

## The Problems and Prospects of Child Adoption in Nigeria

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**ABSTRACT:** *It is not in dispute that children are an integral part of every family. More often than not, the absence of children in a family is viewed as problematic, especially in a place like Nigeria where indigenous customs and traditional practices still largely govern the beliefs of people. It is expected that every marriage should produce biological children; however, some couples are not that fortunate for various reasons ranging from barrenness to loss of pregnancy or non-survival of children. To this end, adoption offers such couples an alternative which makes it possible for them to have children which they can legally call their own, with all the rights, privileges and responsibilities over such children as if they were the biological parents. Although adoption is not a novel practice in the Nigerian Family Law, many challenges have hampered the smooth running of the process, particularly in recent times. Sadly, chief among these challenges is the bizarre reality of “baby factories” that the social welfare system has had to grapple with. Hence, in order to aid a proper interrogation of relevant issues, this paper is divided into five sections. Section I deals with introductory matters in relation to adoption; section two considers the legal framework regulating adoption in Nigeria; section three which is the thrust of the paper, considers the problems facing the child adoption system in Nigeria; section four takes a look at the position of intercountry adoption as well as the future of adoption in Nigeria; while section five concludes with meaningful suggestions that could uncurl the adoption system in Nigeria.*

**KEYWORDS:** child adoption, challenges, customary law, Islamic law.

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## INTRODUCTION

Adoption is defined as “the process by which the legal relationship between a child and his natural parents is severed and re-established between the child and a third party or parties.”<sup>1</sup> It can be referred to as the legal process through which all the parental rights and duties, including ownership, of the natural parents of a child are permanently terminated and fully transferred to

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<sup>1</sup>Nwogugu E.I. 1990, “Family Law in Nigeria.” Heinemann Educational Books, Nigeria; p312.

another in relation to the same child. Although adoption is believed to be a statutory creation in most legal systems,<sup>2</sup> the concept is probably as old as time itself, and certain ancient religions even allude to adoption in their texts. For instance, the Holy Bible captures the story of a Jewish baby found beside River Nile by Pharaoh's daughter who chose to adopt him and christened him Moses.<sup>3</sup> Nonetheless, legal adoption as we have it today is a creation of statutes.<sup>4</sup> Globally, it gained ascendancy after the World War II for humanitarian reasons, as a solution to the predicament of children who had lost parents to the war.<sup>5</sup> Ever since that time, humanitarian cause has ranked high as part of the reasons why adoption is encouraged. The United Nations Convention on the Rights of a Child (CRC) makes provision for adoption, viewing it as a mechanism by which alternative care may be provided for children that have been deprived of the family environment, alongside guardianship, foster care and *Kafalah*,<sup>6</sup> institutional care being the very last option.<sup>7</sup>

“1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, *kafalah* of Islamic law, adoption or if necessary placement in suitable institutions for the care of children....”

Indeed, adoption plays a very important role in our society. While it brings relief to childless couples by giving them the sense of ownership of their own child (ren) in life, adoption is also a means by which privileged persons of the society can help orphaned, neglected and destitute children to make headway in life. This is the spirit and intendment of every child related treaty, law or policy- the wellbeing and best interest of children. Children need families and families need children, and adoption provides a statutory solution where these needs are not met naturally. Hence, child adoption could be both a socially-responsive venture and a possible way out of infertility.<sup>8</sup>

<sup>2</sup>Tajudeen OI. 2013. Adoption Practice in Nigeria –an Overview. Journal of Law, Policy and Globalization 19:7. Retrieved from <http://www.iiste.org/Journals/index.php/JLPG/article/viewFile/8922/9081> on 09 April 2022

<sup>3</sup>Exodus 2:1-10, the Holy Bible.

<sup>4</sup>Adoption was non-existent under common law; as a matter of fact, the legal relationship that exists between a child and his natural parents was inalienable. See Nwogugu E.I. Op cit note 1.

<sup>5</sup>Future of Children, 1993. “Overview and Major Recommendations: International Adoption”. *Adoption* 3:1. Retrieved from

<http://www.princeton.edu/futureofchildren/publications/journals/article/index.xml?journalid=66&articleid=450&sectionid=3082> on 29<sup>th</sup> May, 2015.

<sup>6</sup>Guardianship under Islamic law.

<sup>7</sup> Article 20 CRC

<sup>8</sup>Ojelabi OA, Osamor PE and OwumiBE, 2015. “Policies and Practices of Child Adoption in Nigeria: A Review Paper.” *Mediterranean Journal of Social Sciences* 6:1.75. Retrieved from

<http://www.mcser.org/journal/index.php/mjss/article/viewFile/5511/5315> on 26th May 2022.

## LEGAL FRAMEWORK REGULATING ADOPTION IN NIGERIA

Under the Nigerian Family Law, three systems of law are recognized namely: Statutory law system, Customary Law system and Islamic Law system.

