

**THE CHILD CARE SYSTEM UNDER THE CUSTOMARY LAW OF THE YORUBA  
PEOPLE IN SOUTHWESTERN NIGERIA**

**BY**

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## **DEDICATION**

This work is dedicated to my Lord the Supreme, the Alpha and Omega.

and

My daughter, Adedunmola Adedolapo Aridunnu.

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## CERTIFICATION

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## TABLE OF CONTENTS

	PAGE
<b>Title page</b> .....	<b>i</b>
<b>Dedication</b> .....	<b>ii</b>
<b>Acknowledgment</b> .....	<b>iii</b>
<b>Certification</b> .....	<b>iv</b>
<b>Table of Contents</b> .....	<b>v</b>
<b>Table of Cases</b> .....	<b>x</b>
<b>List of Statutes</b> .....	<b>xiii</b>
<b>Treaties, Conventions and Multinational Agreements</b> .....	<b>xv</b>
<b>List of Abbreviations</b> .....	<b>xvi</b>
<b>Abstract</b> .....	<b>xvii</b>

### CHAPTER ONE: GENERAL INTRODUCTION

1.1. Background to the Study	1
1.2. Statement of the Problem	5
1.3. Research Questions	11
1.4. Aim and Objectives	11
1.5. Scope and limitation	12
1.6. Significance of Study	13
1.7. Contribution to Knowledge	14
1.8. Structure of the Study	15

### CHAPTER TWO: LITERATURE REVIEW AND CONCEPTUAL FRAMEWORK

2.1. Literature Review	16
2.2. Conceptual Clarification	35

### CHAPTER THREE: METHODOLOGY AND THEORETICAL FRAMEWORK

3.1. Research Methodology, Materials and Methods.	41
3.2. Theoretical Framework	44
3.2.1. Multiculturalism- An intermediate theory between the Relativism and Universalism	44

3.2.2. Caretaker Theory.	50
3.2.3. Other Principles-Best Interest, Attachment, Tender age, Feminism vs Patrilineality, Communitarianism vs Individualism, Traditionalism vs Modernism	53

#### **CHAPTER FOUR: THE CHILD CARE SYSTEM OF YORUBA PEOPLE**

4.1. Concept of a Child	54
4.1.1 Omo (Individual's Child)	54
4.1.2 Omode/Omo kekere (Little Child)	54
4.1.3 Ikoko (Infant)	55
4.1.4 Ole Ilu (Foetus)	55
4.2. Sources of Yoruba Customary Law on the Care of Children	56
4.2.1. God	56
4.2.2. Belief in Deities	57
4.2.3. Belief in Spirits	61
4.2.4. Ancestors	65
4.2.5. Natural Instinct	65
4.2.6. Traditional practices	66
4.2.7. Human-Kings and Individuals	66

#### **4.3. Scope and Nature of the Yoruba Customary Law on Children**

4.3 Scope and Nature of the Yoruba Child Care System	66
4.3.1. Parental Obligations towards Children	66
4.3.2. Parental Rights over Children	69
4.3.2.1 Vested Rights	69
4.3.2.2 Personal Rights	69
4.3.2.3 Shared Rights	71
4.3.3. Nature of Parental Responsibility	71
4.3.3.1 Reciprocal (rights of parents)	71
4.3.3.2 Obligatory	72
4.3.4. Constituents of Child Care/ Responsibilities	73
4.3.5. Limitations on Parental power and obligations	86
4.3.6. The Yoruba on care of Children During Divorce	88
4.3.7. Single Parenthood and Child Care	94

4.3.8. Death of Parent(s)	95
4.3.9. Categories of Children	96

#### **4.4. Indigenous Institutions for the Actualization and Enforcement of Requisite**

##### **Obligations towards Children**

4.4.1. Parents	106
4.4.2. Step-Parents	108
4.4.3. Siblings	109
4.4.4. Extended Family members.	109
4.4.5. The Family Council	110
4.4.6. Community	110
4.4.7. Oral Codes	114
4.4.8. Alternative Dispute Resolution Processes	117
4.5. Yoruba Customary Law and other Ideas in Parenthood and Child Care	118
4.5.1. Child Delivery/Birth options	118
4.5.2. Maturity age	119
4.5.3. Incest	119
4.5.4. Abortion	119
4.5.5. Celibacy	120
4.5.6. Family planning	120
4.5.7. Single parenthood by choice	121
4.5.8. Adoption	121
4.5.9. Adoption by same sex	122
4.5.10. Surrogacy	122
4.5.11. Baby Factories	122
4.5.12. Artificial Insemination	122
4.5.13. Child Pornography	123
4.5.14. Immunization	123
4.5.15. Female Circumcision	123
4.5.16. Sex Education/teenage contraceptive	124
4.5.17. Street Hawking	124
4.5.18. Street begging	124
4.5.19. Herbal/Traditional Care	124

## **CHAPTER FIVE**

### **APPLICABLE STATUTORY, INSTITUTIONAL AND INTERNATIONAL REGIMES**

5.1. Legislative Sources on the care of children under Yoruba Customary Law	126
5.1.1. Applicable Federal Statutes on Indigenous Children	126
5.1.2. Local Government Laws/Bye Laws	142
5.1.3. Western Region Marriage, Divorce, Custody of Children and Adoptive Bye -Laws Order, 1958	144
5.1.4. Customary Court Laws and Customary Courts Rules.	144
5.1.5. Customary Courts Manuals	152
5.1.6. Restatement of Customary Law of Nigeria as Promulgated by Nigerian Institute of Advanced Legal Studies in 2013	152
5.2. Institutional Framework for the Care and Protection of Yoruba Children	153
5.2.1. Child Welfare Services	153
5.2.2. The Child's Right Implementation Committee	155
5.2.3. Hospitals	156
5.2.4. Day Care and Child Minder Services	157
5.2.5. The Nigerian Police Force	157
5.2.6. NAPTIP	158
5.2.7. Community Homes, Registered Children Homes, Voluntary Homes and Organizations	159
5.2.8. Borstal Institutions and Remand Centers	159
5.2.9. Policies	160
5.3. Judicial and Court System	162
5.3.1. Customary Courts	162
5.3.2. District Customary Courts	162
5.3.3. Juvenile Courts	163
5.3.4. Magistrate Courts	166
5.3.5. Family Courts	166
5.3.6. National Industrial Courts	171
5.3.7. High Courts	172
5.3.8. Customary Court of Appeal	172
5.3.9. Court of Appeal	173
5.3.10. Supreme Court	174



5.4. International Initiatives	174
5.4.1. United States Agency for International Development	174
5.4.2. International Planned Parenthood Federation.	175
5.4.3. International Labour Organisation	175
5.4.4. African Committee of Experts on the Rights and Welfare of the Child	176
5.4.5. United Nations Initiatives applicable to Nigerian Indigenous Children	176
<b>CHAPTER SIX</b>	
<b>6. SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATION</b>	
6.1. Summary of Findings	182
6.2. Findings	185
6.3. Conclusion	199
6.4. Recommendations	200
<b>BIBLIOGRAPHY</b>	204
<b>APPENDICES</b>	213-239

## TABLE OF CASES

- Abdulateef Jimoh v Ejimotu Abdulateef* OS/CCA/3A/2013- on 31 Jan 2014
- Abiakam & Ors v Anuanwu*(1975) 5ECSLR 305, 310-1
- Abolarin v Ogundele* (2012)10NWLR (pt 1308) 253 CA
- Adebisi Omirin v Folake Omirin* Suit No ILGC3/23/96 at Ilesha Grade C Customary Court Ogburu
- Adegbola Tosin v Ikong Thomas*, Suitno 105/16,10 May 2016,Ile-Tuntun Grade C Customary Crt Ibadan
- Ahmadu Usman v Sidi Umaru*((1992)7 NWLR(Pt254)P377
- Alhaji Sumonu Agbabiaka V Akibu Okanlawon Saidu & 11 Ors*(1998)7 SCNJ 305
- Alhaji Tukur v Governor of Gongola State* (1989) 4NWLR, Pt117 P 516
- Angelina Ijeoma Okafor v Samuel Maduka Okafor* Suit No 0/6D/71 Onitsha Monday 13<sup>th</sup> of Nov,1972
- Aoko Fagbemi v DPP*(1961)1ALLWLR 400
- Arum v Nwobodo*(2013) 10 NWLR (pt 1362) 374 SC
- Bimbo Omole v Gbenga Adewumi* Suit No ILGC 3/47/98 at Grade C 3 Ogburu, Ilesha 25<sup>th</sup> May 1998
- Chief James Egbuson & Ors v Joseph Ikechiuku* (1977)6 SC
- Chief T.A.L Akapo Ojora of Lagos v Alhaji H.A Hakeem Habeeb & 16 Ors*(1992) 7SCNJ 119
- DuTroit & Anor v Minister of Welfare & Population Dev. & Anor (South African Constitutional Crts*(2003)(2) SA 198(CC);(2002) (10) BCLR 1006(CC)
- Egba Native Administration v E.L Adeyanju* (1936)19NLR 164
- Esugbayi Eleko v Govt of Nigeria*(1931) AC 662 at 673
- Eyo v Onuoha*(2011) 11NWLR(pt1274) 474 CA
- Gabriel Adebolu Oladetohun v Grace Olabisi Oladetohun* in suit No HD/111/70,University of Ife (Nigeria) Law Reports,September,1972 pg 289
- Golok v Diyalpwan* (1992)2NWLR(Pt 222)233
- Health Practitioner of Nigeria and Association of Community Health Practitioners of Nigeria and 2 Ors v Medical and health Workers' Union of Nigeria & Ors*(2008)37 WRN 1SC
- Hewer v Bryant* (1975)1QB,357,373
- Hyde v Hyde* (1886)LRIP &D130,133
- Iyamu v Aigbiremwen* (1990)3NWLR (Pt 139)411
- J and B v Director-General, Dept of Home Affairs Anors*(South African Constitutional Court CCT 46/02 (2003)(2) (5) BCLR 463 (2003 )ZACC 3

*Kehinde Jimoh v Afusatu Kehinde* Suit 100/2009 Grade C Customary Crt at Nnalende Area, Mokola IB

*Kindley and Ors v Military Governor of Plateau State*(1988)2NWLR(pt 77)p 444

*Labinjoh v Abake*(1924). 5NLR p.33

*Lasisi Lasupo Alli v Chief JO Ikusebiala* (1985)1NSCC 662

*Lewis v Bankole* (1909) 1NLRN 100

*Madam Olaitan Musibau Alimi v Memunatu Yisa Alimi* Suit No ILGC 3/11/98-Oghuru Ilesha, Osun State,13 July 1998

*Madukolu v Nkemdilim* ((1962)SCNLR 341

*Marianne Nwabugwu v Joel C Nwabugwu* Suit No 0/3D/63 Mon Feb 1973

*Mashuwareng v Abdu* (2003)11NWLR (Pt831)403

*Mogaji Latunde V Lajinfin* (1989)5SC 67

*Mojeed Ayinde V Safiatu Agbaje*,Suit 237/2009 Grade C Customary Crt,Nnalende Area, Mokola Ibadan

*Monisola Aremu Oturarebi v Olowookere Oturarebi*

*Moriyamo Adesanya v Otuewu & Ors* (1993) 1SCNJ 77

*Motoh v Motoh* (2011) 16NWLR (pt 1274) 474 CA

*Nwaigwe v Okere* (1999)1SCNJ 73

*Nwaigwe v Okere* (2008)13NWLR (Pt1105)445

*Ojiogu v Ojiogu* (2010)9NWLR pt 1198) 1SC

*Ojisua v Aiyebelehin* (2001) 11NWLR(Pt 723) 44 N 54

*Okonkwo v Okagbue*(1994) 9NWLR(Pt 368

*Okwueze v Okwueze*(1989) 5SC 186

*Olagbaju v Abass* (2011) 15NWLR(pt 1271) 437 CA

*Oladele Taibat v Oladele Isiak* Suit No 247/2015 October 2015,Mapo Grade C, Customary Court Ibadan

*Olagbaju v Abass* (2011) 15NWLR(pt 1271) 437 CA

*Olalere Oladimeji v Olalere Deborah* Suit No 231 2015,23<sup>rd</sup> Sept 2015 at Mapo Grade C Customary Court Ibadan

*Osadebe v Osadebe* (2013)3NWLR(pt1361) 185 SC

*Owonyin v Omotosho* (1961)ALLNLR 304 @309,

*Oyewumi v Amos Owoade*(1990) 3NWLR 182 @207

*Oyewumi v Ogunesan*(1990) NWLR p 137

*Pam v Gwom*(2000)2NWLR(Pt644)322

*Ransome Kuti v Attorney General of the Federation* (1985) 2NWLR pt 6 211 at 230  
*Rukayatu Taju v Taiwo Adeniji* 101/09 at Nalende Area Mokola Ibadan Oyo State  
*Rukayatu Taju V Taiwo Adeniji* 101/09 AT Nalende Mokola Ibadan  
*Salau v Aderibigbe* (1963)WNLR 80  
*Sikiratu Sina V Sina Liadi* Suit No 772/09 AT Mokola Ibadan.  
*Tagbo v Allen* (1948) 2ALLER 413, *Tagbo v Tagbo* O/ID/71 unreported  
*Tagbo v Tagbo* O/ID/71 Friday 10<sup>th</sup> Nov ,1972  
*V Vv South African High Court, Cape Provincial Division*, (1998)(4) SA 169)  
*Wedd vWedd* (1948) SASR.104  
*Williams v Williams* (1987) 2NWLR(Pt.54)  
*Yemisi Awofidipe V Aremu Awofidipe* Suit No ILGC3/150/96, at Grade C 3 Customary Crt  
Oghuru, Ilesha  
*Yinka lawore v Toyin Adelokun* OS/CCA/M2/2014 , 26 March 2014

## STATUTES

Adoption Laws of the South-Western States  
Armed Forces Act A20 Laws of Federation of Nigeria 2004  
Birth Death etc (Compulsory Registration Act) 1992  
Children and Young Persons Act 1943, 1945, 1947, 1950, 1954 and 1955  
Criminal Code Cap C38 Laws of the Federation of Nigeria 2004  
Customary Court Law of Ondo State Cap 33 1978,Cap 41 Laws of Ondo State 2006  
Ekiti State Customary Law 2014  
Ekiti State Child's Right Law 2006  
Ekiti State Magistrate Court Law  
Ekiti State Magistrate Court Bill 2013  
Family Court of Lagos State (Civil Procedure) Rules 2012  
Family Economic Advancement Programmes (FEAP)  
Harmful Traditional Practices Affecting The Health and Welfare of Women and Children  
2005, Cap 60 Laws of Ondo State 2006  
Infant Law Cap 66 Laws of South Western Nigeria 1958  
Infant Law of Ondo State 2008  
Infant Law of the South Western State 1958  
Instruments Establishing the Lagos State Customary Courts Law 1981,1982 etc  
Legal Aid Act 1977 LFN 2004  
Lagos State Child's Right Law 2007  
Lagos State Customary Court Law as Re-enacted in 2005 and 2015  
Lagos State Customary Court Law 2011  
Lagos State Magistrate Court Civil Procedure Rules  
Lagos State Magistrate Court Law 2009  
Magistrate Courts Law No. 14 2009 of Lagos State and also the Magistrate Court Civil  
Procedure Rules  
Marriage Act M6 LFN 2004  
Matrimonial Causes Act CAP M7 LFN 2004  
Nigerian Children Trust Fund Act 1990  
Nigerian Constitution Alteration Act 2011  
Nigerian Electoral Act 2010  
Nigerian Evidence Act 2011  
National Health Act 2014

Nigerian Labor Act 1974 Cap L1 LFN 2001  
Nigerians with Disability Act 1993  
Ogun State Child's Right Law 2006  
Ogun State Customary Court Law of 1986 as re-enacted  
Ondo State Customary Court Rules and Laws 1978 as reenacted in 2004 and 2006  
Ondo State Child's Right Law 2007  
Ondo State Family Court Practice Directions  
Osun State Child's Right Law 2007  
Osun State Customary Courts Laws and Rules 2006  
Osun State District Customary Courts and Customary Courts Rules 2010  
Osun State District Customary Courts and Customary Courts Law 2006  
Osun State District Customary Court Law 2010  
Oyo State Child's Right Law 2006  
Oyo State Customary Courts Laws and Rules 2000  
Penal Code of Northern Nigeria  
Police Act 1943 LFN 2004  
Queens Land Code Australia 1899  
Supreme Court Act 1960  
The Interpretation Acts 1964  
The Nigerian 1999 Constitution  
The Nigerian Child's Right Act 2003  
Universal Basic Education Act 2004  
Western Region Marriage, Divorce, Custody of Children and Adoptive Bye Laws Order,  
1958

## **TREATIES, CONVENTIONS, PROTOCOLS AND MULTINATIONAL AGREEMENTS**

African Charter on the Rights and Welfare of the Child 1990

African Charter on Human and Persons Rights Adopted in June 1981 entered into force in 1986

Convention on the Elimination of all forms of Discrimination against Women 1979

Convention for the Elimination of all Worst forms of Child Labour 1999

Convention on the Protection and Promotion of the Diversity of Cultural Expressions. Adopted on October 2005 (entered into force 2007)

International Covenant on Civil and Political Rights

International Covenant on Economic , Social and Cultural Rights 1966

International Convention on the Elimination of all Forms of Racial Discrimination 1965

United Nations Convention on the Rights of Children 1989

United Nations Declaration on the Rights of Indegenous Peoples A/RES/61/295(2007)

United Nations Declaration of the Principles of International Cultural Co-operation, Art, vi Doc 14 UNESCO 1966

United Nations Declaration on the Rights of persons belonging to ethnic or national, religious and linguistics minority 1992

United Nations Declaration on Fundamental Principles and Rights at Work, 1998

United Nations Standard for Minimum Rules For the Administration of Juvenile Justice (Beijing Rules)

Universal Declarations on Cultural Diversity 2001

Universal Declaration of Human Right 1948

Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography

The Minimum Age Convention 1973

The Minimum Age (Underground Work Convention) 1965

Third Optional Protocol to the Child's Right Convention on a Communication Procedure A/RES/66/138 of 19 Dec 2011

UN General Assembly, Vienna Declaration and Programme Action of the World Conference on Human Rights, 12 July 1993, A/CONF.157/23(1993)

Vocational Rehabilitation of Disabled Persons Convention 1983

## **ABBREVIATIONS**

ACRWC-African Charter on the Rights and Welfare of Children

AU-African Union

CEDAW-Convention on the Elimination of all forms of Discrimination against Women

CRA-Child's Right Act

CRC- Child's Right Convention

CRL-Child's Right Law

DNA-Deoxyribonucleic Acid

EX-Example

FEAP-Family Economic Empowerment Programme

FGM-Female Genital Mutilation

ICCPR-International Covenant on People and Political Rights

ICESCR-International Covenant on Economic Social and Cultural Rights

ILO-International Labour Organisation

LFN-Laws of Federation of Nigeria

NIALS-Nigerian Institute of Advanced Legal Studies

NAPTIP-National Agency for the Prohibition of Trafficking in Person

UNICEF-United Nations Children Fund

USAID-United State Agency for International Development

UNPO-Unrepresented Nations and Peoples Organization (UNPO)

UNESCO- Universal Declarations on Cultural Diversity

UN- United Nations

UNCRC- United Nations Convention of the Rights of Children.

UNDHR-Universal Declaration of Human Right

UBEA-Universal Basic Education Act



## ABSTRACT

Child care is universally perceived as germane to the continuity of any society, irrespective of its level of prosperity or cultural disposition. In Nigeria, the history of the legal system has given rise to conflicts in the co-existence of indigenous and received rules of child care. These conflicts have encouraged the prominent notion that customary rules militate against the advancement of evolving child's right. Previous studies on these conflicts emphasized statutory and international norms on child care, with less focus on the indigenous customs and practices. This work was therefore designed to examine the nature, scope and institutions of Yoruba child care customs and practices, in order to clarify its actual status of convergence or divergence from statutory and international child's right norms.

The legal multiculturalism and caretaker theories guided the study. A qualitative method of analysis within indigenous Yoruba setting was adopted. The primary sources of law include the 1999 Constitution of the Federal Republic of Nigeria, Child's Right Act 2003, Child Laws of Oyo, Ogun, Osun, Ekiti, Ondo and Lagos, the African Charter on the Right and Welfare of the Child 2003, case laws on customary practices and relevant international treaties. These were complemented with secondary sources: books, journals, Internet materials and oral interviews. The research laid emphasis on the legislative capital cities of the six Southwestern States in Nigeria. Seventeen and Thirty-one sessions of unstructured in-depth interviews of Key informants, were held with customary courts administrators and other custodians of Yoruba customs and practices respectively.

The national child care structure consists of inchoate interactions between varying judicial, legislative and institutional frameworks. Yoruba child care system is largely unwritten, flexible, philosophical and reliant on belief systems. Child care enforcement among Yoruba is reflective of the preference for Alternative Dispute Resolution. Despite international influences, statutes espouse indigenous ideals on same sex adoption, baby factories and abortion amongst others. However, statutes exhibit conceptual unfamiliarity with relevant Yoruba terms including, circumcision, child, discipline, education, medical care and maturity age. Customary law administrators are generally not aware of child specific enactments. The received composition is yet to assimilate other factors ("Omoluabi" "Ifa" and polygamy) that influence Yoruba process of childcare. Customary courts are prohibited from attending to issues from statutory matrimony, but they have jurisdictions over children whose parents are married under customs. The non-integration of customary courts into applicable Child's Right Laws has created an unsatisfactory dichotomy between customary courts and other governmental institutions. Factors such as the guardian's social status, religion, economic class, and idiosyncrasies influence the care of children with special needs.

Despite its distinct definitions, methods and structures, the purpose of the Yoruba childcare system is compatible with the international benchmark. This customary system should withstand human right tests of validity, if objectively integrated into a progressive multicultural framework.

**Keywords:** Child care system, Yoruba Customary Law, Nigerian legal system

**Words count:** 461

# CHAPTER ONE

## GENERAL INTRODUCTION

### 1.1. Background to the Study

Children, as described by their vulnerability and helplessness are presumed to be a reproductive consequence of the cellular relations between the human male and his female counter part.<sup>1</sup> Traditionally, the man and the woman or other persons who decide to keep a child either by giving birth to or adopting same are regarded as the parents (the immediate family), who are generally expected to assume the role of the primary care giver<sup>2</sup>. The family, among other institutions is therefore presumed to be the foremost point of reference on issues relating to the care of children<sup>3</sup>. On the larger spectrum, the care, custody and control of children had been variously defined to mean so much of the wellbeing of the child and how any persons or authorities in possession of the child treats it. State governments have, if only for relevance amongst the Committee of Nations<sup>4</sup> strived to project their attitude towards children citizens as positive, protective and in line with international standards<sup>5</sup>.

