instruments protecting the child.[[9]](#footnote-9)

In addressing the best interest of a child, the court evaluates and balances all elements or factors surrounding a child’s life and upbringing to arrive at appropriate decisions. It is essential that before any action affecting an individual child is taken, the circumstances surrounding his/her life should be appraised. It does not require any particular formality and should be conducted systematically in many circumstances that occur between the moment a child is found at risk, to the time a durable solution is implemented. Doing this requires possession of requisite skills and knowledge at every stage and because it is about a child, the disposition of all concerned must be friendly and flexible. It is a critical process of helping the child’s proper development and growth. Through assessment the court notes record of the child’s surrounding circumstances particularly, as relating to his or her family background and development.

During assessment, the court evaluates all information taken /gathered, about a child, review the information and use the same to the child’s advantage. This involves: Observation, Documentation, Analysis, Summarizing and Instructing. Assessments thus, afford the court opportunity to know if the child may need additional support and any intervention/services. It will give the court opportunity of appraising or weighing the effect of the child’s cultural/religious background vis-à-vis its influence/impact on the child. Furthermore, it will also provide information on how the various multi-sectorial bodies cooperates/synergizes in bringing about needed interventions. It is important to note that the family court being in the category of special court, is a child friendly court. The child justice administration is therefore the totality of what is involved in guaranteeing the best for a child. All stakeholders are expected by law, to ensure the welfare of every child. Court officers/personnel and all parties involved, should understand the difference between the regular court procedures and the child friendly court (family court) procedures. For instance, where a child is involved, whether as in conflict with the law/offender, victim, or even as a witness, as earlier stated, regard should be had on the way, the child is question or interrogated. Where the court interviews the child for his or her input, the court is careful to read meaning or see beyond the ordinary.

Generally, the court considers the child’s wishes and feelings but does not necessarily have to follow same, although such views and feelings would carry significant weight. In-fact, the court in considering these is to ensure that the child’s wishes are independently ascertained and not purely a reflection of the perception of any of the parent. Usually the court ascertain the child’s wishes and feelings by ordering for Welfare Report, which involves previous meetings of the Welfare Officer with the child. As earlier state though the child’s view is important, the court is not bound to follow it, where in the court’s appraisal, same will not be in the best interest of the child. While the court takes into consideration a parent’s ability to provide physical care such as accommodation for a child, the court is primarily concern with the happiness and security of the child. It is the emotional need of the child that is relevant, not the emotions of any of the parents. For instance, in custody issue, the child’s gender, age background, and culture/religious factors as well as the child’s understanding of the situation are usually taken into consideration in deciding which of the parent should have custody of the child. Furthermore, the courts are generally, conscious not to disrupt a child’s sense of security and normalcy, so will only do so on good cause. For example, in situation a child is well bonded with a parent and his or her safety and wellbeing is guaranteed, the court will not tampered with the position just to yield to emotional display of the other parent, probably, with better financial power.

POSSIBLE ORDERS THE COURT MAY GRANT

The Child Right’s Act provides for different types of orders which the court in the exercise of discretionary power may grant. Unlike the regular criminal justice system, where punitive measures are the means of deterrence, the child justice system’s focus is on finding root causes, and applying a number of remedial orders with the aim to reduce recidivism. In child justice system, removal of children from their homes and families should be as a measure of last resort and such decision should only exercise when there is ‘‘imminent danger’’ [[10]](#footnote-10) The same principle also apply in cases where the child is in conflict with the law. Custodial orders are a measure of last resort.

* **Child Assessment Order:**[[11]](#footnote-11) This is the first stage in child protection. Child assessment orders are applied for when the appropriate authority has reasons to suspect harm, suffering or likely to suffer. This application lets the authority determine the condition of the child. The court may decide to grant an emergency protection order alongside or instead of an assessment order depending on the findings of the court.
* **Emergency Protection Order:**[[12]](#footnote-12) of the Act. This often comes up where access to the child is required as a matter of urgency. Appropriate authorities applying for this order require this as a form of authority or authentication to have access to a child.
* **Care and Supervision Order:**[[13]](#footnote-13) Care Orders are serious and not to be invoked lightly. It effectively allows a child to be removed from his or her parents or other custodians and placed with welfare services. In Haase v. Gerrmany[[14]](#footnote-14) the court states:

“The Court observes…before public authorities have recourse to emergency measures in such delicate issues as care orders, the imminent danger should be actually established”

* Supervision Orders are often interchanged with care orders,[[15]](#footnote-15) however, the court are empowered by the Act to interchange or vary these order with consideration, to the circumstances of the cases before them, as appropriate.

The effect of care order and the power of the court to grant them is provided for under Section 55 of the Act.