### Adoption under the statutory law

The Eastern Nigeria Adoption Law of 1965, which is still applicable in eastern States today, was the very first legislation on adoption in the country.<sup>9</sup> Subsequently, Lagos State promulgated the Adoption Law of Lagos 1968, after which some other States such as Oyo, Ogun and Cross-River States followed suit. All these laws have very similar provisions with very minor differences.<sup>10</sup> However, in 2003, Nigeria passed into law the Childs' Right Act<sup>11</sup> which is basically a domestication of the United Nations Convention on the Rights of the Child (CRC) which Nigeria is signatory to. This notwithstanding, it should be noted that the 1999 Constitution of the Federal Republic of Nigeria places child welfare matters under the concurrent legislative list and as such, States have exclusive jurisdiction in this regard and can legislate on such matters<sup>12</sup>. However, Section 274 of the Act states inter alia:

“(1) the provisions of this Act supercede the provisions of all enactments relating to-

- (a) Children;
- (b) Adoption, fostering, guardianship and wardship;
- (c) Approved institutions, remand centres and borstal institutions; and
- (d) Any other matter pertaining to children already provided for in this Act.

(2) Accordingly, where any provision of this Act is inconsistent with that of any of the enactments specified in Subsection (1) of this Section, the provision of this Act shall prevail and that other provision shall, to the extent of its inconsistency, be void.

By the foregoing provision, all enactments of States regarding the welfare of children must be brought into substantial conformity with the principles and provisions of the Act; and in the event of any inconsistency, the Act prevails. About 28 States have domesticated the Act, including but not limited to Lagos, Oyo, Ondo, Abia, Rivers, Benue, Kogi, Taraba, Nasarawa, Plateau, Delta, Imo, Osun and Bayelsa.<sup>13</sup> Most of these “compliant” States are located in the

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<sup>9</sup>Nwogugu EI, 1990. “Family Law in Nigeria”. Heinemann Educational Books, Nigeria; p.313.

<sup>10</sup>Ojelabi OA, Osamor PE and OwumiBE, 2015. Policies and Practices of Child Adoption in Nigeria: A Review Paper *Mediterranean Journal of Social Sciences* 6:1.77. Retrieved from <http://www.mcser.org/journal/index.php/mjss/article/viewFile/5511/5315> on 26th May 2015.

<sup>11</sup>Subsequently referred to as the Act.

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<sup>13</sup>UNICEF Nigeria, 2011. Fact Sheet on Child rights legislation in Nigeria. Retrieved from [www.unicef.org/nigeria/child\\_rights\\_legislation\\_in\\_Nigeria.pdf](http://www.unicef.org/nigeria/child_rights_legislation_in_Nigeria.pdf) on 25th May, 2015. Also, Ben Ezeamalu, 2014. “Nigeria’s Child Rights Act non-functional, activists say.” *Premium Times*, reported on May 27, 2014.

southern and north central parts of Nigeria where muslim population is lower. The northern parts of Nigeria has a strong Muslim presence, hence, prior to the Act, these States located therein had no adoption laws because Islamic law which is the personal law of many does not recognize adoption. As at 2021, only nine northern states were yet to domesticate the Act including Adamawa, Bornu, Bauchi, Gombe, Jigawa, Kebbi, Yobe, Kano and Zamfara States.<sup>14</sup> Hence, in line with the prevailing legal situation, it would be safe to conclude that adoption as a practice is yet unknown to law in many States in northern Nigeria.

It is instructive to note that prior to the Child Rights Act (CRA) 2003, the Child and Young Persons' Act (CYPA)<sup>15</sup> which apart from the Matrimonial Causes Act<sup>16</sup> was the federal law which basically addressed child protection issues, is rather silent about child adoption or the procedure for it. The closest the CYPA gets to adoption is foster-parentage/guardianship. It provides that in respect of juveniles in need of care or protection,<sup>17</sup> the court can make a corrective order "committing him to the care of any fit person, whether a relative or not, who is willing to undertake the care of him."<sup>18</sup> However, the CRA has very explicit provisions regarding adoption, the process of adoption, the eligibility of the adopter, the powers of the Court, as well as the role of supervision officers.<sup>19</sup>

Under the CRA, a child who has been abandoned, neglected or persistently abused is eligible for adoption, nonetheless, convincing reasons in the interest of the child why such should be adopted must be shown to exist.<sup>20</sup> Even then, the parent(s) or guardian of the child must give their consent.<sup>21</sup> This particular clause further buttresses the view that a child is best brought up in his/her natural family environment. Even though adoption equally brings succour to childless families, as far as the law in this regard is concerned, that is not the primary aim. Adoption is viewed from the child's perspective, the best interest of the child is the factor to be considered and providing a suitable family for a child that has been deprived of the family environment is the focus of the law, not finding a child for a family.