Nigeria's primary legal framework on care of children by persons or institutions consists of the Statutes, Case Laws, and the Customary/Islamic laws.<sup>6</sup> While the consequential conflict amongst these sources of the Nigerian children laws is bound to instigate comparative legal studies, the specific interest of this work, is to evaluate the relevance of Yoruba indigenous laws within Nigeria's contemporary Child Care System.<sup>7</sup>

As stated, parental access to their children is established in societies as paramount in child care. It was presumed that parents, especially the biological caretakers of the child knew what was best for their own children. The family, consisting of both parents, was therefore exemplified in most races as the appropriate background for children. Among the Yoruba, the legal culture on

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<sup>1</sup> Oxfords Advanced Learners Dictionary 6th Edition Pg 273 and subject to contemporary improvements in advanced /alternative Reproductive Technologies.

<sup>2</sup> Article 18(1) and 27(2) of the UN Convention on the Rights of the Child 1989

<sup>3</sup> The UN Convention on the Right of the Child, The African Charter on Right and Welfare of the Child, Section 14 of the Childs Right Act 2003

<sup>4</sup> For example Nigeria as a member of the United Nations, Organization of African Union, Common Wealth of Nations and others at all times have corresponding obligations under these Organizations Treaties on the Rights of the Child.

<sup>5</sup> Article 4 of the Convention on the Right of the Child 1989

<sup>6</sup> The complexity of the Nigerian Legal System as described by it multifaceted sources embedded in its Primary and Secondary Sources of the laws.

<sup>7</sup> The Nigerian Constitution, the Childs Rights Act 2003, Islamic Laws, Matrimonial Causes Act CAP M7 Laws of the Federation of Nigeria 2004 and the Marriage Act M6 LFN 2004, the Adoption Laws and the Customary Courts Laws of States among others.

children care was inculcated into the “Ebi”(extended family) system ,<sup>8</sup> as projected through the indigenous principle of collective responsibility<sup>9</sup>.The Yoruba jurisprudence was unwritten but grounded in the traditional religion and beliefs in the influence of ancestors on all human activities. Due to the largely homogenous nature of the Yoruba society and its structures of hierarchy, the Oba (king) was the supreme human institution of recourse in public/private issues, including those relating to children care and welfare.

The Yoruba ideology was superstitious on the foundation that, the Divine gives children and has the ability to afflict or plague any uncompromising member of the community who ventures into dislocating peace and order.<sup>10</sup>The ability to bear Children and rear same successfully was perceived as one of the three most important achievements in life. This fact can be deduced from several Ifa Corpus on Children amongst which the following are prominent:

- |                                                                                                                                                   |                                                                                                                                                                |
|---------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. <i>Ire meta lawa n wa</i> <sup>11</sup><br><i>Awa n wowo o</i><br><i>Awa n womo</i><br><i>A wa n wa atubotan aye</i>                           | We seek three forms of blessings<br>We seek money<br>We seek children<br>We seek the worth of the earth/humanity                                               |
| 2. <i>Oku Olowo</i> <sup>12</sup><br><i>Osu meje</i><br><i>Oku Oloro</i><br><i>Osu mefa</i><br><i>Oku onimajesin</i><br><i>Owa dosu ta o moye</i> | The burial of the rich<br>spans seven months<br>The burial of the wealthy<br>spans six month<br>The burial of a parent<br>spans for a period of months unknown |
| 3. <i>Otootootoo, Babalawo olowo lo difa folowo</i> <sup>13</sup><br><br><i>Oroorooo, babalawo oloro lo difa foloro</i>                           | Divination for riches is done by an ifa priest that understand riches<br><br>The divination for wealth is done by a priest who understands wealth              |

<sup>8</sup> Akinjogbin, I.A. 1967. *Dahomey and Its Neighbors 1708-1818* Cambridge University Press p16,

<sup>9</sup> Olaoba, O.B. 2002. *Introduction to African Legal Culture*, Hope Publications Ibadan at p 14.

<sup>10</sup> Driberg. 1934. The African Conception of Law. *Journal of Comparative Legislations and International Law* 3<sup>rd</sup> series Vol 16 p230,237 also Abimbola W. 1973. *The Literature of Ifa Cult, in Sources of Yoruba History* ed. Biobaku SO published by Oxford University Press

<sup>11</sup> Ijinle Ohun Enu ifa Apa kejin, p98 at P xxxix ,Wande Abimbola, 2014. *Awon Oju Odu Mereerindinlogun*, University Press Plc Ibadan, First published, by Oxford University Press 1977.

<sup>12</sup> A very popular Yoruba Dirge

<sup>13</sup> Ijinle Ohun Enu ifa Apa kerin, pp3-4 at P xxxix ,Ibid.

<i>Ka jewa tan, ka gbon woo re nu awo poro poro</i>	in order to eat beans and leave left over in our plates
<i>Babalawo olomo lo difa folomo</i>	The divination for children is done by an ifa priest that understands children
<i>Ero okun</i>	sojourners/foreigners after oceans
<i>Ero osa</i>	Sojourners/foreigners after lagoons
<i>Tani o mo pe ipa olomo o ni iparun</i>	who does not know that a parent's path in life is inextinguishable

From the above quotations, amongst others, it may be deduced that apart from the inherent love for children, the Yoruba believe that children are long lasting unique blessings from God. The fear of possible punishments by the supreme divinity or the intermediate deities<sup>14</sup> was the vital force influencing the attitudes of persons in charge of children.<sup>15</sup>

The above stated, was the position before the introduction of the English system of statutes, judicial precedents and legal principles. British colonization herald the amalgamation of the Yoruba area with the other regions in 1914. The creation of the new country Nigeria thereby enhanced the rapid imposition, adaptation and adoption of foreign laws.<sup>16</sup> After independence and as a sovereign State, Nigeria began to emerge with its own locally made Statutes<sup>17</sup>. The direct

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<sup>14</sup> The Yoruba highly regards the deities "Osun and Yemoja" amongst others in issues of child care

<sup>15</sup> Akiwowo, A.1983. Ajobi and Ajogbe "Variations on the theme of Socialization". *Inaugural Lecture Series*,46 University of Ife Nigeria. Also, Eades, J.S. (1980), *The Yoruba Today*, Cambridge University Press , Johnson S. 1921. *The History of the Yoruba*.SS Bookshop Ltd Lagos 2009

<sup>16</sup> As at independence, Nigeria was not unaware of the efforts of the rest of the world to promote and protect the rights of the child<sup>16</sup>.The first international recognition of the rights though not binding on States was at the Geneva Declaration on the right of the Child in 1924 which addressed the basic rights of the child in five succinct points. The consequent international efforts towards the promotion of the rights of the child were the United Nations Universal Declaration of Human Rights 1949 and the adoption of the United Nations Declaration on the Right of the Child by the General Assembly in 1959. These stated Conventions recognized the fact that children have special needs and for such reason , introduced the 'paramount principle' by which the 'best interests of children' are to become the overriding consideration for all persons and creed when deciding all issues ( including the custody) relating to children.The efforts of the United Nations towards providing the best environment for the world's children was channeled by the earlier position until the campaign shifted from the approach that children have special needs to the conviction that children have the same rights as adults.

<sup>17</sup> For example, English laws became inapplicable in the old Western State by virtue of the Law of England Application Law of 1959. Nigerias independence witnessed the birth of the 1963,1979 and 1999 Constitutions respectively and also the compilations of the Laws of the Federation of Nigeria 1979.

law on Children was the Children and Young Persons Act.<sup>18</sup> At this period, the received English laws were subjected to Local Statutes, and other Laws which local circumstances permitted.<sup>19</sup> Different States enacted their own Children and Young Persons Laws and other local Statutes which were directly applicable to children. In addition to the above, the Nigerian Government ratified the African Charter on the Right Welfare of the Child in 2003. In the same year the government enacted the Child's Right Act 2003 which was a virtual internalization of the contents of the United Nations Convention on the Rights of Children 1989<sup>20</sup>. The CRA 2003, subject to domestication by individual States, has therefore become the Modern National Child protection Statute in Nigeria.

On the indigenous level, various Yoruba family values and legal customs on the care of children survived and weathered the introduction of the English Laws.<sup>21</sup> Despite the gradual but strategic modernization of the Nigerian legal system, customary laws, especially of private nature as ingrained in the sub consciousness of the indigenes still retained their relevance in locales. Traditional practice remains relevant and vibrant amongst those who believe in its efficacy.<sup>22</sup> It also holds its pace as a force sustaining the legal/social order in indigenous communities.<sup>23</sup> A contemporary incursion into the practices of the indigenous Yoruba on children's welfare is the interest of this research. The study will be done with recourse to the fact that, existing foreign counterparts are strongly flavored by international and modern perceptions.<sup>24</sup>

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<sup>18</sup> The Children and Young Persons Act was initially enacted as a colonial Ordinance in 1943, and severally amended in 1945, 1947, 1950, 1954 and 1955. The law made "provision for the welfare of the young persons, young offenders and also for the establishment of Juvenile Courts".

<sup>19</sup> Sections 32(2) The Interpretation Acts 1964

<sup>20</sup> which was ratified by Nigeria in 1999

<sup>21</sup> Agbede, I.O. 1997. *Repugnancy Doctrine ; "A Reappraisal in Current Themes in Nigerian Law"*, University of Lagos p154, also Section 36(12) 1999 Constitution, *Okueze v Okueze (1989) 5 SC SC 202/1985, Okonkwo v Okagbue (1994) 9NWLR(Pt 368) , Aoko Fagbemi v DPP (1961) 1ALLWLR 400*, Section 18 of the Evidence Act 2011.

<sup>22</sup> For example High Courts do not have jurisdictions over issues of custody and maintenance of children of customary law marriages. Ajisafe A.K. 1946. *The Laws and Customs of the Yoruba people*, Kash and Klare bookshop Lagos, Adebisin, F. 1921. *Laws and Customs of Egbaland*, ENA Press Abeokuta, Johnson, S. 1921. *History of the Yoruba* Cambridge University Press 2010

<sup>23</sup> Obilade A.O. 1990. *Nigerian Legal System* Spectrum Law Series p 93

<sup>24</sup> Criminal Code was based on the 1899 Queens Land Code Australia, the Matrimonial Causes Act, Childs Rights Act, Children and Young Persons Act among others, are replica of the English Versions.

## 1.2. Statement of the Problem

Ideological interactions amongst multiple Child Care frameworks of varying backgrounds, have caused a cultural lag, which is a major setback towards the achievement of a balanced child's right Framework in Nigeria.

On the vague state of the Nigerian legislations on Children, presently, the Nigerian Constitution and Statutes have eradicated many other jurisdictions of Yoruba Customary Law. However, Yoruba family Law, including matters on welfare of children, are still left within the jurisdiction of the Customary Courts<sup>25</sup>. While the Child custodial provisions in developed countries have become consistent with International rules and standards of Child Care, the situation in Nigeria is still unordered. These inefficiencies of the National objectives, ironically render the children of a larger traditional populace to custodial abuse, neglect and deprivation. Unfortunately, such inadequacies against Nigerian children are commonly overshadowed by local Caretakers claims for Cultural/Social independence<sup>26</sup>.

Apart from the unhealthy contradictions among the applicable statutory, religious and customary laws, administrative ineptitudes stem from the fact that, the jurisdictions of these laws are not designed to interact with one other. While the judges of the Higher Courts of records are supposed to adjudicate on General Laws, they are precluded from delving into issues of Customs until such customs are unequivocally proven before them. The sanctity of Judgments dished out by Judges of the Higher Courts after thorough considerations of Statutory Laws on Children, becomes threatened when same do not tally with the ideas of contesting parties. From the content of the 1999 Constitution of the Federal Republic of Nigeria, it is glaring that Customary Courts are not listed as courts of records. Customary Court presidents are often non lawyers, who have been assessed as vast in the indigenous practices. These customary court heads flexibly, adjudicate in indigenous languages/ procedures and most times their decisions are made out of practice and initiatives<sup>27</sup>. On the contrary, designated high courts of records are headed by learned personals, who must adjudicate based on the documental pleadings as formally filed and

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<sup>25</sup> Section 1 Cap M7 of the MCA LFN 2004 provides that the provisions of the marriage statute shall not be applicable to customary law cases.

<sup>26</sup> Article 15 of the International Covenant on Economic, Social and Cultural Rights 1976

<sup>27</sup> *Arum v Nwobodo*(2013) 10 NWLR (pt 1362) 374 SC, *Osadebe v Osadebe* (2013)3NWLR(pt1361) 185 SC, *Eyo v Onuoha*(2011) 11NWLR(pt1274) 474 CA.

frontloaded by Lawyers.<sup>28</sup> The implication of the above being that, while the Statutes enable legal practitioners to represent parties in the Higher Family Courts, Customary Courts are permitted to adjudicate on children's welfare without corresponding finesse. Governmental child welfare departments insist that customary courts presidents often give decisions laced with obsolete ideas, despite their claims of being closer to indigenes.

The mandate to apply the "best interest" principle in issues relating to children has become a manipulative free for all standards. Subjective, vague and ambiguous judgments from contradicting jurisdictions with varying standards and ideologies are hinged on this universal term. The necessity for this study, is due to the fatal irony that, Yoruba speaking courts without much drafting, retain their very indispensable position in the hearts of the larger populace. Indigenes from the applicable locality tend to prefer the informality, availability, alacrity, cheapness, flexibility, familiarity and proximity of such Courts.<sup>29</sup> The modus for distinguishing between Evidential and Customary law facts in Customary Courts cases is inconclusive. Since the codification of Customary Laws is still an 'Herculean' Cultural project, the Constitutional Courts of records are always on their discretionary frolic, in the bid to distinguish between factual and legal customs. The import of the interrelationship within the customary law Jurisdiction of the Customary Courts of Appeal, Sharia Courts of Appeal, States High Courts and the Court of Appeal remains controversial<sup>30</sup>. In reality, there is no straight cut rule on where appeals on child care matters from customary courts should lie. The options of appellate courts on customary courts decisions on children are, but not restricted to, Magistrate Courts, Family Courts, Welfare Courts, High Courts, Customary Courts of Appeal, District Courts among others. The body to receive appeal depends on the provisions of the particular lower courts rules and the peculiarity of each State appellates structure.

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<sup>28</sup> *Ojiogu v Ojiogu (2010)9NWLR pt 1198* 1SC, *Olagbaju v Abass (2011) 15NWLR(pt 1271) 437 CA*, *Abolarin v Ogundele (2012)10NWLR (pt 1308) 253 CA*

<sup>29</sup> Current trend of global improvements in children rights dictates that there should be basic amenities which any child should be entitled to irrespective of the race, sex, religion or background also see Section 42(2) Nigerian 1999 Constitution

<sup>30</sup> Section 242,247,277,282 of The 1999 Constitution of the Federal Republic of Nigeria, describes the appellate system, which suggests that the Customary Court of Appeal or High Courts can take appeals from Customary Courts. The case of *Ahmadu Usman v Sidi Umaru((1992)7 NWLR(PT254)P377* discussed the distinctions between errors of General Law and Customary law, for the purpose of appeal from customary courts. Also, *Alhaji Tukur v Governor of Gongola State (1989) 4NWLR, Pt117 P 516* on the nullity of proceedings from courts that allows appeals outside their jurisdiction.

From all ramification traditionalists are yet to come into perfect terms with the enforcement of some basic rights of children as mandated by the Child's Right Act 2003. The CRA being the very contemporary children's law continues to face outright rejection by some tribes. A major issue stems from the fact that this law adopted all the fundamental rights as provided for in the 1999 Constitution without the structure to enable same.<sup>31</sup> While the Constitution expressly excludes children of customary law marriages from its exclusive list and placed same under the whims and caprices of local laws<sup>32</sup>, the Child's Right Act which encompasses all, is subject to individual States domestication. Also the philosophy behind the operation of contemporary Juvenile Justice System has remained an issue of local dissatisfaction. The establishment of family Courts as recommended by the Child's Right Act is still unworkable in States. Without over flogging the lasting effect of the inferior status accorded to Customary Laws by Colonial Legislators, incidental conflicts from historical legal pluralism, compound the status of uncertainty in the Nigerian Child Care framework. This virtually inefficient Nigerian framework may be regarded as the non beneficial outcome of cultural imperialism which fueled views that, the acclaimed primitive traditional systems do not possess what it takes to raise a "universal standard child". This bias further creates the notorious impression that, the continuous existence of indigenous child care laws is bound to militate against the successful application of better laws of international mandates.

The Social problem arises from the fact that, contrary to popular impressions, indigenes believe that several ideas behind formal children laws are mere happy ending tales, which no society with strong communal attachment should accommodate. More readily, the elites and other persons, who claim allegiance to written/modern laws, also participate confidently within their cultural milieu. In the light of the above ideological interactions, Nigerian children continually relive issues from double deck marriages and the implication of other jurisdictional contradictions. Purposefully, the modern children's legislations are expensively packaged and they have served as the consistent toolbox for scholarly evaluations and re-evaluations. However, despite all efforts, only few States have provided sincere avenues for imported Laws to thrive<sup>33</sup>. Regional legislations publicly appraise the philosophies behind internationally flavored

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<sup>31</sup> Part 2 section 39(1) of the 1999 Constitution on the application of Chapter 4 of the 1999 Constitution

<sup>32</sup> Part 1 of the Second Schedule of the legislative powers, at No 62 of the legislative list of the 1999 Constitution

<sup>33</sup> Childs Rights Act 2003



Children's Statutes. In reality, they regard same as ideal but unworkable substitutes for pre-existing codes. In many instances, the policy makers, water down the influence of foreign Family Rules in order to accommodate pre existing codes that preserve the Status Quo. Unsuccessful experiments abound with several governmental and Non-governmental projects, designed to redefine child care for the locales. This ideological lock up invariably serves as the basis for the expensive but persistent efforts of international bodies to penetrate the sub conscience of natives, who consistently regard contemporary Child's Right Regimes as contaminating.

The Nigerian Human Right Framework reflects various international mandates on persons especially as contained in her signed treaties. Amongst several others, multiple ideas on children's rights and the manifestation of same, have resulted from the interactions between perceived pre-colonial and post-colonial order as follows;

- a. Absolutism versus Best interest principle
- b. Caretaker versus Will theories on child's right
- c. Relativity versus Universality of the principles of Children's Care.
- d. Masculinity versus Feminism or Equality of principal caretakers
- e. Modern v Traditional values on child possession
- f. Communal v individual obligations of/on children.

Considering the country's multicultural structures, issues have always arisen on the impact of barbaric cultures on children. Various theories evolve and devolve for better ideas on the implication of Cultural Diversity on Children. Demands for inter/intra national cultural conflicts resolution, continue to neutralize the campaign for Universal Child's Right. The Theoretical discordance between Universalists and Cultural relativists is that, while the former is heavily criticized for overreaching and insensitivity, the latter is mostly condemned for its unworkable free for all approach. The impact of the above conflict necessitated the recent international attitude towards Multiculturalism as another means of achieving a common child care protection regime<sup>34</sup>, irrespective of the variances in interacting cultures. Nevertheless, this diplomatic introduction although flexible, has not been able to curtail or restrain excesses of participating

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<sup>34</sup> The Preamble ,Article 2,5 and 6 of the UNESCO Universal Declarations on Cultural Diversity 2001

cultures. The extent to which individual cultures should be accommodated in the process of promoting a universal framework has become the attending concern.

While the International framework acknowledges the right to culture as important to individual ideological aspirations, the unequivocal expressions of international rules remain. That, cultural rights in respect of the beliefs, philosophies and values of caretakers, shall be restrained from negatively interfering with the human rights of children as expressly mapped out for Universal application<sup>35</sup>. The resulting difficulty is therefore on how to salvage the basic Children's Rights to 3Ps,<sup>36</sup> from the apathetic influences of their Caretakers Cultural allegiances. In other words, a culturally independent Child's right regime seems to be impossible without a consequential distortion of the wider Scope of International Human Social-Cultural Rights. The above theoretical dissensions in their strides, also contribute to the continuing "Caretaker v Choice" era. This recent debate on the roles of Caretakers in child care, may be glimpsed from the "full circle" import of various international child's right regimes<sup>37</sup>. The applicable treaties mostly confer the responsibility for achieving child's right goals on care givers<sup>38</sup>. The supposed independent regimes ironically insinuate that children are dependent on adults to survive. In other words, despite the prominent campaigns for inviolable children's rights, the perceptions that adults know what is best for children and are therefore capable of enforcing same on their behalf, permeates the Nigerian laws on child care. The implication of the above is that, critics suppose that it is futile to describe children as bearers of rights, when it is notoriously impossible for them to personally enforce same.

Compared to the legal jurisprudence of developed countries, the Nigerian multi legal framework on child custody is yet to adequately accommodate newest trends in child's care. Traditional ideas still contradict various advanced scientific/technological procedures. Also, policy makers hesitate to accommodate dynamic propositions on the essence of marriage and family. The major characteristics of customary law with emphasis on the Yoruba indigenous laws connote that the pace of child welfare emancipation is subject to the readiness of the communal will. As for now, there is the need to examine the indigenous child care principles vis a vis the contemporary

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<sup>35</sup> Article 4 of the UNESCO Universal Declaration on Cultural Diversity 2001, Article 2 of the UN Convention on the Right of the Child 1989

<sup>36</sup> Provisions, Protection and Prevention from Harm and Discrimination,

<sup>37</sup> Section 2 of the Nigerian Childs Rights Act 2003, Article 19 of the Childs Rights Convention 1989

<sup>38</sup> Article 18(1), 27(2) of the UN Convention on the Rights of the Child 1989

perceptions on adoption, babyfactories, surrogacy ,artificial insemination, modern family planning techniques, same sex unions, caesarian sections, incest, abortion, celibacy and single parenthood .

