

**LEGAL SAFEGUARDS ON THE RIGHTS AND WELLBEING OF A CHILD  
IN THE FAMILY COURT**

**BY**

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**Introduction:**

The protection and wellbeing of children in contact with the justice system is a priority recognized by various international conventions, regional legislation, policies, and laws. The Preamble to the Declaration of the Rights of the Child adopted by the General Assembly of the United Nations on 20<sup>th</sup> November 1959 states that “***the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth***”.

This statement endorses the perception of children as a vulnerable group in society deserving special protection – a perception that influences the philosophy of child justice administration.

In Nigeria, these principles are enshrined in the Child Rights Act (CRA) of 2003 and the child rights laws adopted by different states. The CRA establishes a separate system of juvenile justice through family courts,

dedicated to upholding the best interests, welfare, and dignity of children, while promoting rehabilitation and reintegration. This specialized court system is a cornerstone of a child-friendly justice framework.

This paper will explore and elucidate legal safeguards can be employed by not just the family courts but the courts as a whole to protect the rights and wellbeing of children.

It aims to analyze the legal safeguards within Nigeria's family courts designed to protect the rights and wellbeing of children and how this measures are applied in the family courts and lastly to evaluate how these measures align with international standards for juvenile justice.

## **The Family Courts**

According to international standards as provided for under Article 40 of the ***United Nations Convention on the Rights of the Child***, it is encouraged wherever possible, for children in conflict with the law not to be dealt with in a formal judicial proceeding as carried out by the courts. However, where this can't be avoided, children should always be dealt with in a ***specialized, child friendly environment***.

In line with the above it is safe to say that the first legal safeguard for the right and wellbeing of a child is establishment of a separate court for children which are referred to in this paper as the family courts.

S. 149 of the CRA provided for the establishment of the family courts while S. 151 provides the jurisdiction of the court to cover every issue as it related to a child brought before the court<sup>1</sup>. The family courts in Nigeria play a pivotal role in the child justice administration by ensuring that cases involving children are handled in a manner that prioritizes their best interests, welfare, dignity and conciliation of the parties involved as it affects children. These courts provide a specialized system designed to address the unique needs of children, while focusing on rehabilitation and reintegration rather than punishment. S.154 further provided with emphasis, the need for training and professionalism for those in charge of children in the court. The aim is to create a child-friendly environment that supports the rights and wellbeing of children, ensuring that legal proceedings are conducted with sensitivity and appropriateness for young individuals.

I would now proceed to explain various other measures within the family courts system available to safeguard the right and wellbeing of a child.

## **PROCEEDINGS**

It has been observed that in criminal cases, child offenders often commit minor offences such as theft of goods or food items majorly due to hunger,

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<sup>1</sup> See S. 151(1-3)

deprivation or poverty. These offenders are usually out of school and their parents are illiterates so they most likely do not know these provisions of the law and so they would be better protected by it when the court supports and assist them with these provisions of the law.

S. 208 further emphasis this effect that:

“in view of the varying special needs of children and the variety of measures available, a person who makes determinations 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 disposition.

Furthermore, S. 204 of the CRA 2003 provides that:

“No child shall be subject to the criminal justice process or to criminal sanctions, but a child alleged to have committed an act which would have constituted a criminal offence if he were an adult shall be subject only to the child justice system and processes set out in this Act”.

This implies that the Act prohibits the joint trial of a child with adults under any circumstances. Rather, the provisions of this Act would guide how proceedings involving a child would be carried out.

S.158 and S. 215 explains the guiding principles in adjudication of child proceedings. They emphasize that proceedings of the court should be conducive to the best interests of the child, is conducted in an atmosphere of understanding allowing the child to participate express his/herself freely, and to ensure that the personal liberty of the child is restricted only after “careful” consideration of the case.

S. 154 provides that in;

“constituting a court handling a matter concerning a child, consideration shall be given to the circumstances and the needs of the child, particularly the age, sex, religion or special characteristics of the child”.

