

**CHILD FRIENDLY JUSTICE SYSTEM: DOES THE CHILD RIGHTS ACT, 2003  
TICK ALL THE BOXES? BEING A PAPER PRESENTED BY EMEM ETTE ESQ. AT  
THE 2020 FIDA NIGERIA WEEK/ ANNUAL GENERAL MEETING ON THE 18<sup>TH</sup>  
- 20<sup>TH</sup> NOVEMBER 2020 HELD IN JOS, PLATEAU STATE.**

**PROTOCOL**

**INTRODUCTION:**

About December 2019, we woke up to the reality of a deadly virus that was sweeping across Wuhan, China. Most of us before now never heard nor knew that such a city existed. Being 'Nigerians', we shrugged off the news and continued our lives hoping the virus will stay in Wuhan.

Alas, on the 27<sup>th</sup> of February, 2020, the virus arrived Nigeria through the body of an Italian citizen who tested positive to the virus in Lagos. Fake news made rounds that the virus could not affect the black man and that the virus cannot survive the hot weather in Nigeria. We all held on to these pieces of hope until the 9<sup>th</sup> of March, 2020, when the Nigerian, who had contact with the Italian citizen tested positive in Ogun State.

By the end of March, life as we knew it came to an abrupt halt and we entered a new era of nose/face masks, social/physical distancing, washing of hands, sanitizing, discovering and drinking all kinds of concoctions. Additionally, physical contacts was restricted with the calls for precautionary measures such as no hugging, no shaking of hands *etcetera* became the new normal.

The covid-19 pandemic did not just disrupt our everyday interactions with each other but has had profound effect on the socio- economic and political landscape of the entire world. Economies are collapsing and even the so-called developed countries are suffering under the effects of the virus.

As usual, the most vulnerable groups of people who are most affected by any world crisis remain women and children as they face multiple challenges including physical and psychological health risks, family confinement, isolation and economic vulnerability during this period.

As legal services providers, we have observed an acute dysfunction of legal, security and governance structures resulting in serious exposure of our children to human rights abuses including exposure to sexual and gender based violence. This is especially true as most of their parents, guardians and or caregivers have lost their jobs or income earning capacities and thus fanning the likelihood of an increased rate of child labour, sexual exploitation, teenage pregnancy, child marriage and child crimes.

The covid-19 pandemic has highlighted grave weaknesses in many countries' protection for children including inadequate health and social protection systems, over crowded detention facilities and the lack of synergized action plans. It has also

brought to full glare the many gaps inherent in Nigeria's Child Rights Act, 2003, a legislation filled with so much promise but with little wind in its sail. This paper will seek to open those gaps and suggest ways of bridging same.

## **OVERVIEW OF THE CHILD RIGHTS ACT**

The Child Rights Act was enacted in 2003 by the Nigerian government as a response to her duties towards the Nigerian child and to fulfil her obligations under the various international/regional conventions on children including the 1959 Declaration on the Rights of the Child and the Convention on the Rights of the Child 1989, which Nigeria became signatory in 1989 but ratified in 1991. Regionally, Nigeria became a signatory to the African Charter on the Rights and Welfare of the Child in 1999 though ratified in 2001.

These conventions and charters recognise the needs of a child, as distinct from those of adults, on the ground that the child, by reason of his or her physical and mental immaturity, needs special safeguards and care, including appropriate legal protection before as well as after birth.

The Act which defines a child as a person under the age of 18, consolidates all laws relating to children into one single piece of legislation, incorporating all the rights and responsibilities of children and specifying the duties and obligations of government, parents and other authorities, organizations' and bodies.

### **Best Interests of the Child**

Section 1 of the CRA categorically provides that the child's best interests shall be paramount. A child shall be given such protection and care as is necessary for its well being, retaining the right to survival and development and to a name and registration at birth.