At a time when the situation should be of sophistication, considering the improvement in other contemporary legal frameworks and jurisdictions, codifying informal Nigerian customary family law is still a thriving topic for discourse amongst scholars. While counterpart customary practices, for example, land use and criminal rules, have been revolutionized, influenced or substituted by major governmental and nongovernmental interventions, the family law jurisdiction has sensitively evaded co-ordinated pro-actions. Presently, other, post colonial issues on customary law land holding, inheritance and succession are at the fore, as a result of consistent scholarly interventions. However, no such contemporary legal scrutiny has occurred in the Yoruba child care section.

At this level, it is safe to conclude that the continuous frustration of children legislations is due to the above identified social, historical, institutional, theoretical and legal issues. However, the existing ideological gridlock is irresolvable by continuous white collar understudy of the Statutes alone. Apart from the constant scholarly dissections of Nigerian received laws on the care of children, there is that need to do a legal analysis of equivalent child care concepts under the receiving frameworks. If the success of international regimes on children is not independent of receiving cultures/values, there is the preferable need to investigate these cultures to determine their levels of familiarity or discordance with formally mandated ideas. The compromise between ideas should enhance a discovery of traditional but better approach to child care or of unhealthy ideologies worthy of eradication.

### **1.3. Research Questions**

- i. What are the sources of the Yoruba Customary Law on children care?
- ii. What is the scope and nature of the Yoruba Customary Law on children care?
- iii. What is the Judicial and Institutional framework for protecting children subjects of Yoruba Customary law?
- iv. Are there indigenous institutions for the protection/enforcement of children's care amongst the Yoruba?
- v. How responsive or comparable is the Yoruba customary law to other ideas on parenthood and child care?

### **1.4. Aim and Objectives**

The Aim of this work is to objectively investigate the Yoruba laws on the care of children, in order to understand the impact/role of the indigenous law on the effort to achieve an efficient Child's Right System in Nigeria.

#### **The specific objectives are to:**

- i. examine the sources of Yoruba Customary Laws on issues of child custody, care and protection;
- ii. investigate the nature and the scope of the Yoruba Customary Law on the care of children;
- iii. Evaluate the Judicial and Institutional framework for the care and protection of Yoruba children;
- iv. Identify the indigenous frameworks for the protection and care of children amongst the Yoruba ; and
- v. analyze Yoruba attitude to other trends in parenthood and child care, especially through an examination of non-traditional concept that have acquired prominence in modern family law.

## 1.5. Scope and Limitation of Study

Since the specific goal of the work is to determine the relevance of Yoruba Customary Law within the Nigerian law of child care, control and custody, the study will refrain from delving into issues on the overall rights of children in Nigeria. The study acknowledges that various works have been done generally on child protection. This work therefore intends to use the concepts “care, custody and control” alternatively, in clear terms and in respect of children in the physical possession of adults (natural or artificial) with legally acquired parental status. In other words the research may make reference to, but will not address issues on care and survival of children in times of war, in illegalities settings or in relation to persons who do not have legal or actual possession<sup>39</sup>.

The Yoruba customs to be utilized are those that are still in practice, having survived the colonial invasion of the sub-consciousness of indigenes. It is an investigation of the underlying ideas for child care in contemporary Yoruba societies. The study will be based on the notion that the laws of the Yoruba are in their unwritten legal customs and as formalized by codifications, restatements and declarations. The study shall argue that the identification of laws within the Yoruba cultural milieu is capable of being greatly influenced by the observer’s perceptions and theoretical outlook. The analysis will therefore posit from the communally sanctioned ideas, practices, customs, culture and norms of the Yoruba people on children. The research intends to construct the Yoruba legal customs as those ideas and practices which if not adhered to by indigenes are considered capable of disintegrating the structure and existence of their society. The work regards previous efforts to distinguish Yoruba laws from Yoruba legal customs as exercises in tautology. Both concepts are different but extremely interwoven. Therefore, the study will only describe “laws” within the scope of relevant customs which are accepted as rules and valued in researched environments.

A limitation of this study will be the inability to resource a complete codification of Yoruba customary law on children before and during Nigerians colonization till present. This inadequacy is bound to be emphasized by the relative availability of its statutory counterparts<sup>40</sup>. In order to

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<sup>39</sup> Issues on child abduction, kidnapping, child trafficking and illegal adoptions shall be treated as breaches of the proper rights of custody

<sup>40</sup> The Childs Rights Act, Matrimonial Causes Act, Children and Young Persons Act, Adoption Laws, etc

acquire an adequate resource for a research in Yoruba customs, the work shall rely on historical, cultural, and legal records from local and foreign scholars on the subject matter. Also, the research will rely on codifications and rules of general customs. These sources will be in the forms of indigenous laws, edict, bye laws, restatements, reports and manuals and interviews of experts among other sources. On the interviews to be conducted to augment the primary findings, the researcher notes that the use of scientific and empirical methods of analysis is likely to streamline findings in manners that contradict a theoretical research.

Finally, since it is financially and economically challenging to make an all round in course into all existing Yoruba villages, towns and States in Nigeria for the quantitative assessment, this work cannot make definite and incontrovertible description of all the customs within the Yoruba culture. The research methodology is designed to gather the sufficient overview of relevant Yoruba laws for the purpose of the research. Yoruba groups may vary, but this analysis will be done on the pedestrian that there are more common concepts between them. If there are differences, such are only in the forms but not in substance.

### **1.6. Significance of the Study.**

This work is that independent assessment of the Yoruba culture on the care, control and custody of children. The study is a written resource for the identification of the philosophies behind the Yoruba's day to day activities on children. The work presents arguments that queries the perception that customary laws militate against the achievement of universal dictates on child's right<sup>41</sup>. This research is relevant for a better understanding and identification of the series of contradictions that arise as a result of the indigenes ideological prostitution within multiple systems of law<sup>42</sup>. The study exposes the achievement and failures of the customary laws of child care. The study stands several arguments away from the beautiful bride description of the Yoruba customary laws in order to investigate its relevance within the Nigerian legal system. Since objectively:

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<sup>41</sup> The work therefore adopts the multicultural approach to handling independent legal and cultural values in pluralistic systems. The theory propounds a compromise between the Universalists and the Relativists Schools of thoughts in Law.

<sup>42</sup> Issues arising out of practices which are outside the Statutory definitions of marriage as given in the case Hyde v Hyde, Marriage Act etc. Also issues on the custody of children when they conflict with laws. Others include matters on double decked marriages, award of custody of children to widows, *Motoh v Motoh* (2011) 16NWLR (pt 1274) 474 CA.

*The goal of development should be directed at alleviating peoples suffering and indignities within the contest of their cultural milieu*<sup>43</sup>

This is a piece of work that is relevant for other human right studies in respect of the day to day survival and care of children. The multi-cultural approach adopted, may also be relevant for other researchers understudying the conflicts of law within the Nigerian Jurisdiction. It addresses cultural and legislative issues on the compatibility of the provisions of the Nigerian Child's Right Act with the indigenous customs/practices on children. The comparative analysis presents the means by which the gaps created by varying ideas on child development may be filled.

The study is also relevant for researchers in other customary laws, as the style of enquiries lays down precedents and principles that are equally useful for the enforcement of children's rights in other Nigerian cultures. This is an important work in the progression towards the attainment of a reformed African international law on children. Apart from its capacity to discover newer revelations for legislative intervention, this work provides additional information to policy stakeholders on the reasons for the failure of many children laws in Nigeria. Relevant insights as presented may be used to influence projections on how the government can manage inevitable discrepancies in values, in manners that do not affect the welfare of its children negatively. Being an exposition of the practices of the Yoruba on the care of children, the study encourages further researches on the perceived similarities in the nature in African customary laws, especially on child care. The research contains information that are relevant for international bodies in the course of their Nigerian related enquiries and policies. The work is also an indigenous complement to other child's right studies. It is a new dancing step in the presentation of many dancers.<sup>44</sup>

### **1.7. Contribution to Knowledge**

The work is a legal analysis of the applicable customary law, as distinct from previous sociological or anthropological studies. Also, in addition to previous general works on customary laws, the study is specific and objectively concerned about Indigenous Yoruba children. It is an indigenous assessment in a field where other studies have been basically international and

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<sup>43</sup> Olurode L and Olusanya, P.O.2011. *Nigerian Heritage; the Yoruba example*. Rebonik publications Ltd Lagos p 4

<sup>44</sup> Anyebe, A.P. 1985. *Customary Law; War Without Arms*. Fourth Dimension Publisher Enugu in his introductory page where he described the various studies of academics who have probed to find answers to various issues on customary law related issues as a dance with many dancers

statutory in perspectives. At the end of the study, the analysis is supposed to be a recourse for appropriate improvements in the Nigerian child's right enforcement programmes. It should be a veritable source of reference for stakeholders in search of contemporary information on Nigeria Customary child care systems. Although other scholarly discourses abound, on the modern rights of children, the study is a clear attempt at addressing some contemporary child related values and the possible implications of the present legislative unconcerned approach to such non traditional concepts of child care especially on parenthood (adoption, surrogacy, Alternative Reproductive Techniques and other technological conceptions/birthing procedures) among others. The research introduces the intermediate (multi-cultural theory) approach in order to impartially access available laws. The clarification will be an enabling project for an efficient jurisdiction of rules and laws which is capable of positively restructuring the Nigerian Legal framework on Children.

### **1.8. Structure of the Study**

The work will be divided into six chapters.

Chapter One will be the introductory part with the background information on the research. This part will present the historical background, research questions, problem statement, aims and the objectives of the work. This section shall further contain discussions on the justification, scope, Significance, Limitations and significance of study and the proposed chapterisation of the thesis will constitute the ending part of chapter one. Chapter two contains the conceptual clarification of relevant terms and a review of available literatures relating to the objectives of study. Chapter three will be an assessment of existing theories in comparison with contemporary concepts, in order to achieve the essence of research. The same chapter will also describe the methodology, instruments and resources for research. Chapter Four and Five are for the discussions on the results of investigations. Chapter Six will present the summary of investigations done with appropriate discussions of findings, including the conclusion and relevant recommendations.



## CHAPTER TWO

### LITERATURE REVIEW AND CONCEPTUAL FRAMEWORK

#### 2.1. Literature Review

A legal study of African indigenous societies, although tasking due to the age long challenges in methodology, finds its sophistication in the several arrays of researches done in African jurisprudence. The term “African jurisprudence” over the years has established the fact that while jurisprudence is the science of all laws, there are arguable rationales to isolate the African philosophical theories as distinct and worthy of separate consideration. The channel, through which the diverse practices and values of traditional African societies have commanded universal academic attention, is undeniably from the efforts of scholars in African jurisprudence. Consistent researches on the nature of African legal culture have invariably projected well laid down findings on indigenous legal ideas<sup>45</sup>. The Literature Review examines various studies on indigenous laws and child care. The essence of the review is to identify previous works as they relate to the underlisted objectives and with due regard to their extent of similarities and variances.

- a. Examine the nature, sources and the scope of the Yoruba customary law on the care of children.
- b. Discuss the existing institutional framework for the protection/enforcement of the examined children’s rights amongst the Yoruba.
- c. Examine the judicial framework on the care of Yoruba customary law children.
- d. Discuss the Yoruba Laws attitude to global trends in parenthood and child care, especially through an examination of non traditional concepts which have never the less acquired prominence in modern family law.
- e. Assess the relevance of Yoruba child care laws within Nigerian Human Rights framework.

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<sup>45</sup> Anyebe, A.P. 1985. *War Without Arms*. Fourth Dimension Publishers, Enugu p17, Elias, T.O. 1956. *Nature of African Law* p8, Schulte-Tenckhoff, 1997 *The Right of Persons Belonging to Minorities To Enjoy Their Own Culture*, Comm’n on Human Rights, Sub Committee on Prevention of Discrimination and Protection of Minority, 3<sup>rd</sup> Session 28-30, UN Doc, E/CN ,4/Sub.2/AC 5/1997/WP.7(1997), Layonu, A.I. 2012. *Aspects Of The Nigerian Legal System: Customary Law(as tradition) in A Modern Society*.

## Definition of Customary Law

Several authors have given descriptive definitions of what constitutes the indigenous African Customary laws. Such definitions, although distinguishable from one another, peculiarly reflect similar thoughts. In order to avoid possible distractions from the main focus of the study, the review acknowledges, but refrains from making a deep recourse to the age long multi discourse on the characteristics and definition of Customary Law. Nevertheless, it is important to note that virtually all definitions prescribe that Customary Law;

- i. Must be accepted by the members of the community as binding on them.<sup>46</sup>
- ii. It must be existence.<sup>47</sup>
- iii. Is basically unwritten but equally presentable through restatements, manuals, byelaws among others<sup>48</sup>.
- iv. It must be flexible.<sup>49</sup>
- v. Should be Customs as well as law.<sup>50</sup>
- vi. Must be regarded as the enforceable and applicable law of the area of acceptability.<sup>51</sup>
- vii. The application must be a matter of obligation.<sup>52</sup>

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<sup>46</sup> Obilade, A.O.1991. *The Relevance of Customary Law to Modern Nigerian Society* Towards a Restatement of Nigerian Customary Law , Vol 10 Federal Ministry of Justice Law Review Series, and,also, Elias, T.O. 1956. *The Nature of African Law* Manchester, University Press Manchester, Vol 1. See, Utana A.A(1991) and also Osibajo Y, Oshipitan, T. 1991.*Customary Law and The Land Use Act* Towards a Restatement of Nigerian Customary Law , Vol 10 Federal Ministry of Justice Law Review Series. P102, *Owonyin v Omotosho (1961)ALLNLR 304 at 309,Oyewumi v Ogunesan(1990) NWLR p 137.*

<sup>47</sup> *Kindley and Ors v Military Governor of Plateau State(1988)2NWLR(pt 77)p 444*

<sup>48</sup> *Obaseki J in Oyewumi v Amos Owoade(1990) 3NWLR 182 at 207 ,Esugbayi Eleko v Govt of Nigeria(1931) AC 662 at 673*

<sup>49</sup> *Osborn CJ Lewis v Bankole (1909) INLRN 100.Also Anyebe AB(1985) Customary Law;The War Without Arms 4<sup>th</sup> Dimension Publishers Enugu*

<sup>50</sup> *Ojisua v Aiyebilehin (2001) 11NWLR(Pt 723) 44 N 54* also Eso,K. 1991. *Towards Certainly in our Laws* in*Towards a Restatement of Nigerian Customary Law , Vol 10 Federal Ministry of Justice Law Review Series* pg 51-53,Allot A .N et al(1966) *Essays in African Law*, Intro in Gluckman M(ed) p154

<sup>51</sup> Abumere P.I. 1991. *Atukhiuki Among the Esans in Bendel State: A Case study in Belief System in the Customary Law as a means of Social Control* .Ibid at pg 304 and 309

<sup>52</sup> Park ,W.1968. *Sources of Nigeria Law*, Sweet and Maxwell London P 68

## Nature of the Yoruba Customary Law

The need for continuous legal studies in African law has been variously weighed by academics and scholars within the past decades. This position is due to the denial by some writers that there is indeed a research worthy systems of laws within the indigenous societies. Hartland, Malinowski<sup>53</sup>, Lambert H.E,<sup>54</sup> Bohannan. P<sup>55</sup>, Gulliver A.G<sup>56</sup>, Holleman J.F<sup>57</sup>, Roberts S,<sup>58</sup> argued that indigenous African communities had no legal institutions nor Law. These arguments although marshaled from a direct assessment of the early colonial period, were based on the perception that the African societies lacked civilized structures for co-ordinate legislatures and as such do not poses any form of laid down organs of governance<sup>59</sup>. To the above, these pre-colonial systems lacked provisions for the enforcement of sanctions due to their access to mere arbitrary procedures and practices. They argued that the indigenous African Society was basically governed through the whims and caprices of Chiefs, Kings and Councils as recognized by people rather than by the Rule of Laws. The conclusion from the above school of thought was that, the informal structures in the indigenous African Society lacked the requisite institutions to accommodate sophisticated cultural researches. However, from a more liberal perspective, Dike K.O and Ajayi J.F<sup>60</sup> agreed that there may not have been any legal jurisprudence in the African system like they existed in the western society, but the African values at such, was submerged by the larger idea of the society. The duo opined strongly that the African philosophy of society was based on a belief in the continuity of life, life after death with the community of interest in the living, the dead and the generations unborn. Against the previously discussed assertions on the non existence of African indigenous Laws, Driberg J.H<sup>61</sup> described law as a privilege of a restricted group, which to him mainly summarizes African law into family law, clan law, tribal law and associational law. He identified the importance of the sustaining concepts of maintenance of equilibrium, principle of reciprocity of obligations and benefits,

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<sup>53</sup> Malinowski, 1926. *Crime and Customs in Savage Society* , London 1926

<sup>54</sup> Lambert, H.E. 1956. *Modern Law Review* 663 ,*Kikuyu Social and Political Institutions*(1956)p 118

<sup>55</sup> Bohannan. P. 1957. *Justice and Judgment and the Tivs*, Oxford 1957

<sup>56</sup> Gulliver, A.G. 1963. *Social Control in an African Society* ,London 1963

<sup>57</sup> Holleman, J.F. 1974. *Issues in African law* (The Hague,1974) p 13

<sup>58</sup> Roberts, S. 1976. *Law and the Study of Social Control in Small Scale Societies*(1976) 39,

<sup>59</sup> Adigun, O. 1991. *The Equity of Nigerian Customary Law. Towards A Restatement of Nigerian Customary Law*,Vol 10 Federal Ministry of Justice Law Review Series.

<sup>60</sup> Dike K.O and Ajayi, J.F. 1968. African Histography, in David I Sills(ed) *International Encyclopedia of the social Sciences*(New York 1968) Vol 6 p 394.

<sup>61</sup> Driberg, J.H.1934.*The African Conception of Law*, *Journal of The African Society* 34 Supplement July1955 p 230.

communitarianism, equivalence of penalty to crimes, assessment of motive and intention, religious sanctions, collective <sup>62</sup>responsibility, magical sanctions, ridicule and ostracism as the embodiments in of the African law. To Driberg, the African Customary Law existed, but was flexible .If not, there would not have been inherent conflicts between indigenous cultures and the British system of Justice administration, due to the latter's individualist tendencies.

In line with Driberg , Allot<sup>63</sup> , Elias <sup>64</sup> , Gluckman<sup>65</sup> , Allot and Contran <sup>66</sup> , Elias, Benard Hom <sup>67</sup> , Allot ,<sup>68</sup>Aguda<sup>69</sup> , Elegido <sup>70</sup> , Ajomo<sup>71</sup> rejoined that such assertions about the African society were basically the reflection of the ignorance of the anti-existence scholars on the nature of the African Customary law. To the preexistence scholars, although there may be no distinct articulation of a philosophy of law as comparable with the English society, the Yoruba had a clear philosophy of laws which cannot not be divorced from the socio-cultural and moral atmosphere of the larger society. To Adewoye <sup>72</sup> , the Yoruba attitude to law is not to objectify it as a self contained entity with a logic of its own. Juristic thought interpenetrates social thoughts as an aspect of social reality and the engraving of law was into the communities' social consciousness. To him, the concern for social cohesion in the Yoruba juristic thought would explain the principle of collectivity in the definition of what constitutes legal personality. He opined that the strength of the Yoruba law is derived from the lack of rigidity in the application of rules of social behavior. With emphasis on the relevance of the Yoruba philosophical thoughts on contemporaries, he identified the demerits of the clash of culture i. e the imposition of the English law on the local system and he for saw the resolution of such conflicts through the raising of lawyers with good knowledge of the traditional legal heritage.<sup>73</sup>

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<sup>62</sup> Ibid 19

<sup>63</sup> Allot, A. 1960. *The Future of African Law* (London 1960).

<sup>64</sup> Elais, T.O.1962.*The Nigerian Legal System*, Rotulede and Kegan Paul Ltd London p307

<sup>65</sup>Gluckman, 1967.<sup>65</sup> , *Judicial Process Among the Barotse*,(Manchester 167) p 126

<sup>66</sup> Allot, A. and Contran, E. (1971)<sup>66</sup> , *A background paper on Restatement of Laws in Africa, Faculty of Law, Ife, Integration of Customary and Modern Legal Systems in Africa*(1971)

<sup>67</sup> Benard, I. 1977.*Tiv Customary Law of Marriage and Divorce A Case Study*(1977)

<sup>68</sup> Allot, A.1980. *The Limits of the Law*(London,1980) pp52.54

<sup>69</sup> Aguda, 1989. *Towards a Nigerian Common Law in Ajomo (ed)*, Fundermentals of Nigerian Law, Lagos Nigerian Institute of Advanced Legal Studies.1989

<sup>70</sup>Elegido, J.M. 1994. *Jurisprudence*; Spectrum Law Pub Ibadan(1994)

<sup>71</sup>Ajomo, M.A.1989. *Comparative Analysis of African Customary Laws*” Paper presented at the All African Law Ministers Conference Abuja 1989

<sup>72</sup>To Adewoye, O.O.1987. *Proverbs as Vehicle of Juristic Thought among the Yoruba*,3&4 OAU L J

<sup>73</sup> Proverbs as Vehicle of Juristic thought among the Yoruba (1987) 3 7 4 OAU LJ p 9.

## Indigenous Societies and Foreign Laws

The pro existence scholars argued that the differentiation between the African law and the laws of other civilized jurisdictions was basically superficial. Bohannan and Laura<sup>74</sup> opined that Africa a peculiar sense is one of the homes of advanced legal institutions. Wande Abimbola,<sup>75</sup> emphasised that the law in the Yoruba society cannot be distinguished from the moral milieu in which it operates, being that it is dominated by belief in the existence of supernatural powers and by the hierarchy of authorities. Bennet TW and T Vermeulen supported the perception that the law of the Africans reflects the African traditional culture while the Western Laws represents the western values and attitudes. The duo advocated for ways by which the Customary Law may be adjusted to meet up with contemporary dictates. They support the postulation that the Customary Laws represents the old social order while the Western Laws in themselves represents the new order of modern development and exposures.<sup>76</sup>

Ayittey BN,<sup>77</sup> while considering the jurisprudence behind the indigenous legal and judicial institutions of the African societies stressed the fact that reconciliation, principles of fairness, adherence to cosmological factors and the maintenance of the social order and harmony amongst persons and between the societies and the supernatural enabled the judicial forms to adjudicate in the settlement of disputes through discussions with deliberation. There was correction of wrong doings by compensation except in serious offences which was likely to necessitate the impartial adjudication by elders using indigenous principles of fairness. In Ayittey opinion, the Yoruba legal system was structured, as disputes were referred from the lowest cadres i.e the family level-clan level-Baale, up to the king. It was a system where at most, the king included the town chiefs and the ogbonis in decision making. He observed that the elders in the Yoruba land made decisions based on a knowledge of the traditional way of life, circumspection and adherence to the truth. In another but similar assessment, Elegido (1994) discussed the characteristics which are positively shared by the African systems and which distinguished them from the industrial society. Some of the variances he identified in the established African ingenious laws were in the judicial processes, Group responsibility and styles of law enforcement.