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Retrieved from [www.premiumtimesng.com/news/161510-nigerias-child-rights-act-non-functional-activists-say.html](http://www.premiumtimesng.com/news/161510-nigerias-child-rights-act-non-functional-activists-say.html) on 01 June 2015.

<sup>14</sup> UNICEF Nigeria Press release: "UNICEF welcomes signing of Child Protection Bill into law in Sokoto State" Reported on 23 November, 2021. Retrieved from [www.unicef.org/Nigeria/press-releases/unicef-welcomes-signing-child-protection-bill-law-sokoto-state](http://www.unicef.org/Nigeria/press-releases/unicef-welcomes-signing-child-protection-bill-law-sokoto-state) on 30 June, 2022

<sup>15</sup> Laws of the Federation of Nigeria 1958, hereinafter referred to as CYPA

<sup>16</sup> Cap M7 Laws of the Federation of Nigeria 2004

<sup>17</sup> See Section 26(1) for the categories of children which are regarded to be in need of care or protection. Although not all the categories listed would have qualified for adoption under the Child Rights Act, many of such children qualify, notably orphans, those that have been deserted by relatives, neglected and destitute children.

<sup>18</sup> Section 26(2)(a)(ii)

<sup>19</sup> Part xii of the CRA provides for Adoption, particularly section 125-148

<sup>20</sup> Section 128(b)

<sup>21</sup> Notwithstanding, where the Court is satisfied that such requisite consent is being unreasonably withheld, the Court may dispense with that consent and go ahead to issue an adoption order in favour of the application placed before it. See Section 130; 132(6)

A couple will not be eligible to adopt except each has attained twenty-five years of age and there is an order of the court which authorizes them to adopt jointly. Where either of a married couple wants to adopt, such must obtain the consent of his or her spouse, as the case may be.<sup>22</sup> Anyone seeking to adopt in Nigeria, married or single, must be at least twenty-one years older than the child sought to be adopted.<sup>23</sup>

### **Adoption under the customary law**

That said, customary adoption may either be formal or informal depending on the locality in question. Under the Ishan Native Law and Custom, formal adoption may be effected in a meeting of the family of the adopter and that of the adoptee in which formal transfer of parental rights and obligation is done.<sup>24</sup> Informal adoption is the more prevalent form of cultural adoption. Usually the adopter simply takes in a relative or an orphaned child who may eventually lose connection with his biological roots as he/she grows into maturity.<sup>25</sup> Informal adoption could also come up where a widow, single parent or divorcee, with the consent of her husband, a child from a previous relationship and the husband allows the child to answer his last name and raises the child as his.<sup>26</sup> Under the customary law, adoption overlaps with guardianship, the only difference being that while guardianship lasts for a shorter duration, adoption lasts longer. While there is permanent severance of ties between the adoptee and his biological parents under statutory adoption, cultural adoption is not so strict on that.<sup>27</sup> Also, there is no definite rule about whether or not adopted child may inherit from his biological parents as well as his adopted parents.<sup>28</sup>

### **Adoption under the Islamic law system**

The Islamic law system does not recognize adoption and as such makes no provision for its regulation. What is acceptable in Islamic law is guardianship otherwise known as *kafalah*. Islamic jurists devised this guardianship model as a means of providing a family environment for deprived children such as orphans, without necessarily going through the process of adoption (especially closed adoption) which violates Islamic injunctions.<sup>29</sup> *Kafalah* is similar to foster-parenting but is different in that it is of a permanent nature and hence is more stable. *Kafalah* also differs from adoption in that although the “adoptive” parent has all the obligations of guardianship and maintenance towards the “adoptee”, there will be no severance of family

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<sup>22</sup> Section 131

<sup>23</sup> Section 131(1)(a)

<sup>24</sup> In Re Martin: Martin v Johnson and Henshaw (1936) WACA 91,92

<sup>25</sup> Justice Ngozika U. Okaisabor “Adoption, Guardianship, Fostering: Practice and Procedure -Customary Law Perspective at the National Workshop for Area/Sharia/Customary Court Judges” organized by the National Judicial Institute, Abuja 18th – 22nd March, 2019

<sup>26</sup> Ibid,

<sup>27</sup> Ibid,

<sup>28</sup> Ibid, 16

<sup>29</sup> Islam places a lot of emphasis on lineage; closed adoption means the adopted child’s lineage will not be traceable. Kutty F. 2013, “Islamic law, adoptions and kafalah” OpEd News, January 20, 2013.; Usang M.A and Julia S, Islamic *Kafala* as an alternative care option for children deprived of a family environment, African human rights law Journal vol 14 (2) Pretoria 2014



ties between the child and his/her biological family in favour of the new family.<sup>30</sup> Islamic law views *kafalah* as “a gift of care and not a substitute for lineal descent.”<sup>31</sup> The Qur’an forbids adoptive parents from naming their adopted children after themselves, rather, they are to call them by the names of their biological parents.