S.217 provides detailed steps as to how a child before the court shall be treated. The offence committed by the child must be told to the child and his parent or guardian in the language they understand, what to do if the

child does not admit the offence<sup>2</sup>, asking question of the child<sup>3</sup>, if a child should be remanded<sup>4</sup> and allow for a child to have legal representation.<sup>5</sup>

When Children are to give evidence in court, S. 160 provides that a child can give unsworn evidence. It is also important that children are questioned appropriately. The following are some of the guidance on best practices that the court can put in place for the child to give evidence.

- Discourage questions that are said in an aggressive, confrontational or degrading language
- Clear simple phased questions should be asked. Avoid repetitive questions because this could have confused the child.
- Avoid questions that involve comparative judgement due to difference in perceptions. (e.g, small, fast, big etc)
- Be sensitive to languages that children find difficult to say for instance sexual languages or languages about body parts.
- Younger kids might need breaks now and then. Consider not having long sessions and give breaks from time to time if need be.

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<sup>2</sup> S.217 (3)

<sup>3</sup> S.217(4-6)

<sup>4</sup> S. 217(7-9)

<sup>5</sup> S.155 CRA

It is also permissible to explain to the child to say I don't know or I don't remember in order for the child not to feel obligated to give just any answer.

From the forgoing the provisions of S. 208 cannot be overemphasized. It implies that it is paramount that the Judge would use his/her discretion on what is best for the child, to effectively use the provisions of this Act to help the child at any stage when the child is brought before the court.

## **DIVERSION**

Another legal safeguard put in place in the child justice administration is Diversion measures. Diversion happens when a child who is accused of a criminal offence has his or her case dealt with without recourse to judicial proceedings of trial. Diversion is used for very simple offences and where the child has admitted guilt and remorse. Diversion measures range from a simple Apology to referral to a specialized diversion project.

A Judge can use her discretion to divert a child from the criminal justice system at any stage where a child is in conflict with the law appears before the court. If a child is diverted from the criminal justice system at an early stage, it is likely to be in the best interest of the child and the Judge should bear this in mind at preliminary hearings involving children in conflict with the law. Regard should always be given to the nature of the offence, the

parties to the case, the conduct of the child offender and on a case by case basis.

## **SENTENCING**

When children matters are before the court, it is important that before the determination of what order to make following a finding of guilt, the court should take into consideration the seriousness of the offence or offences and any aggravating or mitigating factor associated with the offence or personal to the child. This may lead to a more lenient Punishment. To further ascertain this, S.217(6)(a) makes provision to the effect that all information concerning the welfare of the child such as child background, living situation as well as the circumstances that lead to the offence and all facts that could be relevant to the case concerning the child must be made available to the court on time by the social welfare officer as provided for under S. 219 of the CRA. After this is done the court would consider the appropriate measure to dispose of the case as provided under S. 223 of the CRA. This ensures the best interest of the child is considered before granting any order to dispose of the case. It further emphasizes in S. 221 that no child shall be subject to imprisonment, corporal punishment or the death penalty. Also, under S. 213(2) of the Act it is provided to the effect that in dealing with children the courts are discouraged from using



the words “conviction” and “sentence” in relation to children and young persons who are dealt with by the juvenile courts<sup>6</sup>. Hence, the word Disposal is used in dealing with sentencing involving Children.

## **PRIVACY**

Ensuring the privacy of a child in the Nigerian family court is paramount to safeguarding their well-being and dignity. It helps to protect children by safeguarding them from public scrutiny, stigmatization or intimidation as well as revealing sensitive information about them<sup>7</sup>. S. 156 of the Act provided that child proceedings should be held as private as possible with only the officers of the court, parties to a case with their legal representatives and the parents or guardian of the child. It also went further under S.157 to prohibit the publication of the child’s name or anything that could lead to the identification of such child by the public.