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<sup>74</sup> Bohannan and Laura, 1968. *Tiv Economy*. Evanston, IL Northwestern University Press

<sup>75</sup> Wande Abimbola, 1975.<sup>75</sup> *Iwapele: The Concept of Good Character in Ifa Literary Corpus* in Wande Abimbola (ed), *Yoruba Oral Tradition(Ile Ife)* 1975,p 393

<sup>76</sup> Bennet TW and T Vermeulen. 1980. *Codification of Customary Law* Journal of African Law Vol 24, No 2 Autumn 1980

<sup>77</sup> Ayittey B.N.1991. *Indigenous African Institutions*, USA Transitional Publishers 1991 Chapter 2 pg 39,40,47,48,67,68

According to Akiwowo,<sup>78</sup> the basis of any progressive society is in its existence and co-existence for a common purpose. The perception of the world according to him is therefore relative to the conceiving agent. He posited from the African humanist perspective by concluding that the society is bond together in active goal seeking, self actualizing social organization and belief in the capacity of humans to die and re incarnating. He connected the fatal breakdown in the Alajobi system of consanguinity to the advent of the European market in the 18<sup>th</sup> century with the capitalist tendencies for material wealth surpassing that of the preexisting communitarianism. He equally opined from the Orunmilaist perspective of Humanism (Asuwa and Asuwada) (togetherness and togetherness for a common goal). Abdulmumini A Oba(2008)<sup>79</sup>,concluded that the supernatural plays an important role in African customary law and recognized juju and oaths as part of this supernatural complex.

This study concludes from the above legal, anthropological and sociological perspectives, that the previous scholars rather than being in discordance over the prior status of indigenous laws, were mere thinkers from the different school of thoughts. This review posits from the perspective that, there is an African concept of law which of course is traditional to the indigenes. However the identification of such laws including that of the Yoruba, can be greatly influenced by an author's legal background and his subjective understanding of what 'LAW' is or ought to be. More importantly most of the identified literatures were derived from anthropological/sociological methods rather than legal. It is also noteworthy that prominent researches on the history/nature of African indigenous laws were done shortly before and after the introduction of English Laws were originally presented between the early and middle period of the twentieth century.

### **Historical Nature of the Nigerian Legal Systems**

Robinson<sup>80</sup>, Asein<sup>81</sup>, argued that a peculiar feature of the legal systems of the British African territories was the dualism of laws by the Native Courts and the Received British laws/ courts. He opined that prior to the intervention, the African territories, including Nigeria may not have

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<sup>78</sup> Akiwowo, *Ajobi and Ajogbe Variations on the Theme of Sociation*, Inaugural Lecture Series 16, Univeristy of Ife Press P15

<sup>79</sup> Oba A. 2008. *Juju Oaths in Customary Law Arbitration and Their Legal Validity in Nigerian Courts* p43 Vol 52 Number 1 2008

<sup>80</sup> Robinson, 1948. *Administration of African Customary Law Journal of African Administration* Vol 1 No 4 1949

<sup>81</sup> Asein A. 2005. *Introduction to the Nigerian Legal System* 2<sup>nd</sup> Edition 2005 Ababa Press ltd Lagos p 4- 5

had the same institutions as that of the British but they had systems, institutions, procedures and judicial philosophies that suited them. To Brooke N.J. (1954) the African legal system became destabilized, when a fully developed system of Courts and Laws with a highly technical system of procedure which had taken like 800 years to develop, was imposed on what was a little more than a social system. He identified the inherent conflicts between the English law and the local laws especially the Mohammedian laws. To Brooke, the resolve of such conflicts as established by the introduction of new ideas is not by the codification of customary laws into English form, rather it entails the allowance of these local law to by themselves evolve through constant interaction with contemporary rules.<sup>82</sup> According to Elias T.O<sup>83</sup> the dual nature of the Nigerian legal system due to the intervention of the British Law enabled the English men to regard the Nigerian customs as inferior to its English counterpart. Ajayi F.A<sup>84</sup>, Gower L.C.B<sup>85</sup>, identified the various sources of the Nigerian Legal System which included the received British Laws, SOGA, Imperial Legislation, Local legislation and customary Laws in addition to the contradictions resulting from the interactions of these laws.

### **Impact of Colonization on the Indigenous Laws**

Obilade (1990) observed that despite the status of inferiority conferred on the customary laws, the Nigerian customary courts still retained its pace as a force sustaining the legal/social order in the indigenous communities.<sup>86</sup> Olurode and Olusanya<sup>87</sup> discovered that a cultural lag has arisen as a result of the unequal growth in different aspect of culture. To them this was the ideological/material response to the process of cultural contact or cultural diffusion .The duo explained that the process of change is not synonymous to development and statements on the effects of changes in the society evolves from moral judgment. Abgbede noted that while the Nigerian Constitution and many other foreign and local statutes had overshadowed other several jurisdictions of the Yoruba customary laws<sup>88</sup>, issues of private nature including matters relating

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<sup>82</sup> Brooke, N.J.1954. *Journal of African Administration* Vol VI ,No 2 April 1954 pg 67

<sup>83</sup> Elias, T.O.1956.*Elias T.O.(1956) Nigerian Legal System*. Routledge & Kegan Paul Ltd London p12

<sup>84</sup> Ajayi, F.A. 1960.The Interaction of English and Customary Law in Nigeria. *Journal of African Law* Vol 4

<sup>85</sup> Gower, L.C.B.1964. The Nigerian Statutes and Customary Law, *The Nigerian Law Journal* Vol 1 No 1 Nov 1964

<sup>86</sup> Obilade, A.O.1990. *Nigerian Legal System* Spectrum Law Series p 93

<sup>87</sup> Olurode, I. Olusanya O.1994. *The Nigerian Heritage The Yoruba Example* , Reboni Publications Ltd. Reprinted in 2011p 20,61,13,62,109,110,111

<sup>88</sup> Agbede, I.O. 1997. *Repugnancy Doctrine ;A Reappraisal in Current Themes in Nigerian Law* ,University of Lagos p154 .

to children are still left in the jurisdiction of the customary courts. To Hans-H Munker<sup>89</sup> although colonialism in Africa represented the imported and imposed order of things, the rules survived the invasion of the blatantly opposing laws however the result of the clash was the split of identity in the mind of the indigenes. He identified the glaring distinguishing features of English laws from the indigenous laws as follows,

1. Individualism focuses on the rights of individuals as against the family and collectivity
2. Introduction of a secular state which distinguished between regions beliefs and civil life
3. Struggle for equal rights of all citizens, irrespective of age, and gender.
4. Introducing methods that were peculiar to a state with expressly written laws.

Alemika E.E.O. Chukwuma<sup>90</sup> identified the evolution of the Nigerian legal system through colonialism as the major cause of the several fundamental defects in the philosophy and practice of juvenile justice in the country. Olaoba<sup>91</sup> described the impact of the colonial legal heritage on the Yoruba society by explaining the various unfavorable processes the local customs went through in order to accommodate the British indirect rule. To him the Yoruba culture was able to survive the magnitude of subjugation by the British due to its virility and dynamism. He posited that the English legal heritage cannot befittingly match the Yoruba but for the distortion encountered in the Yoruba jurisprudence due to the civil war of the 19<sup>th</sup> century and coupled with the establishment of the English native courts as part of the British administrative agenda.

### **Compability of the English Laws with the Native Systems**

According to Julius Lewis<sup>92</sup> the determination of the rules of native laws was supposed to be by the application doctrines of English law, he argued that native laws should have been applied in its own limited hemisphere. To him, the Colonial choice of administration is responsible for the laissez faire attitudes adopted towards policies relating to customary courts. In his opinion,

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<sup>89</sup> Hans-H Munker,1998. *Which Values for Africa at the 21<sup>st</sup> Century?* African Marburgensia Special Issue 17, 1998.Also See Agbede I.O.1991.The Different Systems of Law: Nature and Basis of Conflict of Laws In Nigeria, and Yadudu, A.H. 1991. Customary Law and the Nigerian State: Policies, Dilemas and Options, *Towards a Restatement of Nigerian Customary Law*, Vol 10 Federal Ministry of Justice Law review Series .p 46

<sup>90</sup> Alemika E.E.O, Chukwuma, I.C.2001.*Juvenile Justice Administration in Nigeria: Philosophy and Practice*, Published by Centre for Law Enforcement Education (CLEEN) Lagos, Nigeria p 10

<sup>91</sup> Olaoba, O.B. 2008. *Yoruba Legal Culture Problems and Prospects of Studying Yoruba Legal Culture* ,New Age Publishers Ltd Lagos p108-125.

<sup>92</sup> to Julius Lewis,1944. *Native Courts and British Justice in Africa*, Africa Vol xiv No 8 October 1944 pg 449,451



segregating the indigenous courts from the English law has left the native courts without sufficient direction and procedure. He opined that the principles of natural justice is fundamental to any system of law, the attitude of the British government to inculcate the full formality and rigors of the English through the insistence of the application of the repugnancy doctrine was not to impose but to expand the jurisdictions of native courts beyond traditional laws and customs in order to keep it abreast with changing social conditions.

On the effects of the repugnancy clause, Ajayi <sup>93</sup> equally, submitted that the repugnancy Clause/Test/doctrine which subjects customary laws to the compatibility with natural justice, equity and good conscience had so far developed the customary laws. To the duo it has helped to prepare the customary laws for consequent adaptation to meet new social and economic needs which have emerged since the establishment of British rule. Peel,<sup>94</sup> acknowledged the fact that civilization to the Yorubas with emphasis on the Ijeshas through the British was highly welcome as it was perceived from the reflection of helplessness and powerlessness of the culture vis a vis the opportunities created by the colonial masters. He explained the introduction of the English system into the preexisting culture of hidden enlightenment to a situation of access to all. Olurode L and Olusanya(1994) <sup>95</sup>discovered that a cultural lag has arisen as a result of the different growth of different aspect of culture. To them this is the ideological and material response to the process of cultural contact or cultural diffusion which although signified change in the system but did not imply requisite development.

### **Internal Conflicts between Nigerian Children Laws**

Loveridge<sup>96</sup> observed that while material progress is urgently necessary there is need for colonial development to be human as well as material. To him, the foreign approach officially, financially and from the drawing board give rise to projects which are doomed to cause at least distress through lack of knowledge of the human factors. According to Hobsbawn and T.Range, the

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<sup>93</sup> Ajayi, F.A.1960.The Interaction of English Law with Customary Law in Western Nigeria(1960) JAL at 103

<sup>94</sup> Peel, J.D.Y. 1978.*A Yoruba Concept of development* ,Journal of Development Studies(1978),14:2-165

<sup>95</sup> Olurode, I. Olusanya O.1994.*The Nigerian Heritage The Yoruba Example* , Reboni Publications Ltd. Reprinted in 2011p 20,61,13,62,109,110,111

<sup>96</sup> Loveridge, A.J.1949. referred to the OBE,Judicial Adviser, Gold Coast on his Address titled The Future of Native Courts given at the Colonial Office Summer School held in Connection with the Second Training Course for Colonial Service officers at St Johns College ,Cambridge, in September 1948.See the journal For African Administration Vol 11 1949 p 7

present day customary laws would be a new law of invented traditions, due to the strength of influence by modern economic, institutional and social-political inventions by colonialism. Anyebe AP 1985<sup>97</sup> in a non comparative analysis considered the custody of children generally and with emphasis on the Idoma native marriage laws/customs and the Tiv customary laws of Nigeria. He attended to the issue of marriage, paternity and illegitimacy as considered under these laws. He painstakingly described the discretion and the attitude of the judges of the indigenous courts and the crisis rocking issues of appeals from customary courts to higher courts on the basis of the contradictions in procedures and laws. His piece emphasized the meaning of the concept “best interest” as presented in decided cases, statutory and customary laws.

Tomlinson, M. (2002) in an explanation of the extreme effect of contradictions in the systems noted that throughout the centuries, Nigeria had witnessed countless cases of waste and tragedy that occurred as a result of the culturally illiterate approach to development by foreigners. He stated that health clinic that have been funded by international donors, have failed to serve the communities that desperately need them because aid workers failed to respect local customs. Also he observed many family planning initiatives have floundered because they have ignored cultural sensitivities and values placed on women fertility.<sup>98</sup> Onukah<sup>99</sup> asserts that in Nigeria the best interest” and “general welfare” principles which are the deciding factors for the courts in child care matters were terms borrowed from the English courts. She asserts that the Nigerian Customary Laws on children are different from their statutory counterparts and explained further that such jurisdictional conflicts include incidents from double deck marriages. That is, where a party subjects itself to dual laws by contracting a marriage with the same person under different jurisdiction with contradicting laws.

On a contemporary note, Blair D.M. Weiner M.H.<sup>100</sup> in an international exploration of various jurisdictions posits that there are bound to be jurisdictional disparities in the custodial rules and norms of various States as regards children. Ibidapo Obe<sup>101</sup>, criticized the perceived apathy

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<sup>97</sup> Anyebe, A.P.1985. *War Without Arms*. Fourth Dimension Publishers, Enugu p21.

<sup>98</sup> Tomlinson, M. 2002. Opening Remarks Address delivered by the World Bank Country Director at a workshop by World Bank Abuja, Nigeria on Culture and Development, March 18-19

<sup>99</sup> Onukah, M.C. 2003. Family Law 1<sup>st</sup> Edition Sprettrum Law Series Ibadan at p178,181-183

<sup>100</sup> D. M. Blair, & Weiner, M.H. 2005. Comparative Exploration 39 Fam. L. Q. R 247 [www.digitalcommons.law.utulsa.edu/fac\\_pub\\_retreived](http://www.digitalcommons.law.utulsa.edu/fac_pub_retreived) February 4 1015

<sup>101</sup> Ibidapo-Obe, A. 2005. *Syntheis of African Law*, Concept Publications p33,34,190,197,199,202,192

towards customary laws, forecasting a complete relegation of customary laws. He discussed the impact of the integration of general laws on the area of personal law in a comparative manner and the effect of English laws on issues of double-decked marriage, illegitimacy and succession as they relate to children. He explained that the International Human Right Laws has laid a regime of expansive rights and standards which have not only clashed with the contemporary authorities and socio political structure, but with the very culture of African people. Advocating that rights are both universal and culture specific he discussed the impact, ineffectiveness, challenges and the conflict of laws on children including juvenile justice in Nigeria. Owasanoye (2005)<sup>102</sup> observed that custody disputes arising in customary marriages in Nigeria are still resolved in customary courts, but that these courts are now regulated by statute and increasingly subject to appellate oversight by civil courts. Professor Owasanoye's description of the child custody regulation in Nigeria illustrates a system with Federal and State statutory provisions, derived in part from English law. To him apart from these sorts of structural differences, the substantive norms employed across nations are diverse.

Yusuf O.A.<sup>103</sup> on the efforts by many Nigerian states to localize the Child's Right Act, opined that such State actions connotes serial legislative duplication of the powers of the National Assembly to enact laws which are applicable to all states. He queried the legislative capacity of the Child's Right Act (a received law) to supercede other children's laws in a multi legal country.

Emiola A.<sup>104</sup>, in a further analysis, concluded that anything borrowed for use has its own inherent problems, because the environmental and societal climates in which it will operate are bound to be different. Graveson RH<sup>105</sup> after identifying such discrepancies discussed the rules (lex situs and lex domicilli etc) for resolving conflicts on guardianship, adoption, legitimacy and ward ship of children in cases of statutory conflicts within laws of different jurisdiction.

Considering the concept of growth and modernism, the present study agrees with the severally identified negative impacts of colonialism and multiple laws on the Nigerians child's care

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<sup>102</sup> Owasanoye, B. 2005. *The Regulation of Child Custody and Access in Nigeria*, 39 FAM. L.Q.R. p405 -423

<sup>103</sup> Yusuf, O.A. 2010. Contemporary Issues on the Nigeria Land Scape. *A Compendium in Honour of Prince Lateef Fagbemi*. 1<sup>st</sup> Publication Lex Vison 2010.

<sup>104</sup> Emiola. A. 2011. *Emiolas African Customary Law*. 3rd Edition Emiola Publishing ltd Ogbomosh

<sup>105</sup> Graveson, *Conflicts of Laws* Sweet and Maxwell London 361-392

regime. However it posits that the British laws would not have gone through severe disapproval and criticisms if not for the method of its introduction. This work in fact argues that foreign laws are capable of developing indigenous laws when such external ideas rather than being imposed or positioned, are merely presented by the foreign culture to the receiving culture and with respect of the pre existing structures

### **Care, Control and Custody of Children**

Ekundare O (1969), described the concept of custody, guardianship, adoption, access and maintenance as different entities and as such described them separately from one another. Adesanya S.A<sup>106</sup> discussed custody as an issue to be decided during the divorce of parents and explained what the courts takes into consideration in awarding same. Bromley PM (1981)<sup>107</sup>. In a virtual analysis of the legal and judicial framework on the care of children in the UK, traced the history of the laws of child custody from Common Law period to Equity and finally to the various statutes which were applicable at the time of his work. He variously identified the different types of custody namely de jure custody, de facto custody, actual custody among several others. Such was his breakdown that legal custody was explained to entail situations where such persons though have the right to make decisions for the child do not have physical possession of same. He used each of the type of custody identified under various issues in divorce, guardianship, court ward ship e.t.c While his text is a work done on the English laws, the present work is a Nigerian Counterpart but which addresses the phrase child custody as a single term connoting the legal capacity of appropriate institutions and persons to have the requisite physical possession of children. Ajibola<sup>108</sup> added that in cases of custody of children upon divorce, the customary courts considers each case according to its facts.

Udom Azogu 1991<sup>109</sup>. in a general description of Nigerian customary laws summarized that although also subjected to the best interest principle, unlike its statutory counterpart, under the

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<sup>106</sup> Adesanya, S.A. 1973. *Laws of Matrimonial Causes*, Ibadan University Press 1<sup>st</sup> Edition pg 227

<sup>107</sup> Bromley, P.M. 1981. *Family Law*, 6<sup>th</sup> Edition, London Butterworths 1981.

<sup>108</sup> Ajibola, J.O. 1982. *Administration of Justice in the Customary Court of Yoruba Land* University Press Ltd Ibadan p 36

<sup>109</sup> Udom Azogu, 1991. Women and Children A Disempowered Group under Customary Laws. *Towards a Re-Instatement of Nigeria Customary Law* 1991p 113

customary laws the fathers always have the custody of their children. Sagay I (1999)<sup>110</sup> considers custody of children to include guardianship and adoption of children, but most importantly the award of the possession of children to appropriate parties in matrimonial causes. He explained the statutory powers of the courts to appoint guardians. Owolabi<sup>111</sup> described maintenance of children of the marriage as an incidence of custody which is the responsibility of the spouses. Audi, Tam<sup>112</sup> viewed child custody from the Islamic law of parental and guardian responsibility towards children. She described the correlation between the need to consider the best interest of the child in custodial issues vis a vis the provisions of the Nigerian 1999 constitution. Abdulrazaq FF<sup>113</sup> regards custody of children as an outcome of the decisions of the judges of the courts on the legal possession of children in matrimonial *causes*. He expressly compared the provisions of the general customary law with emphasis basically on the Islamic law on custody of children.

Nwogugu E.I 2011, in a non comparative analysis, described custodial matters of children in Nigeria as involving issues on the entire possession and care of children during adoption, divorce, marriage or outside wedlock. He also described custody to include the guardianship, adoption, fostering of children dependent and independent of marriage. Without reference to the Child's Right Act 2003, he did consider the English Law, Matrimonial Causes Act 1970, Children and Young Persons Act, the Infant Laws, the Nigerian General Customary Laws. He discussed the right to chastise children, parent liability on children actions (criminal and civil), interference with parental rights (criminal and civil),<sup>114</sup> children in need of care and protection and the punishment for juvenile offenders as issues that are incidents of custody.

A peculiar trend in the discourse on custody by the previous legal and non legal authors is that custody connotes the way a child is cared for by the authority or person in its physical possession. While several authors go ahead to either expand or limit the scope of this term, this work deviates from the notion that custody is only about judicial consideration of children

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<sup>110</sup> Sagay, I. (1999) *Nigerian Family Law; Principle, Cases, Statutes and Commentaries* Malthouse Press Ltd First Publishers Lagos 546 -557

<sup>111</sup> Owolabi, A. (2002) Maintenance under the Nigerian Statutory Family Law. A Critical Appraisal University of Ibadan *Journal of Private and Business Law*, IJPBL vol 3 2002 p42

<sup>112</sup> Audi, T. (2006) Child Custody (Hadanah) under Islamic Law in Nigeria: Looking at the Best Interest of The Child. *Ahmadu Bello University Zaria Journal of Private & Comparative Law*. P 219 Vol 1 No1 2006

<sup>113</sup> Abdulrazaq, F.F. (2007) Custody of Children in Nigeria; A Comparative Analysis of Relevant Laws *The University of Ilorin Law Journal* Vol 3 and 4 pg 153-163

<sup>114</sup> Nwogugu, E.I. (2011) *Family Law in Nigeria*, HEBN Publishers Plc pp333-356

welfare during divorce. Infact the study treats custody as simply the overall care and control of children by those who have their physical possession especially parents, guardians, care givers and other governmental and nongovernmental care giving or corrective institutions. This study does not preclude all other definitions however, but it is a work preferred on the peculiar characteristics of the term “custody” as reflected in requisite authorities.

### **Parental Duties and Rights towards their Children**

Elias TO 1962<sup>115</sup> - opines that it is obligatory for the parents to maintain and take care of their children. The Research Directorate, Immigration and Refugee Board of Canada, Ottawa<sup>116</sup> identified the various issues on the award of the physical possession of children during divorce and the effect of same on woman and her immediate family. In a quantitative survey the study realized that in practice, judges give custody of very young children to mothers, and, of older children to fathers. Fajana .A(1996)<sup>117</sup> established the all round nature for the education of children under the Yoruba customary law. He opines that education was through *Awoko* and *Afiye*. Therefore these two phenomena affected all spheres of the child life. However, he laments that this has changed as the present educational structure creates semi Europeans who look down at their own cultures. To him the contemporary system of western education aims at theories alone and the integration of these two different systems remains to be seen. Ogungbe M.O 2001<sup>118</sup> observed that it is the duty of the parents especially the husband who is regarded as the head and also the bread winner of the house to meet all material needs of his children.