“...nor hath He made those whom ye claim [to be your sons] your sons. This is but a saying of your mouths. But Allah sayeth the truth and he showeth the way. Proclaim their real parentage. That will be more equitable in the sight of Allah. And if ye know not their fathers then [they are] your brethren in the faith and your clients.”<sup>32</sup>

Similarly, under the Islamic law, property and inheritance devolves strictly based on blood relationship, hence, a non-biological child is not automatically entitled to inherit from a family different from his natural family. An individual has control over the distribution of only about one-third of his estate out of which he may bequeath to his non-biological child either as a gift during his lifetime or through a testamentary document; the rest are allotted to members of his natural family.<sup>33</sup> What happens to a child whose legal guardian (that is, adoptive parent) under the *kafalah* system dies intestate is a question for Islamic law scholars to address. Islamic law is largely practiced in the northern States of Nigeria where there is a concentration of Muslims.

## CHALLENGES AND PROSPECTS OF ADOPTION IN NIGERIA

In the previous section, some of the laws which regulate the system of adoption in Nigeria were highlighted. Though these laws are man-made and cannot be properly described as perfect, it is at the same time unseemly to make light of the credibility and the degree of certainty which they attempt to put in place in order to safeguard primarily the welfare of children. As of today, adoption in Nigeria is marred by a lot of sharp practices, some of them very offensive to the ears. One of such despicable practices is the rather unfortunate existence of “baby factories” that produce babies principally for economic or commercial profit. Similarly, the socio-cultural perspective of adoption poses a major challenge and affects its acceptability in the Nigerian milieu. Furthermore, the bureaucracies and lacuna contained in the laws regulating adoption are some of the aspects which are crying for attention.

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<sup>30</sup>Muslim Women’s Shura Council, American Society for Muslim Advancement.2011 “Adoption and the Care of Orphan Children: Islam and the Best Interests of the Child.” *The Digest*; August 2011, p6.Retrieved from [http://www.wisemuslimwomen.org/images/activism/Adoption\\_%28August\\_2011%29\\_Final.pdf](http://www.wisemuslimwomen.org/images/activism/Adoption_%28August_2011%29_Final.pdf) on 29<sup>th</sup> May, 2015.

<sup>31</sup>Jamila Bargach; quoted in Adoption and the Care of Orphan Children: Islam and the Best Interests of the Child. Ibid.

<sup>32</sup>Qur’an 33:4-5

<sup>33</sup>Assim UM and Sloth-Nielsen J,2014. Islamic *kafalah* as an alternative care option for children deprived of a family environment. *African Human Rights Law Journal* 14:329. Retrieved from [http://www.ahrlj.up.ac.za/images/ahrlj/2014/ahrlj\\_vol14\\_no2\\_2014\\_chapter2.pdf](http://www.ahrlj.up.ac.za/images/ahrlj/2014/ahrlj_vol14_no2_2014_chapter2.pdf) on 30th May 2015.

### **Baby Harvesting/ Baby Factories**

Baby factories are illegal accommodations that house willing or unwilling young women who give birth to babies for the purpose of trafficking and illegal adoption.<sup>34</sup>

The term was first referred to in a UNESCO 2006 report and has been a recurring problem in the Nigerian society.<sup>35</sup> The practice that metamorphosed into this disturbing reality started as humanitarian services being rendered to young teenage girls with unwanted pregnancies by well-meaning persons and organizations.<sup>36</sup> Usually, these charity homes serve as half-way houses for the girls, housing them through pregnancy to the point of delivery. With the consent of the mother, the baby is put up for adoption and the affected teenager into the larger society. It is this charitable cause that has been hijacked by criminal elements that run the so-called baby factories.<sup>37</sup>

Recently, a number of hideouts for the perpetuation of these activities were uncovered in western and eastern Nigeria, many of them presented as orphanages, maternity clinics, and even water bottling industrial units to the public by their perpetrators.<sup>38</sup> A bewildered scholar described the situation thus: “In fact the abuse of children has nosedived to a dimension that some of the children are now specifically produced to be sold like toiletries in the open market with reckless abandon in Nigeria and other so-called developing countries.”<sup>39</sup> These circumstances are an indictment of the governmental bodies which should have been responsible for the exercise of oversight functions in this regard. On one of such raids by security agents when one of such factories was discovered, “Moonlight Maternity Clinic”, the proprietor of the clinic, one Dr. Akpudache, claimed that the clinic was registered, even when it was obvious that the clinic engaged in the sale of children. When his house was raided, six pregnant teenage girls were found there.<sup>40</sup> Although some of the pregnant teenage girls go to these clinics voluntarily, some of them are forcibly held back even after their babies have been

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<sup>34</sup> Makinde OA. ‘Infant Trafficking and Baby Factories in Nigeria’ *Child Abuse Rev* (2015), p2. DOI: 10.1002/car.2420 Accessed on 20 May 2022; Eniola B.O and Omoleye B.O, Baby Making Factories and Reproductive Health Right of Women in Nigeria, *Journal of Law Policy and Globalization* vol 72, 2018