### **Basic provisions of the CRA**

- ❖ The **dignity** of the child shall be respected at all times (section 11)
- ❖ Every child has the right to **survival** and **development** (section 4) <sup>[1]</sup><sub>[SEP]</sub>
- ❖ every child is entitled to **privacy** (section 8) <sup>[1]</sup><sub>[SEP]</sub>
- ❖ every child is entitled to basic education (section 15)
- ❖ every child has a right to freedom of thought, conscience and religion (section 7) <sup>[1]</sup><sub>[SEP]</sub>
- ❖ **Freedom from discrimination** on the grounds of belonging to a particular

community or ethnic group, place of origin, sex, religion, the circumstances of birth, disability, deprivation or political opinion (section 10) <sup>[1]</sup><sub>[SEP]</sub>

- ❖ Freedom from physical, mental or emotional injury, abuse or neglect, sexual abuse, maltreatment, torture, inhuman or degrading punishment (section 11; section 32) <sup>[1]</sup><sub>[SEP]</sub>
- ❖ Freedom from attacks on a child's **honour and reputation** (section 11) <sup>[1]</sup><sub>[SEP]</sub>
- ❖ The right to **rest and leisure** (section 12) <sup>[1]</sup><sub>[SEP]</sub>
- ❖ The right to enjoy the best possible state of physical best, mental and spiritual health <sup>[1]</sup><sub>[SEP]</sub>(section 13) <sup>[1]</sup><sub>[SEP]</sub>
- ❖ Every government in Nigeria shall strive to **reduce the infant mortality rate**, provide <sup>[1]</sup><sub>[SEP]</sub>**medical and health care**, adequate **nutrition** and safe drinking **water** and **hygienic** <sup>[1]</sup><sub>[SEP]</sub>environments (section 13) <sup>[1]</sup><sub>[SEP]</sub>
- ❖ The right of **mentally and physically disabled children and street children to** <sup>[1]</sup><sub>[SEP]</sub>**be protected** so that they can socially integrate and develop (section 16) <sup>[1]</sup><sub>[SEP]</sub>
- ❖ The **betrotal and marriage of children is prohibited** (sections 21 and 22) <sup>[1]</sup><sub>[SEP]</sub>
- ❖ Exposing children to pornography or other harmful materials is **prohibited** <sup>[1]</sup><sub>[SEP]</sub>(section 24) <sup>[1]</sup><sub>[SEP]</sub>
- ❖ Trafficking, abducting or unlawfully removing children from lawful custody is prohibited <sup>[1]</sup><sub>[SEP]</sub>(section 27) <sup>[1]</sup><sub>[SEP]</sub>
- ❖ Using **children in criminal activities** is **prohibited** (section 26) <sup>[1]</sup><sub>[SEP]</sub>
- ❖ Forced or exploitative labour and the **employment of children as domestic** <sup>[1]</sup><sub>[SEP]</sub>**help** outside their own home or family is **prohibited** (section 28) <sup>[1]</sup><sub>[SEP]</sub>
- ❖ Buying, selling, hiring or otherwise dealing in children for the purpose of <sup>[1]</sup><sub>[SEP]</sub>begging or hawking, prostitution or for other unlawful immoral purposes are prohibited (section 30) <sup>[1]</sup><sub>[SEP]</sub>
- ❖ **Recruiting children into the armed forces** is prohibited (section 30)

### Children's responsibilities

Under sections 3-20, the CRA gives children responsibilities and mandates parents, guardians, institutions and authorities to provide the necessary guidance, education

and training to enable them live up to their responsibilities, which include:

- ❖ Working towards the cohesion of their families and relating to others in the spirit of tolerance, dialogue and consultation; [L] [SEP]
- ❖ Respecting their parents and elders
- ❖ Placing their physical and intellectual capabilities at the service of the state and contributing to the solidarity and unity of Africa and the world at large; [L] [SEP]
- ❖ Contributing to the moral wellbeing of the society
- ❖ Strengthening social and national solidarity and preserving the independence and [L] [SEP] integrity of the country; [L] [SEP]
- ❖ Respecting the idea of freedom, equality, humanness and justice for all.