Olatunbosun A.<sup>119</sup> considers child nurturing as the exclusive responsibility of the parents. He noted the importance of children to their parents and the society at large. He identified the family as the basic unit for the proper care and development of the child. Ibraheem T.O 2006, in a

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<sup>115</sup> Elias, T.O. 1963. *The Nigerian Legal System*, Rotuledge and Kegan Paul Ltd London p307

<sup>116</sup> IRB - Immigration and Refugee Board of Canada: Nigeria: Divorce law and practices among Christians, including grounds, procedures, length of process, property dispositions, child custody and consequences for the woman and her family [NGA104209.E], 02 November 2012 (available at ecoi.net) [http://www.ecoi.net/local\\_link/231461/339960\\_en.html](http://www.ecoi.net/local_link/231461/339960_en.html) (accessed 05 February 2015)

<sup>117</sup> Fajana, A.1996. Some Aspects of Yoruba Traditional Education, ODU Vol 3, No 1, July 1966

<sup>118</sup> Ogungbe, M.O. 2001. Family Law in Disarray Law to the Rescue.46<sup>th</sup> Inaugural lecture OOU Ago Iwoye Tuesday 2 June 2009

<sup>119</sup> Olatunbosun, A.I. 2005 An Appraisal of the Socio Economic Provisions of the CRA. 2003. *Nigerian Journal of African Law*(2005) 2NJAL .153-163

discussion of maintenance of the spouses in a marriage he alluded<sup>120</sup> to the fact that the duty to maintain a child under the customary law is usually considered a part and parcel of a man's duty to maintain his wife within the limits of his material resources. Olatunbosun A.<sup>121</sup> In an incursion into the status of women and their rights, he previewed the prejudices against female children even from the time of birth in the African society. He stated the existing dissimilarity in the treatment of children due to their sexes by the parents and the society. This work is very relevant due to its specific identification of some issues which arise in the typical African setting of parents and children of both sexes. Yusuff A.O<sup>122</sup> in an analysis of the rights of parents to decide on behalf of children explained that the medical decisions to be taken on behalf of children must be in the best interest of the child. However he opined that the subjective and flexible standard used in accessing what is in the interest of the child or not, has resulted in inconsistent applications of the principle.

This study conforms with the position that parents are the primary care givers. This stated position is however subject to various other conditions necessitating other persons or institutional interference in the familial set up. However, the scope and nature of the obligations of custodians and the extent to which such must conform with or promote rights of children, have been the pre-occupation of existing international and local provisions on the basic rights of all persons including children.

### **Existing Nigerian Legislative Framework on Child Care**

Mason JK.1990<sup>123</sup> considered the status of defective infants generally and under the American laws. He stated the rights of such children, with a legal and moral inquiry into cases where children are deformed, sick or vegetables. Issues of abortion of defective neonates and passive or active care of vegetative children were discussed.Owolabi A. 2002<sup>124</sup> opines that the present

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<sup>120</sup>Ibraheem, T.O. 2006. An Examination of Maintenance under the MCA 1990. *VOL 1 No 1 Oct 2006 85-101.P85-101at p 85*

<sup>121</sup> Olatunbosun, A.I. 2007, Women's Human Rights Gains or Pains to Humanity. *The Calabar Law Journal Vol XI 2007 Faculty of Law Calabar 60-77*

<sup>122</sup> Yusuff, A.O. 2009. Best interest in trial: medical decision making on behalf of the incapable child. *Akungba Law Journal Vol 1, No 3 January 2009 p 17-36.*

<sup>123</sup> Mason, J.K. *Medico-Legal Aspect of Reproduction and Parenthood*. 1<sup>st</sup> Edition Dartmouth Publishing Company Ltd USA 250-279

<sup>124</sup>Owolabi, A. 2002. Maintenance under the Nigerian Statutory Family Law. A Critical Appraisal University of Ibadan *Journal of Private and Business Law*, IJPBL vol 3 2002 p42

legal framework on maintenance in Nigeria has no provision whatsoever for single parents (especially mothers). In an analysis of the maintenance of children of a marriage, he compared the provisions of the Matrimonial Causes Act 2004 to the CYPL of States and concludes that the latter has wider provisions on the subject matter.<sup>125</sup> Olatunbosun A 2005<sup>126</sup> describes the different forms violence, abuse and injustice to children. With emphasis on the provisions of the Child's Right Act 2003 he identified the constitutional, national and international approach to the protection of the child. He noted that poor socio economic empowerment with low enforcement of labour laws affects parents and as such contributes to the rate of child labour which invariably endangers the children's physical, mental and moral wellbeing. Centre for Reproductive Rights 2005<sup>127</sup> in a compilation of the of issues from the sexual and reproductive rights in African Common Wealth Courts identified various decisions of courts towards the effect that any law that discriminates between heterosexual spouses and same sex partners, single parents (cases of artificial insemination), in the grant of parental rights, adoption rights and custody rights is unconstitutional.<sup>128</sup> Yusuff J.A This a comparative analysis of the use of Alternative dispute resolution i.e mediation under the Shari'ah and Nigerian Customary Laws in child custody proceedings upon divorce. To him the family elders and the head of the community will do all in their capacity and efforts to reconcile the parties until all efforts becomes unworkable to reunite both. In awarding custodial right between the biological father and mother, he identified traditional and cultural perspective in Nigeria that biological father has a better right than the mother on the children. To him custodial rights in most cases favor the father than mother especially if the child is a boy<sup>129</sup>.

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<sup>126</sup> An Appraisal of the Socio Economic Provisions of the CRA. 2003. *Nigerian Journal of African Law*(2005) 2NJAL .153-163

<sup>127</sup> Legal Grounds, Reproductive and Sexual Rights un African Commonwealth Courts.Centre for Reproductive Rights 2005 p79-82

<sup>128</sup> *DuTroit and Another vs Minister of Welfare and Population Development and Others. South African Constitutional Court*(2003)(2) SA 198(CC);(2002) (10) BCLR 1006(CC).*J and B vs Director General, Department of Home Affairs and Others*(South African Constitutional Court CCT 46/02 (2003)(2) (5) BCLR 463 (2003 )ZACC 3)on artificial insemination.. *V V vs (South African High Court, Cape Provincial Division,(1998)(4) SA 169)*

<sup>129</sup> Yusuff J .A , "Custody of Children after divorce under the Shari'ah, Customary and Civil Laws in Nigeria: A Comparative Analysis", (MCL dissertation International Islamic University, Malaysia, 2007), 29-30.



Abifarin O, Hammed HA<sup>130</sup> discussed the laws governing the award of custody of children under the Matrimonial Causes Act, The Nigeria Customary Laws, Islamic Law and the international Law during divorce. The study concludes that the Nigerian society is highly patrilineal and the best interest of the children is not actually considered in many customary court's decisions. It is no doubt very tasking to have an exhaustive discourse on the provisions, interactions, effects and limitations of all local and international laws. However in its own contribution to knowledge, the study with respect to previous researches on this aspect of child's right is interested in the Yoruba customary law and how this referenced framework, which is traditional in nature, interacts within the modern Nigerian framework on child custody.

### **Children under the African indigenous laws**

Elias TO 1962<sup>131</sup> described the obligation of parents to care for their children as reciprocal under customary law by which children are in turn obliged to do the father's bidings, which include rendering assistance on the farm. He attributes the custody of children during divorce to the proper return of dowry in cases of adultery of the woman while infants go to their mum and the daughters. He recognized guardianship as unpopular among the Yorubas due to the intimate family ties and described adoption as only possible between relatives. He discussed the local laws and ordinances relating to the welfare of children including the reformation of children and care of children in need. Ekundare O (1969), explained the concept of custody, guardianship, adoption, access and maintenance as different entities. This analysis was done considering the Yoruba customary laws in relation to marriage and matrimonial causes. After a detailed appraisal of the award of custody of children by customary courts and juvenile courts, he asserts that guardianship was not a popular institution among the Yoruba. He identified the notion of involuntary guardianship (iwofa) among the Yoruba's before concluding that the Yoruba's have no adoption laws. He only identified cases of Agbamosho i.e where the family arranges for a child of a relative to live with them. He also discussed in details the available legal frameworks on custody and the access to children of a divorce as at 1962. Fadipe 1970<sup>132</sup> examines the changes in Yoruba traditional family values. Modernization theory was employed to explain how

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<sup>130</sup>Abifarin, O. Hammed H.A. <sup>130</sup>2012. Gender Issues in Child Custody in Matrimonial Causes in Nigeria. *Journal of Commercial and Contemporary Law* Vol 3 June 2012. Published by the Department of Commercial Law Faculty of Law Imo State University. Owerri

<sup>131</sup> Elias, T.O. 1963. *The Nigerian Legal System*, Rotuledge and Kegan Paul Ltd London p307

<sup>132</sup> Fadipe, N.A. 1970. *The Sociology of Yoruba*: Nigeria: Ibadan University Press. Pp. 183-189

western culture has been diffused into the developing countries and has changed family values. He explains that since there has been a change in economic value of children and family priorities, teenaged and young-adult sons no longer value working in their fathers' farm. To him, individualism has virtually replaced communitarianism or dependence in human social relationships. To Adewale S.A and Babatunde,<sup>133</sup> under the Yoruba culture parents are the first models to their children. They have the responsibility to instruct them towards good attitude in the manners of relations to others. The successful outcome of a parents life depends on the efforts he gives in toward the training of the child. Olurode L and Olusanya(1994)<sup>134</sup> identified the extended family as the smallest unit on the decisions about the care of children which are taken by the head of the family or in consultation with principal members. They explained that the power of the heads of families has declined and each male adult of each family unit. They discussed the Baale as being responsible to superior authorities for the conduct of his inmates (including children) in his compound. Also that initially peasant agriculture was the main occupation of the vast majority of Yoruba and everybody earned his upkeep and the wants which were modest and limited, to them, the recent urbanization has diversified occupation and the present extended family is dispersed and lack more with the urban middle class not able to afford basic needs. Oyewo T 1999<sup>135</sup> considers maintenance and custody of children under the Yoruba customary law during a divorce and strictly from the provisions of the grade C Customary courts where the sum N150 could be awarded as maintenance per month. He emphasized the extent of judges discretion in reaching decisions on the welfare of the child.

Ibidapo Obe A 2005<sup>136</sup>, in a summary, described and recognized the role of the family head as loco parentis to all members of the extended family under customary laws. He explained that the number of children a man had was crucial to determining the labour available to him. The practice amongst the Yoruba, as he observed was that the man takes many wives in order to swell the family population for economic purposes. Ibidapo Obe opines that under the Yoruba

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<sup>133</sup>Babtunde, E.D.1992. Culture, Religion, and the Self: A Critical Study of Bini and Yoruba Value Systems in Change. Lewiston ,NY: Edwin Mellen Press @p 8-11 and Adewale S.A (1986) Ethics in Ifa in : S.O. Abogunrin, ed. Religion and Ethis in Nigeria.Ibadan, Nigeria,Day Star Press, 60-71

<sup>134</sup> Olurode I, Olusanya O. 1994.*The Nigerian Heritage The Yoruba Example* , Reboni Publications Ltd. Reprinted in 2011p 20,61,13,62,109,110,111

<sup>135</sup> Oyewo, T.1999...*A Handbook on African Customary Laws of Marriages , Inheritance and Succession*.1<sup>st</sup> Edition. Nator Publishing Company p43

<sup>136</sup> Ibidapo Obe A. 2005. *Syntheis of African Law*, Concept Publications p33,34,190,197,199,202,192

customary law the husband has the right to a child which his wife has for another man while still married to him.

Emiola O 2011, backed his submission in consonance with professor Dias and Aristotle<sup>137</sup> that the laws resting on unwritten customs are more sovereign and are concerned with issue of more sovereign importance, than written laws. He acknowledged the concept of *iwofa* (pawns), in the among the Yoruba, then detailed that young offenders in Yoruba land were rather flogged than kept in prisons. By his research, kings and rulers owed such prisons where minor offenders are kept when the need arises. He identified the General head of the Yoruba family as the Mogaji who is analogous to the biblical biological father and who is the head of the household and is responsible for the spiritual nature of the extended family<sup>138</sup>. He is of the view that the family head is the manager of the house, who ensures the care of the children of the family including orphans. He noted the custody of a child born by a woman to another man while still married to her husband belongs to the husband and to him culturally a woman has no rights to sue and if for whatever reason a marriage breaks down, she loses all children to her husband, property and personal acquisitions from or through the assistance of her husband.

As earlier discussed, the various allusions by above researchers to children, were for mere references in the course of their distinct studies. This work entirely focuses on children, and how the Yoruba customary law has fared within the larger Nigerian family law framework. The research should discover and explore the untouched areas by the previous writers.

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<sup>137</sup> Dias, R.W.M. 1964. *Jurisprudence*, 2nd ed (Butterworth), p508, Emiola, A. 2011. *Emiolas African Customary Law*. 3rd Edition Emiola Publishing Ltd Ogbomosho

<sup>138</sup> Chapter 24 Verses 6 of the Holy Bible.

## 2.2. CONCEPTUAL CLARIFICATIONS

The importance of clarifying the meanings of words and the style of use cannot be underemphasized, especially when such concepts represent the tools for understanding the course of a research work. This part defines and explains concepts that are important to the course of this study. As peculiar with millions of other legal terminologies, an attempt at explaining very pertinent words and phrases used in the study cannot be the adequate representation of all perspectives. Notwithstanding, the clarifications attempted below for the purpose of the study, are sufficient as attributes of such words/phrases in the prominent dictionaries and other legal resources.

1. **Child/Juvenile/Infant/Baby/Minor.** The Child's Right Act of 2003 defines the child as a person under the age of eighteen years. It is a young human being who is not yet an adult.<sup>139</sup> A child is seen as a minor who is under the age of majority<sup>140</sup> of a particular jurisdiction. An infant or baby, in other words, is a very little child.<sup>141</sup> In the study, these terms are used interchangeably to explain various issues as applicable to the main concept “child”.
2. **Child Care, Child Custody and Child Control.** These three words have various attributes in legal parlance. However, for ease in legal referencing, the terms Child Care and Child Custody especially, had been prefixed to be used for multiple purposes.<sup>142</sup> The three

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<sup>139</sup>*Oxford Advanced Learners Dictionary*. 6<sup>th</sup> Edition Oxford University Press at pg 188 also at pg 16 of the same dictionary an adult is defined as a fully grown person who is legally responsible for their actions.

<sup>140</sup> By the provisions of the Nigeria Child's Right Act 2003, the majority age is 18 years.

<sup>141</sup>*Blacks Law Dictionary* 9<sup>th</sup> Edition, Reuter Thompson 2009 Pg 270 .

<sup>142</sup> The term “child care” is used in some parlance to connote day care facilities for kids or any other form of care for children who are not with their parents. In matters relating to the possession of children especially in matrimonial causes, the phrase “custody of children” apply in various forms as<sup>142</sup>; **Dejure Custody** This is the right to custody according to law or as authorized by law **De facto custody**. The factual arrangement for the possession of the child and as distinct from Dejure custody **Actual Custody**. This type of custody arrangement is similar in reference to the physical custody of the child **Legal Custody**. The authority to make significant decisions on a child's behalf including the decision on education religious training and health care. **Physical Custody**. This is with the person who has the physical possession in contrast to the person with just the legal rights to such a child **Constructive custody**. It refers to the custody of a person who is not under direct physical control but whose freedom is controlled by legal authority. **Penal Custody** Custody intended to punish a juvenile offender. **Preventive Custody**. Custody intended to prevent further dangerous or criminal behavior. **Divided custody**. An arrangement by which each parent has exclusive physical custody and full control of and responsibility for the child part of the time, with visitation rights in the other part. **Joint Custody**. An arrangement by which both parents share the responsibility for and authority over the child at all times, although one parent may exercise

concepts, may however be used interchangeably to mean the legal right or duty to keep and take up the care of a child.<sup>143</sup>

3. **Customary Laws and Customs.** Custom is defined as an accepted way of behaving or of doing things in a society or a community. A customary law or right is one that is not written but which, due to being established by long use and the consent of ancestors and people, is put to practice. For example, a right enjoyed through long custom rather than positive law. Customary laws deal with standards of community that have been long-established in a given locale<sup>144</sup>. On the other hand Customs are practices which need to have supportive court rulings in order to give additional weight to their use as laws.
4. **System.** This is the complex whole of the structure, consisting of all Laws, Statutes, Customs, Case Laws, Treaties, Policies, Principles, Procedures and Institutions relating to the protection of the children.
5. **Statutes.** An Edict of the Legislature. This term is usually confined to public Acts i.e. a law that is formally written down.<sup>145</sup> A law passed by a legislative body or legislation enacted by any law making body, including legislatures, Administrative boards and municipal courts.<sup>146</sup>
6. **Yoruba.** The Yoruba ethnic group represent one of the major ethnic groups in Nigeria, a country in the western part of Africa. They live mainly in the South-Western part of Nigeria. They are mostly identifiable by the peculiarity in names, mode of dressing and their peculiar customs, the native language of the Yoruba is Yoruba Language.
7. **Parental responsibility.** Parental responsibility refers to the rights and privileges which underpin the relationship between a child and either of the child's parents or those adults who have a significant role in the child's life. That is all the rights, duties, powers, responsibilities and authority which by law, a parent of a child have. In addition, parental responsibility is

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primary physical custody.**Shared Custody.** This arrangement is similar that of joint custody **Sole Custody.** An arrangement by which one person has full control and sole decision making responsibility, to the exclusion of the other parent. **Split Custody.** An arrangement in which a parent has custody of one or more of the children , while the others have custody of the remaining children.**Residential Custody.** This is a similar arrangement to physical custody i.e where the child lives.**Protective Custody.** An arrangement intended to protect a child from abuse neglect or danger whereby the child is placed in the safety of a foster family after being removed from home or from the custody of the person previously responsible for the child's care. The care control and maintenance of a child awarded by a court to a responsible adult.

<sup>143</sup> *Oxford Advanced Learners Dictionary* 6<sup>th</sup> Edition Oxford University Press 2001 pg 287

<sup>144</sup> *Olubodun & 4 Ors v Oba Adeyemi Lawal & Anor (2008) 6-7 SC(Pt. 1) 1*

<sup>145</sup> *Oxford Advanced Learners Dictionary* ,op.cit 1169

<sup>146</sup> *Ibid.* 1549

defined as “rights of custody”<sup>147</sup>. That is, a person who has parental responsibility for a child has the legal duty to care for, and to protect, that child and a legal right to make and take decisions on the child’s welfare and future.

8. **Cultural lag.** A concept and theory that suggests that there is a gap between the technical development of a society and its moral and legal institutions. The term refers to the notion that culture takes time to catch up with new innovations, and that social problems and conflicts are caused by this lag. It is thus what happens in a social system when the cultural ideas used to regulate social life in a community do not keep pace with social changes in that community<sup>148</sup>.
9. **Child’s Right Framework.** For the purpose of the study, this is considered as containing all the Nigerian Government Policies, Enactments and Legislation which provides for all definitions, procedures and approach towards the realization of the International mandate on the access of Children to adequate welfare provisions, and also protection from abuse, harm and discrimination.
10. **Legitimacy.** Legitimate signifies lawful. The word is applied especially to children in lawful wedlock. As defined as a lawful birth,<sup>149</sup> it means the condition of being born in wedlock. The opposite of legitimacy is **Illegitimacy** which is the condition of a child born out of wedlock. It refer to the social status of one whose parents were not married at the time of his or her birth. **Legitimation** is the making legitimate of a person born illegitimate.

## 11. Marriage

- a. **Heterosexual/Monogamous/Statutory Marriages.** The voluntary union for life of one man and one woman to the exclusion of all others<sup>150</sup> for the purpose of living together and procreating children.<sup>151</sup>It is entered into in accordance with the rules as to consanguinity or affinity of the parties and their capacity to enter into and perform duties

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<sup>147</sup> As provide for in the Hague Convention on Child Abduction,

<sup>148</sup> According to William Fielding Ogburn 1922 ,a sociologist, in his book Social Change in Respect to Culture and Original Nature, Cultural Lag is a common societal phenomenon that occur when material culture evolve and change rapidly while on the contrary, non-material culture resist change and remain fixed for a longer period of time.

<sup>149</sup> *Blacks Law Dictionary* 9<sup>th</sup> Edition , Reuter Thompson 2009 Pg 270 .See also *Osborne Concise Law Dictionary*

<sup>150</sup> *Hyde v Hyde*(1866) LRIP & D 130,133)

<sup>151</sup> *Baxter v Baxter*(1948) AC274,2867,

of matrimony.<sup>152</sup> Monogamy connotes a marriage which recognizes just a man and a woman as the parties to the contract of marriage.

b. **Heterosexual/ Polygamous Marriages.** This includes the various types of marriages under various other customs and religions which involves the union of two different sexes, but as distinct from the monogamous marriages due to its potentially polygamous nature. Also it is the union of a man and a woman but not to the exclusion of their respective extended family members. Polygamy is a situation of marriage that allows more than a husband or wife in the union of marriage.

c. **Homosexual/Monogamous/Statutory Marriages.** This is the recent trend in marriage which allows the union of any two persons irrespective of the sexes to the contract of marriage and to the exclusion of all others.

12. **Matrimonial Causes.** Suits for the redress of injuries in respect of the rights of marriage. For example, any action for Divorce, nullity of marriage, custody of children, maintenance of children and spouses, Judicial Separation, Restitution of conjugal rights among others.<sup>153</sup>

13. **Islamic Law.** This is the detailed system of religious law developed by Muslim scholars in the first three centuries of Islam and still in force among Islamic fundamentalists. This vast compendium of rules regulates all matters of devotional life, worship, ritual purity, marriage and inheritance, criminal offenses, commerce and personal conduct of Muslims. Islamic law entails the code *Shari'a*, which is regarded as the divinely revealed law, perfect and eternal which is binding on individuals, society and state in all its details.

14. **Divorce (or the dissolution of marriage)** is the termination of a marital union. It involves the canceling and/or reorganizing of the legal duties and responsibilities of marriage between the parties involved. It is the process of dissolving the bonds of matrimony between a married couple under the law of the particular country in question. The legal process of divorce may also involve issues of alimony, child custody, distribution of property, and division of debt.