<sup>35</sup> Ibid, p1

<sup>36</sup> Tayo Adelaja, “Inside Nigeria’s baby factories: Sex, pregnancy and child delivery”. *National Mirror*, reported on March 9, 2014. Retrieved from <http://nationalmirroronline.net/new/inside-nigerias-baby-factories-sex-pregnancy-and-child-delivery/> on 27<sup>th</sup> May, 2022

<sup>37</sup> Makinde OA. ‘Infant Trafficking and Baby Factories in Nigeria’ *Child Abuse Rev* (2015), p2. DOI: 10.1002/car.2420 Accessed on 20 May 2022

<sup>38</sup> Tayo Adelaja, “Inside Nigeria’s baby factories: Sex, pregnancy and child delivery”. *National Mirror*, reported on March 9, 2014. Retrieved from <http://nationalmirroronline.net/new/inside-nigerias-baby-factories-sex-pregnancy-and-child-delivery/> on 27<sup>th</sup> May, 2015.

<sup>39</sup> Alfred C; Akwara AF & Andeshi CA, 2014. Dialectics of the Incubation of ‘Baby Factories’ in Nigeria *International Journal of Peace and Conflict Studies (IJPCS)*, 2:1.85. Retrieved from <http://rcmss.com/2014/IJPCS-VOL2No1/Dialectics%20of%20the%20Incubation%20of%20D4%C7Baby%20Factories%D4%C7%D6%20in%20Nigeria.pdf> on 25<sup>th</sup> May, 2015.

<sup>40</sup> Ben Simon, “Nigerian ‘Baby factories’ exposed in child harvesting raid” *Agence France Presse*, reported on August 9, 2014. Retrieved from [http://www.huffingtonpost.com/2013/09/08/nigeria-baby-factories\\_n\\_3889300.html](http://www.huffingtonpost.com/2013/09/08/nigeria-baby-factories_n_3889300.html) on 27<sup>th</sup> May, 2015.

delivered and are again put in the family way by employees -men- who have been recruited to impregnate the girls.<sup>41</sup> It is believed that the babies produced are basically sold to prospective adopters, although there are likely indications that the babies are also allegedly used for ritual purposes, especially in the south-eastern part of Nigeria where the menace is quite rampant.<sup>42</sup> Notably, a research revealed that most of the baby producers are poor rural dwellers looking for greener pastures and are typically educationally challenged and as such it is easy to lure them to exchange their babies for cash.<sup>43</sup> The report further revealed that the consumers of the “baby factories” located in south east of Nigeria are mostly women in cities of the South-South region, Lagos and Abuja.<sup>44</sup>

One would wonder why prospective adopters would prefer illegal means of adopting children to the official and legal channel. Could it be that the process for legal adoption is bureaucratic, cumbersome and uncertain? At a ministerial press briefing in May 2014, the Ministry of Youth and Social Development stated that the Lagos State government released 88 babies for local and international adoptions after screening about 1200 applicants for adoption.<sup>45</sup> That means only about 7.3 per cent of all the applications were successful. While there might be genuine reasons for turning down some of the applications, it is as though on a general note, the demand for adoptable children seems to exceed the supply officially. Addressing some of these issues might as well ruin the baby harvesting industry for good. Private orphanages depend on the magnanimity of members of the public and charity donations for funding, hence they only accommodate the number of babies that they can cater for per time, and of course, government facilities may not be able to effectively take care of all cases- this could affect the number of babies available for legal adoption. But more importantly, the question of how to handle teenage girls with unwanted pregnancies must be addressed. Religious and cultural attitudes towards infertility have also been identified as factors responsible for the clandestine manner in which couples go after alternative ways of having children and might have contributed to the proliferation of baby factories.<sup>46</sup>

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<sup>41</sup> Ibid

<sup>42</sup> Tayo Adelaja, “Inside Nigeria’s baby factories: Sex, pregnancy and child delivery”. *National Mirror*, reported on March 9, 2014. Retrieved from <http://nationalmirroronline.net/new/inside-nigerias-baby-factories-sex-pregnancy-and-child-delivery/> on 27<sup>th</sup> May, 2015.

Also, Abimbola Adelakun, “The baby factories of the South East” *The Punch*, reported on Dec 12, 2013. Retrieved from <http://www.punchng.com/opinion/viewpoint/the-baby-factories-of-the-south-east/> on 27<sup>th</sup> May, 2015.

<sup>43</sup> Alfred C; Akwara AF & Andeshi CA, 2014. Dialectics of the Incubation of ‘Baby Factories’ in Nigeria *International Journal of Peace and Conflict Studies (IJPCS)*, 2:1.85. Retrieved from <http://rcmss.com/2014/IJPCS-VOL2No1/Dialectics%20of%20the%20Incubation%20of%20D4%C7Baby%20Factories%D4%C7%D6%20in%20Nigeria.pdf> on 25<sup>th</sup> May, 2015.