### **Child Justice Administration**

The Act provides for Child Justice Administration, to replace the Juvenile Justice Administration, which has been in existence for several decades in Nigeria. The provisions prohibit the subjection of any child to the criminal justice process and guarantee that due process be given to any child subjected to the child justice system at all the stages of investigation, adjudication and disposition of any case against such a child. It prohibits the use of capital punishment, imprisonment and corporal punishment for children under 18 years of age, and provides for the use of scientific tests in deciding paternity cases. These are all novel provisions.

The Act frowns upon the institutionalization of pregnant children/teenagers and expectant mothers. Where institutionalization is desirable or unavoidable, the CRA mandates the establishment of Special Mothers' Centers for pregnant mothers/teenagers, while Children Residential Centers and Children Correctional Centers are to be established to replace the present Approved Schools created under the Children and Young Persons Act. Where a court decides against institutionalization, it should utilize such disposition measures as dismissing the charge, or placing the child under care, guidance and supervision.

### **Children living under difficult circumstances**

Following the same principles behind the creation of institutions for servicing the needs and welfare of children living under difficult circumstances (such as orphans, street children and those suffering from physical or mental disabilities) are

provisions for the establishment, registration, regulation and monitoring of Community/Children's Homes. The Act vests supervisory functions and responsibilities in the ministry responsible for children in Children's homes, including monitoring, the provision of financial support, research and the gathering of information on the activities of the homes.

### **Institutional framework for the implementation of the CRC**

The CRA provides for the establishment of Child Rights Implementation Committees at the National, State and Local Government levels: the National Child Rights Implementation Committee, the State Child Rights Implementation Committee, and Local Government Child Right Implementation Committee. The committees are to ensure that there is governmental commitment to fulfilling the implementation of the provisions of the CRA at all levels, through research, investigation and jurisprudence. They may initiate actions to ensure the observance of the rights and welfare of the child (Part XXIII of the CRA)

### **Is the Child Right Act child friendly?**

A friend is someone who treats you well, who trusts you and whom you can trust, who listens to what you say and to whom you listen, who understands you and whom you understand. A true friend also has the courage to tell you when you are in the wrong and stands by you to help you work out a solution; any child friendly administration of justice system should adopt all these no matter who the child is, where he or she is from, what religion he or she adheres to or what he or she has done.

Broadly speaking, a child justice system refers to all procedures of judicial or administrative nature, whether formal or informal where children are brought in contact with or are involved in civil, criminal or administrative procedures as victims, witnesses, alleged offenders, persons who have been convicted or who had admitted responsibility for an offence; or as a subject in protective proceedings and family law or succession and inheritance disputes.

When faced with the justice system, children are thrown into an intimidating adult world, which they cannot understand. Adapting a system where they are protected and their best interests made paramount is therefore necessary.

From our experience in our work with children, we find that for many children, coming in contact with the law is a very unpleasant experience, when it could be otherwise. Many of the obstacles and distress they encounter are avoidable and could be removed by actors in the justice system. Though legislations and regulations have been put in place for children, it cannot be said that justice has always been friendly to children and youths. There is generally a mistrust of the system and there are a lot of shortcomings such as intimidating settings, lack of age-

appropriate information and explanations, a weak approach to the family as well as proceedings that are either too long or on the contrary too expeditious.

Various standards and guidelines have been created to achieve a child friendly system which guarantees respect for and effective implementation of all their rights. These guidelines include:

1. Accessibility
2. Age appropriate information and processes
3. Speedy resolution of cases
4. Diligent protocols adopted and focused on the needs of the child;
5. Respecting the right to due process;
6. Respecting the right to participate in and to understand the proceedings;

#### ACCESSIBILITY/AGE APPROPRIATE INFORMATION AND PROCESSES:

A child has the right to be informed of his/her rights and given appropriate ways to access justice and participate in proceedings. Weight should be given to their views bearing in mind their maturity. Their best interest must be the primary consideration in all matters involving or affecting them.