## **CHILD VICTIMS AND WITNESSES**

Another legal safeguard in place is the adoption of special protective measures when dealing with children even when they appear as victims or

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<sup>6</sup> S. 213(2) of the CRA states: - The terms "conviction" and "sentence" shall not be used in relation to a child dealt with in the Court and any reference in any enactment or other law to a person convicted, a conviction or a sentence shall, in the case of child be construed as including a reference to a person found guilty of an offence, or to a finding of guilt or to an order made upon such a finding, as the case may be.

<sup>7</sup> Also See S.205 of the CRA which states that the right of the child to privacy specified in section 8 of this Ct shall be respected at all stages of child justice administration in order to avoid harm being caused to the child by undue publicity or by the process of labeling.

witnesses the system emphasizes on child-friendly procedures rather than structures. Possible special protection measures that can help to create a child-friendly environment can include:

- 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).

This should not only be considered when the child is a victim or witness before the court. Any child that is before the court can be assisted with this measure to get the best possible outcome to the benefit of a child. It would ensure children before the court are free from any form of intimidation that could hinder the positive outcome for them in court.

## **CUSTODY MATTERS INVOLVING CHILDREN**

S. 69 of the CRA empowers the court to make an order in respect to custody or right to access of a child. In dealing with proceedings for the custody of children, the interest of the children must receive paramount consideration. This was further buttressed in S.71 of the Matrimonial Act

and has consistently and uniformly been emphasized in decided cases<sup>8</sup>. The aim was to re-emphasis that in custody matters, a parent who contributed to the breakdown of the marriage should not be deprived custody because of that<sup>9</sup>. Therefore, in deciding what the best interest of the child is the courts should look into the welfare of the child. Factors which should be regarded as relevant by the courts should include the degree of familiarity between the children and each of the parties respectively, the amount of affection between child and the parties, the respective income and care already given by each of the parties, the arrangement for the child's education, if there is a presence of a third party with either of the parties among others factors.

### **Guardian Ad Litem**

The appointment of a guardian ad litem<sup>10</sup> can also provide care and protection for a child to express his or her own view in proceeding. Guardian ad litem is a person appointed by the court to represent the child in a specified proceeding. This is particularly important where the child's views may not be the same as his or her parent or guardian so it is crucial to have an independent legal representation to understand and express the wishes of a child as well as protect their best interest.

### **OBSERVATIONS AND RECOMMENDATION**

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<sup>8</sup> Nigerian Family Law: Principles, cases and commentaries Itse Sagay 1999 at page 536.

<sup>9</sup> Ibid. See also Okafor v. Okafor (1972) suit no. 6D/71

<sup>10</sup> S. 89(1) see the whole session to understand more on the appointment and role of a guardian ad litem.

The concept of the family court and the child justice system is innovative and commendable. However, there are a lot of provisions that would have been safeguards for a child but the system in place currently cannot carry it out. For instance, S. 212(2) provides that;

“while in detention a child shall be given care, protection and all necessary individual assistance, including social, education, vocational, psychological, medical and physical assistance, that he may require having regard for his age, sex and personality.

In reality this is not the case and many children are deprived of this assistance.

Also, Sections 247 and 248 of the CRA provides recommended institutions to care for young offenders, such as the Children Correctional Centre and the Children Residential Centre, among others, and such other institutions as the Minister may, from time to time, designate. These facilities must be established for effective re-habilitation and reintegration of young offenders in order for the child justice system to function properly. Without them, a lot of children would neither be able to have their right and wellbeing safeguarded by the courts, nor would they be successfully re-habilitated or reintegrated to society. Recidivism would also increase because the appropriate measure for certain children would

not be applied rather what is available would be used. This creates a major challenge in the effectiveness or other wise of the child justice system.

## **CONCLUSION**

I would like to reemphasis the provisions of S. 208 of the CRA to conclude on this paper. We have identified that children have varying needs when brought before the courts therefore, special measures - such as those raised in this paper need to be applied when handling children. The role on the Judge or officers in the child justice system is to always apply discretion and this measures to effectively protect the best interest of the child at all times.