<sup>44</sup> Ibid

<sup>45</sup> Okoro Ekene 2014. Lagos releases 88 babies for adoption, rescues 2217 beggars *Daily Independent*, May 23, 2014. Retrieved from [www.dailyindependentnig.com/2014/05/lagos-releases-88-babies-adoption-rescues-2217-beggars/](http://www.dailyindependentnig.com/2014/05/lagos-releases-88-babies-adoption-rescues-2217-beggars/) on 27<sup>th</sup> May, 2015.

<sup>46</sup> Makinde Olusesan Ayodeji et al “Baby Factories in Nigeria: Starting the Discussion Towards a National Prevention Policy” *Trauma, Violence, & Abuse*, p 2 DOI: 10.1177/1524838015591588 retrieved on 13 June 2022



The danger of allowing “baby factories” to fester cannot be overemphasized. Apart from the fact that it constitutes a threat to children and might encourage kidnapping of both babies and teenage girls, serious concerns about the welfare of these illegally adopted children remain unresolved. Many of the customers who patronize these “factories” are unidentifiable and untraceable, hence cannot be held accountable for the welfare of these children, neither can it be ascertained the exact purpose for which they chose to adopt. This is way too risky. Apart from the fact that the baby factories form part of the supply chain for human trafficking, a whole lot of child rights abuses go on in the facilities.<sup>47</sup> Many of the mothers are underaged and owing to the clandestine nature of the baby factory operations, medical care is usually unlikely thereby exposing both mother and child to health related complications.<sup>48</sup>

### **Socio-cultural Perspectives about Adoption**

Basically, one of the major differences between adoption and every other alternative child care system, such as fosterage, is the fact that an adopted child is conferred with all the rights and privileges of a biological child of the adoptive parents. That notwithstanding, it is absolutely possible for the law to confer a given status or legitimacy, it is another thing for society to recognize that status as such even though it is clearly spelt out in black and white. Nigeria happens to be one place where socio-cultural beliefs happen to challenge the principle of child adoption. These socio-cultural inclinations affect not only the status of the adopted child and his/her proper integration into the new environment but also the willingness or otherwise of eligible people to adopt.

In most traditional societies in Nigeria, child adoption is not a part of the culture. The Yorubas believe in fosterage instead and this is reflected in the popular adage: “enikan lo n bimo, opo eniyan lo maa to” meaning one person may give birth to a child, several people help to raise the child. They hold the belief that raising a child is not the sole responsibility of the biological parents, several members of the community also have roles to play in this regard; but in so doing, the rights of the biological parents to the child is not disregarded but is in fact prioritised. According to Tajudeen Ojo, “*in fact, the number of children needing adoption is on the increase because fosterage is failing as a result of difficulty in sustaining the communal spirit of the extended family members.*”<sup>49</sup> This statement lends credence to the fact that adoption is not really a part of most cultures in Nigeria. Fosterage which is more acceptable to most cultures and traditions are entered into with the intention of subsequently reuniting the child in question with the biological family. This is a far cry from what adoption portends, that is, a permanent severance of ties between a child and his natural family. This is the most obvious legal effect of an adoption order which as of yet is still shocking to the cultural sensibilities of many Nigerians, traditional ones in particular. The Nigerian culture practically views infertility or childlessness as undesirable and objectionable, such that as soon as marriage is contracted, in-laws, parents, family and friends eagerly await for news of pregnancy and subsequently

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<sup>47</sup> Ibid, p3

<sup>48</sup> Ibid

<sup>49</sup> Tajudeen O.I; Adoption Practice in Nigeria: An Overview; Journal of Law, Policy and Globalization, Vol.19, 2013, pp 7-13. Retrieved from <http://www.iiste.org/Journals/index.php/JLPG/article/viewFile/8922/9081> on 09 April 2021

child-birth months after. Thus, childless couples often suffer a number of troubles ranging from social stigmatization to a sense of failure. In some severe cases, women have been subjected to humiliating experiences which include forceful ejection from their matrimonial homes.<sup>50</sup> In some settings, infertile couples are excluded from certain leadership roles and important family functions and may even be ostracized by immediate family members and relatives.<sup>51</sup>

A recent research carried out in Ibadan,<sup>52</sup> South West Nigeria revealed that many people knew about adoption but did not know about the process. Most of the participants said that it is their communal belief that an adopted child is a bastard; rather, what is common is the fostering of relative's children. Some were of the view that adoption may be taking a child from fry pan to fire because the environment in the community is not conducive for the child and it is always difficult if not totally impossible to take the adopted child as one's biological child. Most members of the community believe in having their biological children and that an adopted child is a bastard and will eventually ask for his biological parents.<sup>53</sup> In most traditional settings in Nigeria, polygamous marriage is in line with custom. Instead of suggesting the option of adoption to infertile couples, many families will rather pick another wife or husband-as the case may be- for their childless children/relatives because they do not believe that an adopted child can fully replace a biological child. It can therefore be inferred that adoption brings temporary consolation to childless couples pending when the permanent solution, in terms of a biological child, will arrive- if it eventually arrives. Concerning the effect of adoption, the CRA provides that "for the purposes of the devolution of the property on the intestacy of the adopter, an adopted child shall be treated as a child born to the adopter."<sup>54</sup>