This best interest principle would appear to be the norm and consensus both internationally and otherwise. However, the actualization of this phrase is more important as it involves the determination of what is the best interest of a child in every conceivable situation and entrenchment through positive legislation and the issues of enforcement. More so, the fact that the Act provides that the best interest of the child 'shall be a primary consideration' in decisions affecting the child presupposes that it will not always be the single, overriding factor to be considered as there may be other competing or conflicting human rights interests.

#### SPEEDY RESOLUTION OF CASES

Before now, more emphasis was placed on children in conflict with the law – basically the criminal aspect of the justice system as it pertains to a child.

<sup>[L]</sup><sub>[SEP]</sub>Part XIII of the CRA (sections 149-162) provides for the establishment of **Family Courts** for the purpose of hearing and determining matters relating to children. The courts are to be established for each State of the Federation and the Federal Capital Territory. They are to operate at two levels – as a **Division of the High Court** and as **Magistrates' Court** and are vested with the jurisdiction to hear all cases in which the existence of a legal right, power, duty, liability, privilege, interest, obligation or claim in respect of a child is in issue, and any criminal proceedings relating to children.

<sup>[L]</sup><sub>[SEP]</sub>However, only the Family Court at the High court level has the jurisdiction to enforce the civil rights including allegations of infringement of the Fundamental Rights as enshrined in Chapter IV of the 1999 Constitution, as amended. The

Magistrate courts have jurisdiction to hear only the criminal cases. There is grave danger in this. In Akwa Ibom, State for example, we have less than 6 High Courts sitting over matters concerning children in the State and thus it takes 2 to 3 years to hear and determine matters concerning children especially with respect to custody and providing educational, medical and other necessities. It is therefore suggested that both courts should have the jurisdiction to hear all matters concerning children as this will go a long way to decongest the High Court dockets and also promote speedy resolution of cases.

### **Diligent protocols/ right to due process and participation in and to understand the proceedings**

There are several ways a child comes in contact with the law either as a victim or as a child in conflict with the law. In either case, the child is entitled to be treated with care, sensitivity, fairness and respect throughout any proceedings or case with special attention for his/her personal wellbeing and specific needs with full respect for their physical and psychological integrity.

- ❖ The CRA provides that proceedings in the Family Court shall be conducive to the best interests of the child, and shall be conducted in an atmosphere of understanding, allowing the child to express himself and participate in the proceedings (section 158). They are to give evidence or tried in camera. Only those directly involved should be present provided they do not obstruct them from giving evidence.
- ❖ The CRA also provides for the right to free legal representation (section 155) The child therefore has the right to access appropriate independent and effective complaint mechanisms
- ❖ Section 157 guarantees the privacy and the protection of a child's identity thus the personal data of children who are in conflict with the law should be protected. None of their data should be made available or published particularly in the media, which could reveal his or her identity.
- ❖ Protected from harm including intimidation, reprisals and secondary victimization.
- ❖ Professionals working with children should be regularly vetted to ensure their suitability to work with children.
- ❖ When a child is apprehended he should be informed in a manner he understands of the offence he has committed and given the opportunity to contact parents or persons they trust.
- ❖ Child friendly approaches during investigations

Section 221(1) of the Act provides that no child shall be ordered to be:

- a. imprisoned
- b. subjected to corporal punishment or;
- c. subjected to the death penalty or have the death penalty recorded against him.

These provisions are in line with global trends which are actually moving away from keeping children in institutions and meting out punishments. Alternative ways of managing judicial proceedings has been fashioned which includes diversion of judicial processes and using alternative dispute resolution mechanisms where they may best serve the child's best interest. In Zimbabwe they have what they call the Pre-Trial Division where cases from the formal criminal justice system are channelled to an extra judicial program under certain conditions and at the discretion of the prosecution.

The cases are dealt with by non-judicial bodies thereby avoiding the negative effects of a formal judicial proceeding. This gives children the opportunity to rethink their actions and lives without getting a criminal record. This is because many times children commit crimes not out of their own making but are victims of various socio – economic factors such as poverty and homelessness, which leaves them vulnerable. This system therefore prevents them from receiving a criminal record early in life and being labelled as criminals. It protects the child from the dangers of criminal profiling on the basis of a criminal record.