15. **Child minders.** A child minder is a person who looks after other people's children in the child's premises or the child minders own premises<sup>154</sup>. Legally, parents and child minders negotiate their own terms e.g. fees, contracts, hours of work etc. The legislative framework

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<sup>152</sup> Marriage Act, Cap M6 LFN 2004

<sup>153</sup> Section 15-52, of the Matrimonial Causes Act Cap M7 LFN 2004

<sup>154</sup> Part 14, Childs Rights Act 2003

of the country of contract of child minding determines the level of skills, knowledge and competency of the child minder<sup>155</sup>.

16. **Day care for kids** These are child care facilities that parents take their children to during daytime for care, supervision and learning. It entails the care of a child during the day by a person other than the child's legal guardians, typically performed by someone outside the child's immediate family.
17. **English Laws.** The system of law that has developed in England from approximately 1066 to the present. The body of English law includes legislations, Common Law, and a host of other legal norms established by Parliament, the Crown, and the judiciary. English law has spread to many other countries, including former English colonies like the USA, Canada, Australia, New Zealand and Nigeria.
18. **Adoption** is a process whereby a person legally assumes the parenting of another, usually a child, from that person's biological or legal parent or parents. In so doing, the person adopting permanently takes over all rights and responsibilities, along with filiations, from the biological parent or parents. Unlike guardianship or other systems designed for the care of the young, adoption is intended to effect a permanent change in status, and as such requires societal recognition, either through legal or religious sanction. Modern systems of adoption however are mostly governed by comprehensive statutes and regulations.<sup>156</sup>
19. **Guardianship.** A person appointed to take care of another person and his affairs, the other person who by reason, e.g. of infancy or unsoundness of mind is incapable of acting for his own self.
20. **Other Ideas.** For the comparative purpose of the study, this means old or modern trends that are not peculiar or familiar to the Yoruba child care system. It relates to existing ideas on parenthood, childhood and child care, whether settled or controversial. Such ideas include, but are not restricted to foreign and western concepts.
21. **Nigeria.** A republic in West Africa and also a member of the Commonwealth of Nations being formerly a British colony and protectorate. Nigeria gained independence from British colonial rule in 1960, when it operated a parliamentary system of government and before a military coup ushered in the first of a series of military governments which ruled the country

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<sup>155</sup> In England, child minders are registered with OFSTED; in Wales CSSIW and in Scotland the Child Care Commission.. See Part 14 of the Child Rights Act 2003 Nigeria.

<sup>156</sup> Section 128 Childs Rights Act 2003 and The Adoption Laws of the States of the Federation.



from 1966 to 1999. Since 1999, the country has been ruled by democratically elected leaders and it runs a bicameral legislature consisting of an upper house known as the Senate and a lower house known as the House of Representatives. The country is divided into six geo political zones for ease of administration. These zones are the North Central Zone, North East Zone, North Western Zone, South-South Zone, South-East Zone and South West Zone. The South-Western States consist of the old Oyo Empire, Ife Empire that are now within the six other Yoruba states out of the 36 states across all zones. The Official Language of the country is English, while the other prominent languages are from the major ethnic groups consisting of the Hausa, Ibo, and Yoruba. The main religions are Islam and Christianity, while the animists constitutes the traditional sectors. The Capital city is Abuja. Nigeria's population is 193, 571,459 (January 16, 2018, based on the latest United Nations estimate), and its area is 910, 770 sq km (351 650 sq miles)<sup>157</sup>.

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<sup>157</sup> Worldmeters([www.worldometers.info](http://www.worldometers.info)) [Elaboration](#) of data by United Nations, Department of Economic and Social Affairs, Population Division, World Population Prospects: The 2017 Revision (medium-Fertility variant).

## CHAPTER THREE

### RESEARCH METHODOLOGY AND THEORETICAL FRAMEWORK

#### 3.1 Research Methodology, Materials and Methods

The work is a pure theoretical research, done through the use of both the Primary<sup>158</sup> and Secondary Sources of Nigerian Laws. It utilized qualitative methods of analysis. In order not to set out on an endless frolic of its own beyond the territories of a typical legal study, the research relied on statutorily permitted written and oral resources on customary laws. Such Oral resources of the Customary Law and practices which include proverbs, Ifa verses, folktales, poetry, myths, commandments and taboos as handed down from preceding generations. In addition to findings from the written sources which include the review of relevant statutes, the legal research is augmented with semi-structured in depth oral interviews<sup>159</sup> of experts in Yoruba Customary Law.<sup>160</sup> Also included are persons who due to the nature of their duties have direct experience, through interactions with indigenous parents and children on a consistent basis<sup>161</sup>. Indigenous features/rules are compared with their statutory/foreign counterparts in order to test existing claims on their interactions. The study approached the task from the perspectives behind the Multicultural Theory on Law and the Caretaker Theory on the Child's Right<sup>162</sup>.

The supplementary<sup>163</sup> Oral Interview<sup>164</sup> of Respondents is conducted through the use of Tape Recorders and recording applications on two Smart Phones. The relevant interviews were

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<sup>158</sup> The 1989 United Nations Convention on the Rights of the Child and applicable UN Instruments, African Charter on the Rights and Welfare of the Child and other enforceable AU regulations, The Nigeria 1999 Constitution, the Nigerian Criminal Code, the Nigeria Labour Act, the Nigerian Human Right Commission, the Childs Rights Act 2003, the Nigerian Trafficking of Persons Prohibition Act, Universal Basic Education Act, Trafficking of Persons (Prohibition) Law Enforcement and Administration 2003, Birth Death etc (Compulsory Registration Act), the Nigerian Children and Young Persons laws, the Borstal Institutions and Remand Center Act 1990, the Nigeria Police Act, Nigerians with Disability Act, the Nigerian Evidence Act 2011, the Nigerian Health Act 2014, the Lagos, Ogun, Oyo, Osun, Ondo, Ekiti Customary Court Rules and Manuals, other applicable Federal and State Laws, Judicial Precedents from Customary and Higher Courts

<sup>159</sup> The interview guideline is fully reproduced in Appendix 1 and as interpreted in Appendix 2.

<sup>160</sup> Section 70 of the Nigerian Evidence Act 2011

<sup>161</sup> 9 Presidents of Customary Courts (from the Six-South Western States), 4 other Customary Court Officials/Members, 1 Chief Registrar of the Customary Court of Appeal, 1 Traditional Ruler/King (Imperial Majesty), 7 Traditional Leaders, 7 Community Leaders, 19 Persons with direct experience in matters relating to indigenous children<sup>161</sup>

<sup>162</sup> This theory is defined as a doctrine of state policy which provides active encouragement and support to the co-existence of multiple cultures within a territory.

<sup>163</sup> To enhance the other primary sources, in the legal analysis of Findings on Research Question a, b, d and e.

<sup>164</sup> Creswell, J.W. 2007. *Qualitative Inquiry and Research Design :Choosing Among Five Approaches* 2<sup>nd</sup> ed. Thousand Oaks CA Sage. Also see, Gall, M. D., Gall, J. P., & Borg, W. R. 2003. *Educational Research: An Introduction* 7<sup>th</sup> ed. Boston, MA: A & B Publications on standardized Open Ended Interview.

conducted on 19 Females and 29 Males which includes two groups of 6 persons all together.<sup>4</sup> Participants are between the ages of 40-55 years, while the remaining 45 interviewees are between the ages of 55-88 years. The educational levels of Interviewees vary from illiterates to persons with other qualifications including tertiary certificates. In all cases and in addition to the recordings, the researcher writes notes and jots the main points as orally supplied by Respondents. The transcription of recorded answers was done between February 2016 and June 2016. All interviews were conducted between Mondays and Fridays (including public holiday) between the hours of 9am and 3pm. 45 participants were questioned in 41 interview sessions. The interviews were carried out in all the 6 Capital Cities<sup>165</sup> of the South Western Nigeria and three other popular Yoruba dominant communities<sup>166</sup>.

Each interview session was co-ordinated by the Researcher in company of at least one out of the two interpreters/research assistants employed for the purpose. The Subjects were informed of the essence of the research and the possible length of the interview. The researcher had informed consents and each subject was allowed to demand any form or level of confidentiality. The questions were prepared in English Language but interpreted into Yoruba language. The Single non Yoruba speaking subject was interviewed in English Language. The results from the oral response were transcribed on the same day of interview, into a Micro-Soft Word Format. Thereafter they were qualitatively analyzed in themes, while some were presented in Tables and Percentages to augment the legal discussions in appropriate section. Because the accompanying field work is merely to augment already established sources of customary law, it is discovered that a quantitative analysis of reports will be highly restrictive and insufficient due to the volume and flexibility of process, required to acquire a rich Legal- Cultural profile. Since the research is majorly legal, applying an extremely quantitative process on any of the laws in view, is likely to sieve out tangible contents from the general information needed for a pure theoretical research without subjecting same to incompatible Ethics and Standards for Quantitative methods of analysis. The final analysis<sup>167</sup> reflects the content of the contemporary Yoruba Customary Law,

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<sup>165</sup> Ikeja, Abeokuta, Ibadan, Oshogbo, Ado- Ekiti and Akure.

<sup>166</sup> Oyo Town ,Ile-Ife and Ilesha with address and other descriptions as portrayed in the Appendix

<sup>167</sup> Such interviews may be done orally with the aid of electronic recorders or in writing

as a primary source of the Nigerian family law on children. In addition to substantial and procedural rules of Principal and Subsidiary Legislations, Secondary Sources were consulted<sup>168</sup>.

The Institutional frameworks include Yoruba Customary Courts, Traditional/Islamic Welfare Institutions for children, State owned welfare/community homes and school, hospitals, State High Courts, Nigerian Police Force, media houses, day care centers among others.

Information obtained from all ancillary sources were subjected to a qualitative content analysis<sup>169</sup>. The research cuts across the customary law of the Yoruba people living in the six South Western States in Nigeria. The population validity is hinged on a Purposive expert sampling of applicable respondents, through the strategic interview of Presidents and officers of Customary Courts in the capital cities of the six South Western States<sup>170</sup>. To enable a concise work, the historical relationships within these states as constituents of the Old Western Region,<sup>171</sup> prior to their subsequent subdivisions by the various military regimes were put into consideration. In addition to other resource persons as earlier listed, the representation gathered through this geographical map-out presents a justifiable information on Yoruba children Laws. The work shall address Yoruba customary law on children as, including culturally established rules of practice that have been formalized into written forms through codification, restatements or declarations. Also, the study cannot be completed without appropriate reference-able discourse of the norms and cultures of the indigenes outside the law books, courts and the statutes. The relevant Yoruba Laws for a legal research as earlier stated are prominently those customs that have been validated by the courts or enabling legislations either expressly or

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<sup>168</sup> NIALS Restatement of Nigerian Customary Laws, South African Children Act 2005, Canadian Assisted Human Reproduction Act 2004, Hard copies of legal documentations ( Journals , Articles and Law Texts), Other Law related Materials retrieved from Internet sources.

<sup>169</sup> According to Onwueguzie & Johnson(2004), *Mixed Methods Research: A research Paragim Whose Time Has Come*, *Educational Researcher Vol 33, No 7 14-26* Retrieved from [www.sagepub.com](http://www.sagepub.com) on 30 September 2016 also see [www.researchgate.net/quantitative-vs-qualitative-vs-mixed](http://www.researchgate.net/quantitative-vs-qualitative-vs-mixed) retrieved on 30 September 2016. Some possible shortcomings of mixed methods are that its time consuming and expensive, it is difficult to find a researcher with full experience in both qualitative and quantitative research. Since multiple methods must be learnt effectively and not only for specific purposes, methodological purists suggest that its safer to pick one of the two methods. The duo observed the unavailability of thesis examiners who are experts in subject domain and also very familiar with mixed research methods.

<sup>170</sup> Ikeja, Abeokuta, Ibadan, Oshogbo, Akure, Ado-Ekiti.

<sup>171</sup> Ekiti State was mapped out of Ondo State in 1996, Osun from Oyo in 1991, Ondo, Oyo and Ogun from the Western region in 1976 and Lagos State was named in 1967 out of the Federal Territory of Lagos and Colony Province.

impliedly .Within existing arguments, the study construes some parts of the Islamic law as having become practicable ways of life in the Yoruba community.

### 3.2. Theoretical Framework

#### THEORIES ON THE SURVIVAL OF CULTURAL RULES WITHIN THE UNIVERSAL CHILD'S RIGHT REGIME

##### 3.2.1. Debates on the Universality of Children's Rights

The provisions of the OAU Charter on the Right and Welfare of the Child provide that the content of the Charter shall be applicable to all children.<sup>172</sup>

*taking into consideration the virtues of their cultural heritage, historical background and the values of the African civilization which should inspire and characterize their reflection on the concept of the right and welfare of the child*<sup>173</sup>.

Whereas, the UN Declaration on the Right of the Child<sup>174</sup> declared in its preamble that,

*recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, **without distinction of any kind**, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*<sup>175</sup>

A view at the emphasized in the above stated Mother Treaties on Children Rights summarizes the overall contradictions on the general perception of children welfare. These varying ideas as reflected above and in subsequent Children laws have been variously described as a major reason for the inefficacy of Child Protection regime. Aquinas, Finnis and some Natural Laws theorists<sup>176</sup> insists that there are basic principles and concepts which are identical in all human beings. Such values are regarded by the universalists as proper irrespective of whether or not they are

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<sup>172</sup> African Charter on the Rights and Welfare of the Child. 1979.

<sup>173</sup> Preamble to the African Charter on the Rights and Welfare of the Child. 1979. The treaty unlike the CRC addressed the specific issues relating to African children e.g harmful cultural practices, the impact of armed conflicts, the responsibilities of children to their parents, guardians and, communities, apartheid etc

<sup>174</sup> The Childrens Treaty is reputed to be the first of its kind to incorporate all forms of international human right regime on behalf of children i.e economic, civil, cultural, political and social rights.

<sup>175</sup> Childs Rights Convention 1990 in accordance with Article 49 also see the Nigerian Childs Rights Act 2003

<sup>176</sup> Aquinas, Plato ,Aristotle, Austin, John Finnis see generally Elegido JM(2010) *Jurisprudence* ed. Aguda Spectrum Law Series p 1-46

recognized in any given society<sup>177</sup>. In order to allow a social contract for peaceful interaction within the society, legislations must be made in accordance to the needs of the people<sup>178</sup> who already exhibit the universal will. This general conception of a common value of assessment for all persons irrespective of the race, culture or clan was therefore the undertone of the first Universal recognition of the need to protect children. The Geneva Declaration of the Convention of the League of Nations on the 26<sup>th</sup> of September 1924 stated in its preamble that ;

*humanity owes to the child the best it has to give*

Although the above declaration was not binding in effect, the conceived notion of a universal regime of children rights to welfare, which is in their best interest, was thereafter promoted in several other binding international conventions.<sup>179</sup> Eventually the 1989 Convention on the Right of Children in its preamble interwove all countries as equal contributors in the protection of children when it declared that;

*... in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration.....recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries*

## **CULTURAL RELATIVISM**

The cultural relativists thrived from the incompetency of the initial perception and consequently raised concerns about the fact that most documents with universal objectives on Children Rights were primarily prepared by countries in the Western societies. The relativists therefore expressed a concerted attitude against the perceived cultural imperialism over developing countries. They consequently propagated their perceptions on the UN declarations based on the reservations that,

*...today the problem is complicated by the fact that the Declaration must be of world-wide applicability. It must embrace and recognize the validity of many different ways of life. It will not be convincing to the Indonesian, the African, the Chinese, if it lies on the same plane as like documents of an earlier period. The rights of Man in the Twentieth Century cannot be circumscribed by the standards of any single culture, or be dictated by*

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<sup>177</sup> *Ransome Kuti v Attorney General of the Federation* (1985) 2 NWLR pt 6 211 at 230 per Kayode Eso JSC.

<sup>178</sup> Thomas Hobbes, Grotius 1583-1545, John Locke and Rousseau 1688, 1789 and 1776 especially after the English Revolution.

<sup>179</sup> Other binding instruments are the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights<sup>179</sup> and other international regimes which applies to children. After another consistent proclamation at Geneva in 1936, the United Nations in 1948 formally declared distinctively, the Universal Rights of the Child as adopted by the General Assembly on 20 November 1959

*the aspirations of any single people. Such a document will lead to frustration, not realization of the personalities of vast numbers of human beings*<sup>180</sup>.

The Historical Law theorists, emphasized that laws have no universal validity, but only applies solely to the area which created it. To Savigny, law cannot be created by a law giver but can only evolve from the history and through the spirit of the people (Volkgeist). This school emphasized that the common will of the people is made manifest from their history and no sovereign can make any effective law if such law is against the spirit of the people. He advocated that developed laws can only happen when jurists and lawyers create the technical rules which are guided by the spirit of the people.<sup>181</sup> Meanwhile, the Sociological Law Theorists also relatively opined that the concept of universality of reasoning in making laws is incorrect. According to Ehrlich (1862-1922) an Austrian Jurist, the centre of the gravity of legal development lies not in legislations nor in juristic science nor in judicial decisions but in the society itself. He identified the two driving forces of the laws of any society as being in its legal history and jurisprudence/the living (active) law of the people. To him it is the living law that reflects the values of the society, the inner order and the cultural pattern of the societal value. It advocates that it is the task of the legislators and judges to ensure that positive laws do not contradict the living laws in order not to create gaps. In other words it is the view that positive laws must reflect the social inner feelings and set up, in order to be effective<sup>182</sup>.

The Revisionists however, perceive the nature of customs as fluid. They opined that the description of customary law as old, indigenous and impenetrable is untrue. To this contemporary school, customary laws are the aggregate of individual norms, some of which can easily be shown to be of recent origin, instead of a conceptual whole. To them customary laws are so called because they are made up of norms which are constantly changing in response to societal dictates while their continuity is as validated and legitimated by the acceptance of the binding nature on the subjects<sup>183</sup>.

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<sup>180</sup> Executive Board, American Anthropological Association 1947 "Statement on Human Rights" in *American Anthropologist* 49(4) 539-543

<sup>181</sup> Savigny FC on *Vocation of Our Age* (1814)

<sup>182</sup> Franz Boas, Ehrlich E, *Fundamental Principles of the Sociology of Law* (1912), Pound R, Introduction To The Philosophy Of Law (1922)

<sup>183</sup> Layonu, O. 2012. *Aspect of the Nigerian Legal System: Customary Law (as tradition) in a Modern Society* A Public Lecture delivered at the Faculty of Law Lecture University of Ibadan. pg 18

All relativists agree that the universal principles of ideas can only lead to the improper imposition of civilized and sophisticated ideas from powerful worlds on developing societies. Relativists posit that all points of view are equally valid, and that all truth is relative to their conceiving frameworks. This means that human ideals, perceptions, and conceptions are relative to the individuals, social groups, cultures, situations and frameworks. It asserts that the truth of a proposition depends on the metaphysical, theoretical frame, the instrumental method, the context in which the proposition is expressed, on the person, groups, or culture who interprets the proposition. In other words that no system of truth is more valid than another one, and that there is no objective standard of truth or supreme/divine source of absolute truth. The relativists advise that in order to understand other cultures a researcher should leave his or her own cultural biases and attempt to understand beliefs and behaviors of others in their local contexts. In other words, no universal cultural standard should be used for the assessment of other cultures. They concluded that members of different groups, e.g., some cultures, communities or biological species, have different sets of harmonizing concepts. For example, it is often argued that modern Western cultures count individualism, autonomy, and personal dignity as key values, where certain other cultures see group solidarity or placating the gods as more important<sup>184</sup>. While the latter may take meekness, humility, and submissiveness to the group as virtues, the former emphasizes heroism and pride. Such differences in moral concepts, values, and practices could therefore be the cause of differences in moral perception and moral sensibilities.

Modern rights activists have in response acclaimed that, in reality, many societies have used cultural relativism as a justification for limiting the applications of Universal Declarations on Children<sup>185</sup>. To some commentators the constant<sup>185</sup> appeal to cultural distinctiveness reflects the cynical manipulations of barbaric, archaic, or even mythical cultural structures.<sup>186</sup> However despite the high powered anti-campaigns against relativism, the main argument of the relativists

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<sup>184</sup> See generally Hartland, Driberg, Gluckman, Elias TO, Paul Bohanna, William Bascom Ifa Divination communication between gods and men in West Africa (bloomington, 1969) p 121, Bolaji Idols in Yoruba Belief (London 1962), p 154, Bolaji Idowu, Adewoye, on the nature of African Customary Laws.

<sup>185</sup> So is the position in the Northern parts of Nigeria majorly dominated by muslims. Islamic nations that deny equal rights for men and women and adhere to Sharia and certain traditional practices: Yemen, Iran, Pakistan. "The Government of the Islamic Republic of Iran reserves the right not to apply any provisions or articles of the Convention that are incompatible with Islamic Laws and the international legislation in effect." [www.unicef.org/iran](http://www.unicef.org/iran) Children's Rights is Everyone's Responsibility, says UNICEF Iran Representative on CRC Anniversary .retrieved On 12/1/2015

<sup>186</sup> Jack Donnelly, Cultural Relativism and Universal Human Rights, Human Right in Theory and Practice 109 at 118-21 (Jack Donnelly ed 1989)



centers on tolerance. The relativists insist that insinuating that other cultures suppress the rights of children in any form amounts to intolerance.

The above, being the background to the international dilemma in philosophies, the ideological discordance was further manifested through the immediate query of the UN Convention on the Right of the Child 1989 by another African version of Charter on the Right and Welfare of the Child 1990. The latter treaty was designed with the presumed knowledge of the values in African Systems. The African Charter on the Right and Welfare of the Child expressly referred to the inability of the UNCRC to provide for the peculiar interests of the African Child within the African concept of human rights. Despite this position, the Vienna Declaration and Programme of Action at the Vienna World conference 1993 reiterated the unrelenting effort of the assenting countries towards Universal protection of children rights,

*all human rights are universal indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner on the same footing and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of states, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms..<sup>187</sup>*

On the unending debate, Sonia Harris-Short opined that, against the background of largely theoretical debates concerning the use and potential abuse of cultural relativist, cultural difference remains a common and formidable argument. That, the existing dynamics, simply reflects inherent limitations and weaknesses of the international regime of States, in which the voices of the local and particular are effectively silenced<sup>188</sup>

Although the influence of indigenous cultures on the implementation of universal children's rights remains the crux of the issue, Human Rights Treaties still continue to protect every persons allegiance to their culture. <sup>189</sup>

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<sup>187</sup> Vienna Declaration and Programme action, UN GABOR World Conference on Humanity, 40<sup>th</sup> Session, 22<sup>nd</sup> Plenary Meeting, Part 1, 5 UN Document A/CONF.157/24(1993)

<sup>188</sup> International Human Right Law; Imperialist, Inept and Ineffective? Cultural Relativism and the UN Convention on the Rights of the Child. Human Rights Quarterly Vol 25 No 1 Feb 2003.