In a related development, another study was carried out in Uthman Dan Fuddiyo University Teaching Hospital, Sokoto State to determine the attitude of infertile female patients to adoption.<sup>55</sup> About 250 patients agreed to participate in the study after counseling: the results were quite revealing. Even though 74.8% knew about child adoption, only 1.2% had adopted while 27.2% were willing to adopt. Willingness for adoption was notably higher in patients with infertility problems which had lasted more than five years, those with secondary and tertiary education as well as in those who had no living child in contrast to their reverse counterpart. Out of all the total number of participants, 71.6% were not willing to adopt a child

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<sup>50</sup>Ojelabi OA, Osamor PE and OwumiBE, 2015. Policies and Practices of Child Adoption in Nigeria: A Review Paper *Mediterranean Journal of Social Sciences*6:1.78. Retrieved from <http://www.mcser.org/journal/index.php/mjss/article/viewFile/5511/5315> on 26th May 2015. Also,

<sup>51</sup>Oladokun A. et al, 2009. Acceptability of Child Adoption as Management Option for Infertility in Nigeria: Evidence from Focus Group Discussions. *African Journal of Reproductive Health*; 13:1.80. Retrieved from <http://www.bioline.org.br/pdf?rh09008> on 09 April 2021

<sup>52</sup>Oladokun A. et al, 2009. Acceptability of Child Adoption as Management Option for Infertility in Nigeria: Evidence from Focus Group Discussions; *African Journal of Reproductive Health*; 13:1.79-91 Retrieved from <http://www.bioline.org.br/pdf?rh09008> on 09 April 2021

<sup>53</sup> Ibid

<sup>54</sup> S141(3) CRA 2003

<sup>55</sup>Nwobodo EI and Isah YA, 2011. "Knowledge, attitude and practice of child adoption among infertile female patients in Sokoto north-west Nigeria. *The Nigerian Postgraduate Medical Journal*; 18:4.272. Retrieved from [www.europepmc.org/abstract/med/22193997](http://www.europepmc.org/abstract/med/22193997) on 27th May, 2015.

majorly because child adoption would hinder them from fulfilling their conception role as women. Apart from exposing the societal apathy towards adoption, the study shows that adoption is often considered as a last option after every available solution has been considered. Furthermore, study suggests that education may be a veritable tool that could help to change the general attitude towards adoption, which was also one of the findings in a related research conducted in Nigeria as well.<sup>56</sup> It was observed that acceptability of adoption was considerably lower among poor women and those who had limited education.

It has been observed that the sociocultural view about adoption has enhanced the practice of closed adoption in Nigeria. Whereas the law requires that the adequate investigation to be carried out on the prospective adopters prior to the adoption, this is hardly ever thoroughly done as the whole process is shrouded in secrecy, in order to protect the identity of parties involved.<sup>57</sup> Even during the post-adoption visits, some adoptive parents get usually unnecessarily uneasy with officials because they do not want people around to know the purpose of such visit in order to avoid stigmatization.<sup>58</sup> This attitude may actually run contrary to the aim of the law which is child protection as some adopted children may be exposed to further risk as a result

### **International Adoption in Nigeria**

International adoption (intercountry adoption) is a controversial subject in private international law as far as the care and protection of children is concerned. A number of legal instruments touch on the topic, especially the Hague Convention,<sup>59</sup> each of them aiming at ensuring that the best interest of children is primarily considered when and if they have to cross national borders for the purpose of adoption. Risks such as child trafficking have been identified with international adoption over the years, particularly in African countries which are fast becoming the major sources of supply of adoptable children to the Western world.<sup>60</sup>

The international legal instruments that have one thing or the other to say concerning child adoption emphasize the principle of subsidiarity, that is, intercountry adoption should be considered an option for the alternative care of a child only if a better arrangement cannot be found for the child in his home country, and even then, it must be in the best interest of that

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<sup>56</sup>Adewunmi AA et al, 2012. "Factors associated with acceptability of child adoption as a management option for infertility among women in a developing country". *International Journal of Women's Health*; 4:365–372. Retrieved from <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3422108/pdf/ijwh-4-365.pdf> on 26th May, 2015.