Another advantage of this system is that it reduces the backlog caused by the huge number of cases in courts. Additionally, it helps to decongest police cells and correctional centres by doing away with petty cases. The cases however must be non –serious offences, the child must accept responsibility for the offence without coercion, must preferably be a first time offender and must be willing to take part in a program designed by the divisional officer.

However, though the effect of imprisonment could bring about a complete mental and physical deterioration of a prisoner, avoiding punishment and or imprisonment may be tantamount to compromising public safety. In cases of extreme violence like murder and rape, especially where it is shown that the child has no mental problem, it is not so clear what non – institutionalism aims to achieve. Where a child may steal because he is hungry, a child who can rape or kill another in cold blood does not need vocational training. The safety of the public, which comprises the safety of other children should be of primary concern.

#### CONCLUSION/ RECOMMENDATIONS:

The Act does not apply across the country as only 25 out of the 36 States of the Federation have adopted same as State laws. Some of the reasons given by states that are yet to adopt the Act are that its provisions conflict with their religious and cultural norms especially as it prohibits child marriage, marriage to members of an adoptive family and that it defines a child to be a person below the age of 18.



Also being an item on the concurrent legislative list, states are not bound to strictly adopt its provisions and thus are at liberty to enact whatever fits their intent; and so from Abia to Kwara to Nassarawa to Rivers to Akwa Ibom *etcetera* a child has been defined to be a person below the age of 13, 14, 16 and 18.

The perception of age as a definition of who a child is in Nigeria therefore depends on who is defining and varies according to cultural backgrounds. Thus, this lack of a comprehensive definition poses an encompassing handicap to a holistic application of the provisions of the Act.

Childhood and vulnerability are intrinsically tied together and every child no matter his/her religious, cultural or ethnic background, must be accorded legal protection. It is important therefore, that the law applies equally across the nation as opposed to the current practice where children within the country are subjected to different legal standards simultaneously. Thus:

1. Fida Nigeria branches in States that are yet to adopt the Act should exert more pressure on the State governments to adopt the Act, with the right definition of who a child is in the best interest of the child. States where it has been adopted already, should push for an amendment of the definition of a child where it is lower than 18.
2. Section 221 of the Child Rights Act should be expunged as it appears to allow culpable children walk free without retribution thereby exposing others to harm.
3. Various branches of FIDA should push for the amendment of the punishment section for unlawful sexual intercourse with a child to bring them in line with the provisions of section 31(2) of the Child Rights Act, which provides for life imprisonment. Most States have reduced the punishment to 14 years in the adopted State Law.
4. Some states that have adopted the Child Rights Law are yet to establish family courts, which are vital to the enforcement of the Law. These courts should be established and funded by the appropriate authorities.
5. The government at all levels need to do more in terms of orientation to educate the citizens about the need to rethink some of the cultural and religious rules and practices that are harmful to children (these may include female circumcision, child marriage, skin scarification etc.). This is not intended to undermine the rules and values embedded in this system of law but to review them with the aim of making them operate in the best interest of the children.
6. Government should embark on a country - wide advocacy in order to improve the people's understanding of the issues that are contained in the

CRA. Traditional rulers and other gatekeepers should be involved in the advocacy efforts. There should be a synergy of action between the relevant government agencies like the National Orientation Agency and the National Institute for Cultural Orientation, NGOs, faith based organizations etc in order to make implementation of the CRA more effective.

7. As part of the advocacy, the school curricula, especially for basic and post basic schools, should be reformed to incorporate the teaching of child's rights. This will enable the children, who are the primary actors to have some level of understanding and awareness about their rights and enlighten others.

On the whole, government should adopt a holistic, inclusive strategy for ensuring the functionality of a justice system that is fair, timely, effective and accessible to all.

Thank you for your attention.