* **Interim Orders:**[[16]](#footnote-16): These are orders granted by the court either as interim case orders or interim supervision orders while a matter is still pending before a court. The court can sometimes make an interim residence order alongside an interim supervision order. The court may also under this section make orders as to medical examination, psychiatric examination, or other assessments unless the child (if he/she is of sufficient understanding) declines such assessments.
* **Refuge for Children at risk: The Act**[[17]](#footnote-17) lay out the conditions for voluntary homes or registered children’s homes as places of refuge for children at risk. The license issued by the Minister for such homes however does not cover;

1. Those who have absconded from residential establishments.
2. Be used to compel, persuade incite or assist a child to be absent from detention.
3. Abduction of children.

Agencies in using these refuge centres should be aware of the law and the conditions under which the Minister allows the running of such homes and the type of children to be referred there.

**Education Supervisor Order: The Act**[[18]](#footnote-18) lays out the conditions under which an education supervision can be made. This order is granted where the court is convinced that a child of compulsory school age is not being properly educated. The facts tendered before the court shows that the child is not receiving full time efficient education suitable to his age, ability and aptitude and any special education needs such child may have.

Other remedies and orders available under the Act are Ward ship (section 94), Foster Care Order (section 100 – 125) and Parental Responsibility conferred on court appointed guardian (section 82) These also used by the courts in certain circumstances by the courts as remedies in child matters.

In the above outlined court orders/ remedies, none can be carried out singularly. Different authorities, agencies or stakeholders are expected and sometimes co-opted to play a role. For these and other remedies, for the court orders to be effective, all stakeholders must play an active role and work together as judgement and court orders cannot be given in vacuum. The legal framework provided under local legislation and through international treaties require well-functioning Institutional framework. Further steps are needed for the various Institutional frameworks to form a collective front for maximum impact.

Permit me my Lord, at this juncture to observe that is need for an all embracive stakeholders’ submit on Child Justice Administration; whereby the education sector, health sector, Faith Based Sectors (FBO’s), Civil Societies Organisations (CSOs) and Non-governmental Organisations (NGOs) are made part of a training of this magnitude. These sectors are indeed critical to effective child justice administration as they have much to do with children, who are often prone to come in contact with the law, whether as offenders, victims or witnesses prior to being part of family Court proceedings. All stakeholders need to ascertain their roles/ responsibilities. It is a collaborative effort and the need for training and re-training can never be over emphasized. A multi-disciplinary approach to child justice matters is key to success.

CHALLENGES:

* Funding: This s the main challenge confronting Judiciary generally and the Family Court in particular. There is need for the Family court to be properly equipped in order to position it as a child friendly court.

* Trained Personnel and proper deployment: The importance of training and retraining of officers and personnel of the Family Court cannot be over emphasised. Laws and procedures are evolving phenomenon, hence the need for all stakeholders to be availed with knowledge on emerging trend. The Family Court being a special court, all stakeholders upon training should be properly deployed.

* Confidentiality and integrity: The various processes involved in child justice administration requires that stakeholders in each sector to handle every case with utmost competence, professionalism and some level of altruism.
* Access to Information and Necessary Materials: Stakeholders are to share information without delay to enable the Family Court assesses and address cases in a manner that would guarantee the child’s best interests effectively an timely. Prioritizing and recognising IT is sin qua non to effective and efficient child justice system.

Thank you.

1. The United Nation Charter,1946; Universal Declaration of the Rights of Human Being,1948 [↑](#footnote-ref-1)
2. United Nation Convention on the Rights of a Child, 1989 [↑](#footnote-ref-2)
3. section 217 [↑](#footnote-ref-3)
4. Article 3:1 [↑](#footnote-ref-4)
5. organised within the framework of the Belgian Chairmanship of the committee of Ministers of the Council of Europe in collaboration with the council of Europe Children’s Rights Division in Brussels on 9th to 10th December, 2014 [↑](#footnote-ref-5)
6. See General comment No.14 2013 on the right of the child to have his or her best interest as a primary consideration [↑](#footnote-ref-6)
7. clear United State Bureau Portal on Child’s Welfare; See https://www.scu.edu> [↑](#footnote-ref-7)
8. section 149 [↑](#footnote-ref-8)
9. African Charter on the Rights and Welfare of the Chid, 1990;Convention on the Rights of the Child 1989; the 1999 Constitution of the Federal Republic of Nigeria (as amended); The Child’s Rights Act, as domesticated in various states in the country [↑](#footnote-ref-9)
10. Haase v. Germany (2004) 2 FLR 575 [↑](#footnote-ref-10)
11. Section 41 [↑](#footnote-ref-11)
12. Section 42 Child Right’s Act [↑](#footnote-ref-12)
13. Section 53 [↑](#footnote-ref-13)
14. supra [↑](#footnote-ref-14)
15. section 53(5) (a-b) [↑](#footnote-ref-15)
16. Section 60 [↑](#footnote-ref-16)
17. Section 48 of the Act [↑](#footnote-ref-17)
18. Section 58 of the Act [↑](#footnote-ref-18)