<sup>57</sup> Onayemi O M, Aderinto A A, 2017. 'Child Adoption Investigation in Nigeria: Challenges and Options' *The Nigerian Journal of Sociology and Anthropology* Vol. 15.2 p87-100

<sup>58</sup> *ibid*

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<sup>60</sup>Mezmur DB, 2010."The Sins of the 'Saviours' ": Child Trafficking in the Context of Intercountry Adoption in Africa, Information Document No 2 for the attention of the Special Commission of June 2010 on the practical operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption. Hague Conference on Private International Law, The Hague; p 1.Retrieved from <http://www.hcch.net/upload/wop/adop2010id02e.pdf> on 25 May 2022

child.<sup>61</sup> The CRC categorically urges States to “recognize that inter-country adoption may be considered as an alternative means of child’s care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child’s country of origin”<sup>62</sup>. In other words, in attempting to provide alternative care for children deprived of the family environment, the State should only consider sending a child outside its borders for adoption only when it is absolutely impossible to find an adoptive family for such a child in his home country. Even if an adoptive family is not found for him at home, if there is evidence to show that the child is enjoying any other form of suitable care, it is enough reason not to send that child out for international adoption. More so, it is encouraged that children to be placed for adoption should be kept as close as possible to their ethnic, cultural, religious and linguistic background or environment<sup>63</sup> which international adoption may almost always tamper with in the life of a child, except adoption laws are made to put the appropriate control mechanisms in place and relevant authorities respect and enforce these laws. However, the problem of cultural shock which children given up for international adoption may likely face pales in magnitude when compared to the danger of trafficking which they might be exposed to. Given the key position that Africa occupies as “supplier of adoptable children” to the western world, every country on the continent ought to put strict laws and mechanism in place that will help to forestall criminal actions that international adoption is open to. In appraising the precarious situation of adoptable children in Africa, the African Child Policy Forum states thus:

“With globalisation, there are also indications that illicit activities that violate children’s best interests on the African continent are on the rise, encouraged by a shortage of adoptable children in other parts of the world, the shifting focus of intercountry adoption to Africa, increasing poverty in Africa, and accompanying weak institutional law enforcement capacity of African State institutions.”<sup>64</sup>

Nigeria, the most populous Black Country in the world, and invariably, the largest no of children in Africa cannot afford to be silent about international adoption. However, there is as yet, no federal legislation in Nigeria today that expressly indicates her position on intercountry adoption. Although the CRA provides that “an adoption order shall not be made in respect of a child unless the applicant is a citizen or, in the case of a joint application, both applicants are citizens of Nigeria”<sup>65</sup>, it says nothing more. This omission in the body of laws regulating adoption is a very significant one. This is a very dangerous position because there are indications that international adoptions are usually facilitated in Nigeria by the Federal

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<sup>61</sup> Article 21(b) CRC

<sup>62</sup> Article 21(b)

<sup>63</sup> Article 20(3) CRC

<sup>64</sup> ACPF 2012; “Africa: The New Frontier for Intercountry Adoption.” The African Child Policy Forum; ACPF, 2012. ‘Africa: The New Frontier for Intercountry Adoption. Addis Ababa: The Africa Child Policy Forum. Retrieved from <https://www.childwatch.uio.no/news/2012/africa---the-new-frontier-for-intercountry-adoption-en.pdf> on 26th May, 2015.

<sup>65</sup> Section 131(d), CRA 2003.

Ministry of Women Affairs.<sup>66</sup> A process as sensitive as this ought to be properly regulated by law.

## CONCLUSION AND RECOMMENDATION

This paper has looked at the adoption process in Nigeria under the three legal systems viz: under Statutory, Customary and Islamic laws. While the practice constitutes a very good alternative route for childless couples to satisfy their desire to have children, it is also a way out of poverty for underprivileged children. However, the adoption process in Nigeria is fraught with many problems, some of which have been identified by the paper. In particular, it has been exploited by some criminal elements to give birth to illegal industry now referred to as baby factories. The prevalent sociocultural attitude towards adoption has also discouraged openness in the process, thus hampering the monitoring which is required to ensure maximum protection for prospective adoptees. Also, there remains a huge lacuna in statutory provisions for the regulation of intercountry adoption as far as Nigeria is concerned. In the light of the foregoing, it is recommended as follows:

1. There is a need for public enlightenment and awareness creation to disabuse the mind of the public about adoption. This is highly essential in order to reduce the stigmatization often attached to child adoption and would also enhance a more opened adoption process.
2. Government and well-meaning individuals have to do a lot more to empower women economically in order to alleviate poverty. Most of the victims of child traffickers parading as adoption agencies are usually young teenage girls with unwanted pregnancies and lack the means to take care of both themselves and the unborn child. Poverty makes selling their babies an attractive option.
3. Government has to be very clear on what provision it has put in place for social services to be rendered to girls and women who get pregnant out of wedlock and do not want to keep their babies. These services should be available and information about them should be easily accessible to the public.
4. Laws which would effectively regulate intercountry adoption should be made and clearly delineated in order to forestall incidence of child trafficking under the guise of adoption. Usually, criminal elements make use of loopholes in the law to exploit the system and this should, by all means, be avoided.



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