<sup>189</sup> Article 27 of the Universal Declaration of Human Right 1948, International Covenant on Economic ,Social and Cultural Right 1966, International Convention on the Elimination of all Forms of Racial Discrimination 1965,, Article 31(2), 29(1) Convention on the Right of the Child 1989, Declaration on the Rights of persons belonging to ethnic or national, religious and linguistics minority 1992.

## MULTICULTURALISM

Multiculturalism, as a choice in international policies involves the recognition of the diversity in cultural groups in order to present same as relevant identities in the process of positive transition. It is in the hearts of current international discourse that the respect for such diversities is necessary for the success of International Laws.<sup>190</sup> This intermediate approach is presumed as capable of assisting in the process of balancing in between the receiving cultures and the introduced international standards. This policy also supports the recent campaigns for progressive interactions amongst the distinct laws with similar jurisdiction. Since the main challenge is with the management of clashes as a result of the interactions between multiple concepts and values on children's rights, multiculturalists recommend cooperation of varying laws for the benefit of the nation as a whole. Although ideological clashes are resolvable by judicial institutions, there is the need to prevent the further frustration of foreign ideas by irresolvable institutional conflicts. The appropriate respect for individual cultures has consequently been identified as the possible panacea to the reduction of the need to choose between cultural allegiances and national choices. This work will agree that subject to the social relevance of laws, a perfect universal legislation would have been one which provides adequately for hierarchy of definite individual rights above indefinite cultural rights. But unfortunately, this simple route to universality of children laws has created more problems because no matter how progressive a law is, its inconsistencies with a dominant culture is bound to render it inadequate. The above does not suggest however, that the study agrees with the relativists on the essence of tolerance. This work aligns itself with the position that;

*either we tolerate everything, and keep hands off, or we fight intolerance and conquer.....*<sup>191</sup>

A Universal but multiculturally sensitive<sup>192</sup> approach to the existing ideas on children can therefore achieve the re-examination of every aspect of the existing philosophy. Upon a settled

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<sup>190</sup> Declaration of the Principles of International Cultural Co-operation, Article vi Document 14 UNESCO 1966, Preamble to the Universal Declaration on Cultural Diversity UNESCO, 2 Nov 2001, Article 2(1) Convention on the Protection and Promotion of the Diversity of Cultural Expressions, adopted 20 October 2005 (entered into force 2007)

<sup>191</sup> Steward, Julian 1948 "Comments on the Statement of Human Rights" in *American Anthropologist* 50(2) 351-352 Franz Boas 1963 [1911] *The Mind of Primitive Man* New York: Collier Books. page 149,

perspective, that all systems understand the essence of children and the need to care for same to prevent their own extinction, the Yoruba customary law may not be addressed as an indigenous law with contradicting ideas and concept bound for the wastes. Instead, the study is poised towards channeling the varieties in the Nigerian legal system for a common and straightforward child's right framework. The study's approach has the tendency to identify specific rights of children which can be declared as actually universal from the generally proclaimed principles of foreign cultures. This will also be with the goal of finding out the parts of the Yoruba cultures which are not sustainable in a modern society and replacing them with new ways. However the study will not insinuate that such changes should entail a total eradication/abdication of the existing culture for entirely new concepts. It is to enable a definite posture for Yoruba Customary Law within a modern child right's protection Framework.

### **3.2.2 THEORETICAL ATTITUDES TO CHILD CARE, CUSTODY AND CONTROL**

#### **Caretaker vs Choice/Will Theory-**

The Choice Theorists propound that adults and other third party institutions cannot enforce children's rights without consulting the children. Therefore adults in charge of children have no right to take decisions on behalf of their wards without the adequate awareness of the minors wish.<sup>193</sup> The choice theory considers the child as the major stakeholder on issues relating to his/her own welfare. It propounds that, the fact that adults/caretakers are capable of taking charge of children's lives and manipulating same for their own goals, undermines the essence of Child's Right Campaigns. They explain that, realistically, a person cannot be denoted as a right bearer if he/she is grossly incapable of exercising and enforcing his/her legal endowments. The discussed school of thought asserts that it is contradictory to suggest that a child's right bearer is capable of delegating its legal powers without being aware of same. However, the caretaker thinkers opine that its out of line to argue based on any form of reasoning that children are incapable of being endowed with rights due to their dependent nature. This perception which the present research

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<sup>192</sup> Dealing with the social questions or problems though a focus on the cultural and environmental factors rather than on the personal characteristics of the issue.

<sup>193</sup> Taylor, Smith & Nairn, (2001) Rights Important to Young People, Secondary Students and Staff Perspectives, *International Journal of Childrens Rights*, p. 13.

prefers, admits that children by virtue of their attributes can be too immature and incapable of deciding for themselves<sup>194</sup>. The theme assumes that custodians are put in the natural position to exercise claims on behalf of children and by virtue of this position, they are the appropriate parties to protect and enforce their wards rights. The argument here is that, caretakers, especially parents or other adults who are in legal or physical possession of children have the innate ability to decipher what is in the best interest of their children. The caretaker provisions invariably accommodates the choice view by insisting that, even when the child is mature enough to make decisions for himself or herself, the care givers must exercise their responsibilities and rights towards the same child in a manner that takes into account his/her growing autonomy<sup>195</sup>. The restraint on the caretakers is ;

*that the nature of parental direction and guidance is not unlimited; it must be "appropriate" and consistent with the "evolving capacities" of the child and the Child's Right Convention itself.*<sup>196</sup>

In *Hewer v Bryant*<sup>197</sup>, a working definition of custody was given in the following words,

*In its wider meaning the word custody is used as if it were almost the equivalent of guardianship in its fullest sense. Adapting the convenient phraseology of counsel, such guardianship embraces a bundle of right or to be more exact a bundle of powers which continue until a male attains 18 or a female infant marries. These include the power to control education, the choice of religion, and administration of the infant's property. They include entitlement to veto issue of passport and to withhold consent to marriage. They include also both the personal power physically to control the infant until the years of discretion and the right to apply to the courts to exercise the powers of the crown as parents patriae. It is thus clear that somewhat confusingly one of the powers conferred by custody in its wide meaning is custody in its limited meaning, namely such personal power of physical control as a parent or guardian may have*

The above definition covers actual or physical control of children which includes the factual possession of the child, whether by single persons, parties, institutions e.t.c.<sup>198</sup> Upon a proper re assessment of the above position, the caretaker theory seems to be the major ideology that has

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<sup>194</sup> Eekelaar.1992. The Emergence of Childrens Rights. In H.D Krause(Ed), Child law : *Parent, Child and State* pp37-38

<sup>195</sup> Article 5 and 14

<sup>196</sup> Child Rights Convention, Article 19

<sup>197</sup> (1975)1QB, 357,373,(1969)3 ALLER 578,585.

<sup>198</sup> Also see *Williams v Williams* (1987) 2NWLR(Pt.54)p.66 per Naemeka-Agu, JCA, *Wedd vWedd* (1948) SASR.104 Per Moyo J at p (106)

influenced the provisions of many contemporary Child welfare treaties and laws.<sup>199</sup> These referenced laws, are resultantly premised on the need to therefore promote and protect the Child's right to total wellness irrespective of its custodians influence. The Caretakers, have invariably been conferred with articulated obligations to avail the child with;

- a. **Survival Rights**<sup>200</sup>; children therefore have basic rights to adequate survival articles to life in form of food, shelter, safe water, health care.
- b. **Developmental Rights**<sup>201</sup>; These means that children must be exposed to all beneficial skills, resources, and initiatives necessary for their full development and growth e.g recreation, education and other beneficial experience
- c. **Protection Rights**.<sup>202</sup> These include all the obligations on adults to ensure that children are not subject to activities that are against their best interest. Children should therefore not be exposed to any form of discrimination, sexual, physical and psychological abuse or exploitation. These include protection of children from all forms of cruelty, neglect and victimization. Provisions on the protection rights of children prefer the availability of efficient child welfare and criminal justice systems, for the enforcement of children's protection rules
- d. **Participation rights**<sup>203</sup> These are in total, the Civil and political rights of children to be recognized as living entities, in a typical human society. They include the child's right to a basic form of identity through a name, access to biological parents and background details, to be consulted and considered in beneficial programmes. This part encompasses the Child's right to physical integrity, adequate information, privacy, freedom of association, expression and the liberty to question detrimental decisions made on their behalf. Children are entitled to the freedom to express opinions and to have a say in matters affecting their social, economic, religious, cultural and political life.

The above listed categories of parental obligations are conferred as the basic rights of children which remain indivisible, interdependent, interrelated and of equal importance. These

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<sup>199</sup>United Nations Convention of the Right of Children 1989, African Charter on the Rights and Welfare of Children 1990.

<sup>200</sup> Article 6 and 24 of the CRC 1989

<sup>201</sup> 9,15,23,28 and 31 Ibid.

<sup>202</sup> Article 2,3,19,32,33,34,36,38,40

<sup>203</sup> 7,8,12,13,14,16,17,30,42

characteristics of children's rights make them unachievable and unenforceable unless in totality. The above, represents the legal channel mapped out for nurturing children into relevant contributors in their societies. The classifications represent the mandates on children's social, cultural and economic needs, physical and spiritual needs, psychological, emotional, and intellectual needs

The primary participants in enhancement, promotion and enforcement of the above stated rights of children have been recognize as<sup>204</sup>;

- a. The child when same is capable of deciding its own welfare.
- b. The home through the Parental/Guardians responsibilities to provide for the child within their own capabilities
- c. The society. This includes all immediate personas, practices, cultures and values which influence the child and its primary custodians within their social backgrounds.
- d. **The government**-through its local, national and international policies on child care as enforceable within its territories.

This work is also interested in the multi-cultural interplay of ideas on the existence, recognition, application and enforcement of children rights amongst the Yoruba as follows;

- a. **Parental Obligations to children:** Reciprocity v fundamentality, Individualism v communitarianism.
- b. **Care of Children:** Absolutism v best interest, Patrilineality v feminism
- c. **Children During and after a divorce:** Patrilineality v equality , Tender years and best interest.
- d. **Children born out of Wedlock:** Patrilineality, best interest and attachment
- e. **Children after the Death of Parent(s):** Patrilineality and best interest.
- f. **Third Parties Rights to Custody of Children i.e lesbian and gay rights, Child Minders, Boarding Houses and Day Care of Children:** Best interest, Modernism v traditionalism
- g. **Custody of Children in Need of Care and Protection:** best interest and traditionalism.
- h. **Childs Responsibility:** Reciprocity of Rights v Fundamentality, Individualism v Communitarianism.

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<sup>204</sup> Article 3,45,14 and 18 of the Childs Rights Convention 1989

## CHAPTER FOUR

### CHILD CARE SYSTEM OF THE YORUBA PEOPLE

#### 4.1. The Concept of a Child

The concept “child” amongst the Yoruba is best described in the following categories;

**4.1.1.Omo (Individual’s Child)**-This term is personal<sup>205</sup>. It refers to a persons’s offspring. The term Omo when used automatically attaches the child to a particular parent, caretaker or household. It means any direct offspring of a person or any child within the direct custody of another referenced person(known or unknown). Each parent has individual rights and duties towards his/her own Omo. Such obligations to ones Omo is therefore more specific and direct than that owed to others children (omode or omokekere) in the general sense. An Omo has no age limitation<sup>206</sup> amongst the Yoruba hence the saying that;

**Ex 8.** *Abini tun bini,Abere tun bere ni ki je ki a pe omo egbon eni lomo eni- Persistent and unending questioning cautions one from referring to an elder sibling’s child as one’s child*

**Ex 9.** *Ti eko ba ku eyokan soso, omo eni laa gbe fun-When there’s only one last meal left in the home, one’s is expected to give it to ones child*

**Ex 10.** *Ko si omo se le dagba to,omo ni loju obi/iya e -No matter how old a person is,he remains his parents child*

**Ex 11.** *Omo eni ole se idi bebere ka fi ileke si idi omo elomi-One cannot have a child with enviable buttocks then put a waist chain on another person’s childs.*

**4.1.2. Omode/Omo kekere(Little Child)** has a less possessive connotation. It simply includes all children from infant till the early age of maturity (3 years to 12 years). The term omode is used to describe any independent minor, who is subject to others care ,directions and goodwill.

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<sup>205</sup> The communal and extended nature of the yoruba family set up, does not preclude the recognition of the fact that a child even upon other arrangements, primarily belongs to the biological parents. Biological parents of the child are therefore the first point of recourse on issues relating to the child spiritual and total welfare. This duties and responsibilities can only be waived or delegated if the nature of the duty to be performed permits same. In child care rituals and arrangements, it is very common to specifically request for the biological mother of the child with reference to the blood she must have shed during the child’s delivery. Another common terminology relates to the fact of carrying the child in the womb for nine months.

<sup>206</sup> To achieve its purpose the questions for interviews specified the requisite age range for each issue i.e Questions were majorly about Omo kekere(little children after their birth to the period of maturity(15 years)

The obligations towards Omode is therefore of a general nature. It is believed that all healthy adults members of the community are obliged to treat every Omode with care, and in other ways that are not injurious but beneficial to it.

*Ex 12. Owo omode ko to pepe agbalagba o wo keregbe-* Although a child's hand cannot reach the altar, the adults own, cannot enter a keetle neck pot

*Ex 13. Omode gbon agba gbon la fid a ile-ife* Ile Ife was created from the wise contributions of both children and adults

*Ex 14. Omode oni ni agba ola.* The child today is the adult tomorrow

*Ex 15. Bi omode o ku agba ni nda-* If a child does not die, he's bound to become an adult/Elder

*Ex 16. Ogun omode ki sere pe ogun odun-* A Score of children cannot be friends for ever.

**4.1.3. Ikoko (Infant).** This is the term used to describe a child's right from birth till same is weaned and up till around the age of 3 years.

**4.1.4. Ole Inu(Foetus).** The Yorubas readily address pregnancies as children. Life is believed to begin at conception. Children who are still in their mothers uterus are often described as omo inu oyun (the child in pregnancy)



## 4.2. Sources of Yoruba Customary Law on the Care of Children

The study identifies the sources of the Yoruba Child Care System as follows\*<sup>207</sup>:

### 4.2.1. God

The South Western part of Nigeria is majorly inhabited by Yoruba persons consisting of Muslims<sup>208</sup>, Christians<sup>209</sup> and Traditionalists.<sup>210</sup> Nevertheless, the Supreme Being (*Olodumare, Olorun, Olofin*) is popularly revered irrespective of existing varying religions and spiritual perceptions. God is regarded as the inspiration behind all creations including children. God, spiritual in nature, is the omnipotent, being the sole giver/maker of life, soul and the body. Yoruba's of different religious allegiances believe and obey the mandate of their respective "Creator" through claims of personal or representative interactions with his divine laws, rules and representations.

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<sup>207</sup> \*All information in this chapter were gathered from the interviews of traditional leaders, herbalists and child care experts as listed in the Appendix 1-4. The researcher hesitates in disclosing the identity of interviewees and the opinion they have given. Also other information were gathered from Ifalere O.O. (2014), *Iwe Mimo Ifa: Esin Akoda Olodumare*. Lahoo Productions 2014, Wande Abimbola (1977) *Awon Oju Odu Mereerindinlogun*, University Press PLC Ibadan 2014, Adegoke A.K. (2014) *Owe Yoruba Pelu Itumo ati Iloo won*, ISBN 978-53343-2-6 and other applicable internet sources.

<sup>208</sup> Islam was introduced to the Yoruba around the 14<sup>th</sup> Century by the Fulanis of the Malian Empire. Popularly referred to as "Esin Imale" (Religion of the Malian), Islam is presently practiced by a sizeable portion of Yoruba people. They mostly observe and live by the rules of their holy book "the Quran". Yoruba Muslims, optionally refer to the Islamic and indigenous sources of child care rules. Quran 33:4-5, 33:37-40, Quran 33:4-5, Quran 4:23, Quran 2:233, 65:6, Quran 93:6-8, Quran 107:2, Quran 89:17, 90:14-15, Quran 76:8-9, Quran 16:57-59, Quran 4:8 & 9, Quran 2:226, 49:13, 31:13, 31:16-19, 20:132, 2:132 & 133, 2:180, 4:11, 17:31, 81:8 & 9, 6:140, 4:75, Quran 16:57-59, 76:8, 90:15, 2:177, 2:215, 4:8, 8:41, 59:7, 89:17, 93:9, 107:2, 2:83, 2:220, 4:36, 6:152, 6:17:34, 4:2, 4:6, 4:10

<sup>209</sup> These are persons of Yoruba Origin who also practice the Christian religion. Christianity was introduced to the Yoruba's around the mid 19<sup>th</sup> century by the European. Generally called "Esin Igbagbo" (Religion of Faith), the Yoruba Christians affairs are regulated by the commandments and directives from their Holy Book (The Bible). They optionally refer to the Biblical and the Indigenous Cultural mandate on children. See the provisions of the Holy Bible at Proverbs Chapter 22 Verses 6, Proverbs 22(15);1(8); 29(15);13(1);15(5)(20), Exodus 20(12); Matthew 19(19); 10(37);15(4);18(4), 1 Corinthians 13(11), Genesis 3(16), Deuteronomy 6(7);5(16), Psalm 127(3), 103(13), Proverbs 29(15);10(1);23(22); 20(7);23(4), Ephesians 5(31); 6(4), Colossians 3(20), 1 Peter 1(14), Genesis 25(31);43(33), Hebrew 12(16), Deuteronomy 10(18), 24(19), Luke 11(11), John 2(35), Ephesians 6(2), Hebrews 12(7), Leviticus 20(9);

<sup>210</sup> "Esin Ibo Orisha" (Worshippers of Divinities). They reserve the ancient multi-deitic nature of the Yoruba Culture. They are guided by the principles and practices of life as revealed through Ifa Divinations. The Elesin Ibile (traditional worshippers) revere applicable/several Deities as their pathway and anchor to the Supreme Being.

#### 4.2.2. Belief in Deities

Peculiar Creations or Deities are the entities through which many of the Yoruba populace interact with the supreme being. It is believed that these *orishas and irumoles* have their various but specific duties which they perform as representatives of the supreme God on earth. Many of these divinities are believed to have lived earlier on as heroes or genius, because they were also specially created by *Olodumare* (omnipotent) in order to manifest his wills on his creations. The *Orishas* are mostly represented by carved objects, effigies, statues and conditions of nature/spirit. Subjects invoke the applicable persona/powers into these structures through which they worship the *Orisha*. These structures are thereafter duly honoured and appeased being the den/body of the applicable god. Several of these deities are attributed with super powers in relations to foetus, children and young persons. They possess enormous responsibilities on the wellbeing of children. They are also esteemed, in order for subjects to have good fruits of the womb and to ensure that such children survive and become positive references in the society. Such Orishas include;

- a. **Orunmila(omniscience/only heaven knows those to be saved)** is a prime/superior *Orisha*. He is believed to represent wisdom, knowledge and understanding. Subjects perceive that apart from *olodumare* (God), *Orunmila* is the only other witness to the creation of destinies. He knows the beginning of all things and therefore is the second in command to God and *Elerin Ipin*(the witness at the selection of destinies). He is “God’s advisor”, “the know all” and anyone who refuses to abide by his directions, or ignores his advice is prone to the distress and caprices of the negative powers. He is seen as the first messenger and prophet of God, given the powers to control recreation, development and mortality. He is the bearer/owner of *Ifa*(Oracle of divination)<sup>211</sup>, through which future secrets, issues and solutions of human endeavours can be revealed. He knows all human’s fate/destiny, intuitive wisdom/inner interceptor, personal *orisha*/guardian, beauty, luck, and character.
- b. **Ifa (divine oracle)**<sup>212</sup>- Is based on the knowledge of God, nature/spirit/orisa and ancestors. In the wider sense it is explained to be the system encompassing *Orunmila* the deity and his

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<sup>211</sup> It was also Orunmila who carried Ifá (the wisdom of Olodumare) to Earth.

<sup>212</sup> There is a dual argument on whether *orunmila* is just a bearer of a superior *ifa*(divine codes) from *olodumare* or whether *ifa* represents and interprets the wisdom of *orunmila* himself. The implication is that *ifa* is either an inanimate code/oracle of *olodumare* in custody of *orunmila*, or another (in)animate *orisha* who is equivalent to or who is subject to *Orunmila*.

divination system.<sup>213</sup> It is regarded as the means of deriving appropriate wisdom over human matters. It consists of a numeric structure as cited through the *Opon ifa* (*ifa* divination tablet). To become a sage one needs to learn and study the divine content of *Ifa*. Knowers of *ifa* are regarded as *babalawo* and *iyanifa* (*Ifa* priest and *Ifa* Priestesses). The mastery of the concepts of *ifa* mythology is through appropriate apprenticeship with grand masters of the procedure. *Ifa* is the unifying factor amongst all *Orisha* worshipers. It is believed to be the pure means in charge of the eternal wisdoms needed to solve human issues on survival, wealth, good health, sexual unions, marriages, children, deformities, leadership/government, developments. Since *Ifa* possesses the answer to every situation, whenever persons are confused as to the appropriate decisions to take on issues, or when human reasoning are exhausted, the appropriate solution is to consult a *babalawo* (the custodian of *ifa*) for applicable explanations and guidance.

Upon the birth of a child, the first and most important step is to consult the *Ifa* priest for the **Ex 1a. *Esentaiye*** (chapter of its life), which will reveal the previous, predestined and future record of the child. *Ifa* relating from the child's **Ex 1b. *Odu*** (Code) is seen as being in the appropriate position to disclose what the child represents, how it should be nurtured, its spirit guide and the possible time for its demise. Where there are issues or problems with a child's *Esentaiye* or care process, *ifa* also possesses the knowledge for the identification of appropriate *etutus/ebo* (means of appeasement or ingredients of rectification) to resolve concerns<sup>214</sup>.

- c. **Osanyin (master of medicine and magic)**<sup>215</sup>; is seen as the possessor of *agbo* (herbs) including *omi-ero* (the omnipotent herbal fluid). He is the knowledge behind *ewe omo* (children's herb). *Osanyin* has the greatest knowledge and wisdom in the identification, preparation and uses, of *agbo* (herbs) for human healing. *Osanyin* is the procedural deity renowned with the tangible skills for the preparation, applications of poisonous or medicinal *agbo/ogun* (herbs and medicine). Such medicines are basically derived from his expert discernment of appropriate plants/trees parts to achieve their medical and supernatural purposes as fit for human consumption. He is reputed to be a constant and vocal accomplice of *ifa* who

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<sup>213</sup> Wande Abimbola, 1976

<sup>214</sup> This is the narrative as given by children herbalists.

<sup>215</sup> *Osain and Ifa* to some persons are servants to *orunmila*.

advises subjects on procedures and contents to prepare for medical healing. He is believed to be in control of leaves/herbs which most other *Orishas* require to heal their patients including children.

- d. **Osun.** She is revered for her ability to heal all kinds of ailment with Seleri (cool sacred water from osun river)<sup>216</sup>. She is seen as a goddess of blessings as her subject constantly chants **Ex 1c. Ore yeye oshun (blessings of mother oshun)**. She is perceived as a beautiful and graceful goddess of maternity. She interacts with other gods<sup>217</sup> and possesses enormous powers/abilities to provide children and cure any form of ailment or female disorder including infertility. She is believed to be the *agbomola* (savior of children). As the goddess of conception, she places her values on reciprocal covenant by appellants to repay in kinds<sup>218</sup>. The *Iya Osun* (mother in charge of *Osun* divinity) co-ordinates all activities towards the worship of the *Osun* goddess. The river *Osun* is located in Osogbo, Osun State and popularly celebrated every year. At the *Osun* celebration, believers converge to honour the goddess while they also ask for favour and equally state their means for returning such favours. Children conceived with the assistance of the *Osun* goddess can only be nurtured within the rules, regulations, warnings and restrictions prescribed by the applicable priest.
- e. **Yemoja (mothers of fish children or the mother who cares for her children like they are fish).** She is seen as a cleansing goddess of wealth. She is perceived as a very comforting and liberal problem solver. As the goddess of nurture, she is slow to anger but very possessive with her children. She is however reknowned to be extremely destructive when avenging any harmful act on her own possessions especially children. She is seen as the guardian of the female gender and she controls every fluid in the female body including the breastmilk and the uterine amniotic fluid through which children are nurtured. She regulates womanhood as it relates to conception, child delivery, guardianship, child healing, child protection and the capacity to possess untold wealth e.t.c She is the neat goddess of the ocean, sea river and all

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<sup>216</sup> According to the *Yeye Osun*, children given by *Osun* are prohibited from bathing with hot or boiled water.

<sup>217</sup> It is believed that she consults each of the other different gods in order to satisfy the peculiarities of varying requests from the teeming subjects.

<sup>218</sup> She is seen as *Olohun Adehun* (covenant). The refusal to fulfil promises made to *oshun* will affect the productivity or enjoyment of the gift, she has given. e.g if a parent refuses to fulfil his or her covenant after bearing the child, the child will not grow well nor make him happy.

flowing waters who detests unholiness and iniquities. *Yemoja* high priests coordinates the celebration in many of the Yoruba towns<sup>219</sup>.

- f. **Oba**-is a goddess of marital and domestic affinity. She is regarded as been in charge of how women generally cater for the home, including their husband and children.
- g. **Dada** is the deity of vegetables, foetuses and new born babies .He mostly manifests in children believed to have been born with natural hair locks. Parents must not cut such dreads until appropriate rituals are made.
- h. **Orisha Ibeta** is regarded as the deity responsible for multiple children especially triplets.
- i. **Orisha Ibeji (god of twins)**.This is an *Orisha* that is represented by the statute of a pair of twins. Twins are considered as either signals of doom or the pathway to their parents wealth. The concept *Ibeji/Ejire* may be generally glimpsed from their *Oriki* (praise singing)which is interpreted as follows<sup>220</sup>:

**Ex 2.** *Twins all come from isokun*

*monkey relatives, who love to do jump on trees/play*

*who jumps here and there, then jumps into a wretched mans home*

*and make a wretched man rich*

*famous children who command their ,parents into respect*

*stepmothers do not fancy you at sight, but you dual worlds to your mother*

*He who wants twins should signify*

*Twins are peacocks*

*I danced for having them,I rejoice for having them*

*Ejire, persons from Isokun*

*Monkeys who like to play on trees*

*twins see the rich and refuses them, Twin sees the wealthy home but will not go there*

*they go to the poor's home ,they make the wretched prosperous,they make the poor rich*

*as Taiwo gets to life first, then Kehinde follows suit*

*Omokehinde is the senior, because taye was sent on the errand to come first and check the world, if its good or not*

*The world is sweet as Honey*

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<sup>220</sup> [www.randafricanart.com](http://www.randafricanart.com) retrieved on the 24<sup>th</sup> July 2016

*Taiwo and Kehinde I greet you  
let me prosper*

Among the Yoruba It is a thing of joy to successfully nurture both to maturity, as the Yorubas dare not admit that a twin is dead. It is believed that an admission that a twin is dead will negatively impact on the existence of the living partner and this may eventually lead to the survivor's death. Special meals and rites are performed to celebrate their birth. It is perceived that these types of twins are protected by Shango (the god of fire and thunder). However, apart from their physical and emotional ties, it is believed that twins do not have the same destinies, life plan and purpose. The Yoruba therefore say

**Ex 3.** *Kadara Taiye o papo mo ti Kehinde* (the twins don't have the same fate or destiny)

#### **4.2.3. Belief in Spirits (unseen Children Spirits that exist in groups)**

Emi Elegbe are described as spirits that exist as members of a larger group. They converge and make arrangements within the spiritual realm. However, they have the capacity to also roam the physical world, through which they possess human beings especially children. They strive to enter homes through newborn babies and from the entry to exit they act in consultation with their spiritual companions. It is believed that their companions or their allegiance towards them, ensures that Elegbes do not get too comfortable in the physical realm. There are different types of Elegbe spirits and they are believed to be more active at night or at fore noon. They also roam cemeteries, road sides, quiet corners, narrow footpaths, forests, jungles, trees and water areas seeking to possess the fetus in pregnant women. It is also believed that some Babalawo upon requests from barren couples, often seek assistance from varieties of *Elegbe* due to their abundant quantity and consistent quest to exist physically.

**Ex 4.** *Aiomobi ni mu agba daba Abiku*-It is the horrors attached to infertility that pushes a barren adult to risk having an Abiku.

Such children after their physical delivery to the world begin to manifest tendencies that the Babalawo himself must constantly resolve by consulting its companions. Also only *Babalawos* or *Iyanifa* that have expertise in such *Egbe* issues can successfully pacify the spiritual group, against interfering with their member's physical existence. Examples of such spirits include;

- a) **Emere.** Emeres are in cadres. They are perceived as spirits of high supernatural abilities who have the capacity to go between the human and spiritual worlds. They have the capacity to wish evil or good on whoever they desire. They have transcending capacities and most times disguises these powers while they exist in their children victims. The arrival of a child possessed by the emere spirit could mark the era of destructions, retrogressions and calamities. It is believed that children possessed by *Emere* spirit, prefer to desert their earthly beloved at the climax of their earthly achievements, shortly before, or on their day of great joy. *Emi Emere* is often attributed to female young persons who can appear very beautiful at a time, then look unexplainably elderly or weird at another instance. It is believed that they often entice their earthly victims using the stick and carrot approach, but eventually render their physical home unhappy and in favour of their superior spiritual allegiance.
- b) **Abiku(spirits of premature deaths)** This is the spirit of still births or children predestined for early mortality. It is the force of disruptions in normal human longevity which makes it possible for the same child to continue to die and reincarnate through the same parents. Yoruba believe that *abiku* spirits equally roam in troops and they also compete for the purposes of exiting normal foetus and occupying the unsuspecting mothers womb. At most it is presumed that an *abiku* is incapable of living till its teenage years. It is also extremely difficult to redeem or sustain an *Abiku* spirit past its teenage years. The yorubas then say;

**Ex 5.** *Abiku so oloogun deke* - abiku turns medicine men to liars

Upon entry into the child it is believed that the particular spirit, in order to pacify the multitudes he earlier competed with, often share all his human benefits with his spiritual mates. This onus on him, invariably makes him perpetually unhealthy, irrespective of the level of care accorded to him by his parents. Invariably this is why *Abiku* often die after long term of constant health issues or die in accidents or without any cause. Consequently unless spiritual measures are taken, they are bound to abandon their earthly bodies shortly after they are born. An *Abiku's* abode is the home, where it has chosen and where the parents will continue to birth it and bury it at tender age. It is believed that when when such spirits are forced to stay beyond puberty, they do not grow up to be normal persons of good candour.

- c) **Egbere(Gnomies)** .*Egbere* is seen as the unhappy child spirit that loves to wail, whine and shed tears. it is perpetually disgusting, unkempt and distressed. *Egbere* is believed to always go around with a mat as short as itself but with mystical powers of wealth. It is common place for Yoruba persons to refer to their morose children as *Egbere*. There are claims of *Egbere's* physical manifestations and they are also capable of reflecting their tendencies through *Abiku*.
- d) **Oro inu igi/Igbo(Spirits from the Forests)** Many trees are believed to be habitations of spirits. Examples of these are, the banana tree, the iroko tree<sup>221</sup>, the *agbalumo* tree, the African mahogany among others. Children referred to as *oro inu igi* are often birthed with very weird features or congenital disabilities. In most cases they exhibit the tendencies of the *Egbe* they belonged to in the forests.
- e) **Emi Omi(Spirits from the Waters)**. It is believed that all forms in nature have their inhabiting spirits. The waters are also said to contain spirits which when contacted can result in the birth of very attractive children especially females, who however still exhibit Emere and other abnormal tendencies.

### **Prevention, Protection and cure of Elegbe children**

An expert priest, whether cleric, Islamic or traditional as the case may be, may have to intercede through parents for the purposes of placating the other spirit colleagues to release an Elegbe child. In the alternative such children are forced or tortured until they relinquish their membership and obligations towards the group. The following activities are reknown ways by which Yoruba deals with children invaded by *Elegbe* spirits;

- a. It is common to see pregnant women attach needles or small white stones on the clothes over their stomachs, in order to ward off the *Elegbe/Abiku* spirit from their unborn children.
- b. Expecting parents are counseled to caution their utterances, in order not to provoke marauding spirits;

**Ex 6.** *Eni ti ko ti siwo omo ko gbodo fi were se yeye-Someone in his/her fertile years should not laugh at the plight of an insane person.*

- c. Pregnant women are advised not to walk at odd times e.g noon, dark etc.



- d. Pregnant women are advised to avoid refuse dump sites, T-junctions, grave sides, some water areas and meals etc.
- e. A perceived *Abiku* may be given an unpleasant name to give it the impression that he is unwanted. This will subsequently discourage its other members from the family having lost their hold and relevance. An *Abiku* may be given a name that prominently suggests his parents attempt at persuading him to live.
- f. Religious deliverance sessions may be held where, special prayers and ingredients are applied to relieve the possessed child of the dwelling spirit.
- g. Armlets, Crucifix and other protective signs of spiritual effects are permanently placed on the suspect's hair, neck, wrist, ankle or waists etc in order to ward off the Elegbe spirit.
- h. An *Abiku* based on expert's advice, may be starved, in order to restrain his colleagues from nourishing through him. However, such Caretakers are subsequently advised to offer the angry colleagues Egbe Meals and sacrifices through other means but not the child.
- i. Such children are decorated with noisy irons, padlocks etc on their necks and feet. It is believed that the noisy sound from such metals will irritate and ward off the spiritual colleagues.
- j. Children suspected to be possessed by violent Spirits are tied down with heavy chains in order to restrain them from further hurting themselves and others
- k. Incisions may also be made on the child's body. Spices and other pepperish ingredients will be applied on the tiny but several wounds in order to make the body inhabitable for the spirit.
- l. With the use of broomsticks, palmfont and cane, the child may be flogged until, the Elegbe spirit finds its body inhabitable.
- m. If the child dies, its body is scared, pounded and mutilated to inflict pains on the culpable spirit and therefore discourage it from coming back (there are views that when an *abiku* comes back such signs of mutilations will still be seen on its body). They are unceremoniously buried or thrown away to discourage them from re-appearing the same families.

#### **4.2.4. Ancestors**

Many of the codes and practices in lifestyles are equally connected to the ways of the old indefinite. It is believed that many other rules are unexplainable and must therefore have been laid down by those who have existed earlier on. Such rules although unwritten are described as well handed down orally or by practice from generations immemorial. An example of such practice is the circumcision of children and infliction of tribal marks. Some practices are described as simply immemorial and sometimes untraceable but well inculcated in the Yoruba Norms. Many Yoruba persons irrespective of religion also believe that it is possible for the dead especially elderly relatives of a child's parents to re incarnate through their new born child. Such children are given names which reflect the prior existence of the deceased persons<sup>222</sup>. They are also accorded the usual respect and attributed with characters of the deceased elder. This often occur when the child is the first and next child given birth too after the demise of the elder/father/mother.

#### **4.2.5. Natural Instinct**

To the Yoruba, the care of children is also carried out by relying on parental instincts. Hence, it is said that **Ex 7.** *Abiamo ki gbo ekun omo e, ko ma tati were.* A parent is bound to become alert at the instance of the child's cry. All conditions including the Sexual relations through which the child is conceived is believed to be naturally instinctive. Most especially, no one who teaches the mother or the child the essence of breast milk. These factors may then be discerned from the Yorubas ability to cater for each children based on his/her peculiarities. Consequently, there is no need to impose perceived superior knowledge or foreign rules on the best care for children. Natural instincts and initiatives of human beings while taking care of their children is compared with what exists in the animal world. For example, it is natural to protect a child against excessive weather, feed it and enable that it grows in such a way that makes him a helpful and healthy child toward his family and his society.

#### **4.2.6. Traditional practices**

Respondents believe that the practices and modes of child care can be derived from the actions and decisions as handed over by previous generations in sustainable forms. A parent is bound to cater and bring up its own child according to what obtains in his/her environment and in ways permitted within his community, immediate families and ancestral lineage.

#### **4.2.7. Human-Kings and Individuals**

Laws are made by Yoruba kings and other individuals in charge of human affairs. Yorubas believe that as time goes on these laws become codes by which the subjects abide even when the lawmaker is dead or no longer available.

### **4.3. Scope and Nature of the Yoruba Child Care System**

The attributes of the Yoruba child care system are as described from the parental and child right/obligations as follows;

#### **4.3.1. Parental Obligations towards Children.**

As at the time of research, the Yoruba people did not dispute the natural responsibility of parents to provide for their children's physical needs for survival. The reason for such obligations is basically to ensure that the child grows to be a total person enough to cater for itself, its family and the society at large. The general essence of such commitment is in order to make the child "omo olori ire" (a child with a successful/beneficial/positive aura/self). An extension of this obligation is reflected not only in their physical attitudes towards children development but in the believe that for a child to succeed, the parents have both physical and spiritual roles to play. It is therefore not unusual to find guardians or caretakers earmarking spiritual requisite and responsibilities for themselves in order to ensure that negative influence from civilization, peer pressure, family curses, marital distress, ill health and other's envy do not interfere with or subdue their childrens' developments. However the fact that the biological parents are the primary caretakers of the child, does not preclude the position that, in the absence of both or with the consent of both parents, such parental status may be conferred or delegated on other persons as the case may require. Although other persons whether foster parents, step parents, or extended family members may be overtly attributed with parental rights, third party Caretakers do not strive to acquire biological parental rights. Instead they are regarded guardians (Oluso) in loco

parentis. The extent of third party intervention in the parent -child status sometimes also depend on whether the primary caretakers, that is the man and woman are married, divorced, separated, unmarried or dead.

The Yoruba indigenes include persons married under the following system of laws

- a. **The Monogamous System**-this is the union/contract between a man and a woman to the exclusion of all others<sup>223</sup>.The applicable Nigerian Laws in respect of such unions are the Marriage Act and the Matrimonial Cause Act. These laws <sup>224</sup>expressly exempt children from Customary Law Marriages from their jurisdictions.
- b. **The Islamic Law System**-This includes marriages celebrated according to the provisions of the Quran. It covers all regulations on Muslim marriages. Although a written and fixed law, the lack of requisite Islamic Courts in the South Western part of Nigeria has ensured that issues relating to Islamic law are often regarded as aspects of customary laws. The Islamic law marriage is potentially polygamous in nature and it restricts a man to not more than four wives.
- c. **Customary Law Marriages.** The Customary Law marriage is a potentially polygamous union consisting of the husband and a woman or more than one woman. It is a relationship between the man and the family of each and every one of his wives.

In relation to the last form of marriage, for peaceful co-existence, the Yoruba communities regard the father as the head of the home. This is mostly captured with the phrase,*Oko lolori aya(meaning the husband is the head/leader of the wife)*.Parental responsibilities under the Yoruba customary law marriages, translates to the consequential care and obligations which parents of the child are expected to give the child owing from the fact that they gave birth to it.<sup>225</sup>

**Ex 18.** *Eni bimo oran ni pon-It is the parent of a problematic child that will bear its troubles*

**Ex19.** *Ise ki se loko laya ko ma ran omo-The poverty of a couple is bound to infect their offspring*

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<sup>223</sup> *Hyde v Hyde(1886)LRIP &D130,133*

<sup>224</sup> Matrimonial Causes Act Section 114(6)

<sup>225</sup> See Statutory equivalence at Section 20 of the Childs Rights Act 2003 and also other formal frameworks on the child's rights to survival and development, name, dignity, health and health services, parental care, protection and maintenance etc.

Each Partner to the marriage acquires his/her role from societal dictates. There is also the presumption that the better child is the one that grows in a complete family which consists especially of the mother, father and members of the extended family as they equally interact with the community. The mother is commonly perceived as the feminine indulgent party with dominant responsibilities on children that are still very young until emotional maturity. The father meanwhile, is mostly placed on a firmer, formal and strict status, as he is not expected to have as much rapport with the child as the mother. However the above position is also subject to peculiarities in familial settings, there are exceptions in families where such presumed character traits are swapped by parents. The basic requisite is that a complete child needs both character models. The carrot and stick approach as designated in the parental set up is underscored by the following proverbs;

**Ex 20.** *Bi oko ba je ewure, iyawo a je aguntan or vice versa* When the husband is a goat the wife should be the sheep (vice versa)

**Ex 21.** *Bi a ba fi owo otun ba omo wi, a fi tosi famora-* If one chastises a child with the right hand, one should pacify such child with the left

**Ex 22.** *Eyin ti aja fi n ba omo re sere lo fi n ge je-* A dog bites its puppy with the same teeth it plays with it

The emphasis is basically on the mutual agreement between both parties towards the welfare of the child. The Yoruba describes the general nature of each parent in the following manner;

**Ex 23.** *Iya ni wura baba ni gigi-the mother is the child's gold while the father is its mirror*

However this does not relegate, the more important role attributed to the typical mother over child nurturing responsibilities. A popular Yoruba song goes thus;

**Ex 24.** *Iya ni wura iyebiye, ti a ko le fowo ra.  
Oloyun mi fosu mesan  
Opon mi fodun meta  
Iyani wura iyebiye ti a ko le fowo ra.*

The Mother is the Inestimable gold, that cannot be bought with money  
She was pregnant with me for nine months  
she backed me for three years  
The Mother is the Inestimable gold, that cannot be bought with money

Also the popular saying that,

*Ex 28. Orisha bi iya ko si.*-There is no other deity that can represent the mother

#### **4.3.2. Parental Rights over Children**

**4.3.2.1.Vested Rights**– Children are perceived as gifts from God, who also has the sole

discretion to give or not. Such unique attribute of God is described with words as,

*Ex 29. Olorun lo ni omo lodo-* God is the on bearer of children

*Ex 30. Olorun lo n se omo, -|* God makes Children

*Ex 31. Omo ose fowora-* A Child cannot be bought with money

*Ex 32. Afunniso ni omo-* Parents are representative guardians

*Ex 33. Ninu ofi ninu ola a, ni omo pandoro ngbo-* No distress/neglect can restrain a child destined for greatness from growing

The biological parents of the child are regarded as mere mortals chosen by God to transport each child to life. Parents as the initial and primary care givers are therefore divinely vested with the original instincts (based on love and affection) required to nurture the child to maturity. Such instincts are also driven by recognized natural attributes such as **Ex 34. oro omo, osu mesan**( nine months of pregnancy discomfort), *ojo ikunle*(delivery labour pain), *eje ti iya da le omo lori* (The blood shed by the mother while birthing the child), *ikunle abiamo*(the pain of labour), itara obi etc .

Parents are described as the human representatives of God over the child and it is their primary duty to raise the child in any way that will not invoke the wrath of their benefactor.

**4.3.2.2.Personal Rights**-This expresses the unquestionable discretion of both parents in mutuality, for the purpose of achieving the welfare of their child. Other parties only serve advisory roles towards this purpose. Such personal roles take priority over others' unless same is delegated or acquired by third parties. Ironically, communal interactions of the Yoruba does not take away the fact that parents know that their children are better off in their own confines than any other persons. It is believed that no other individual, person or institution can love children

more and better than the natural parents. This is expressed by an Ifa Corpus at the verse 5 of Irosun Meji<sup>226</sup> as follows;

<b>Ex 35.</b> <i>“akuko fogbe lebelebe seyi- Adia fun Opiliki, ti o fi tie sile-</i>	A cock flies around lightly to achieve its tasks Ifa divination was performed for Opiliki which leaves its own nest
<i>Ti o ma n gbo ti enieleni kaye kiri- Orunmila ni oo ba tun tie naa se- Won ni ki Opiliki o rubo- Ki ole ba niyi laye- Osi ruu, Igba ti o rubo tan- Won ni ki o ma tun ti omo elomiran se- Ju bi o ti n tun ti araa re se lo- Igba ti se gbogbo e tan- Ti o ni opolopo omisin tan- Orin awo ni n ko- Oni kin ni o baa mi tun waa temi se? Orunmila, ibaa mi , Erigi, Alo ni yo ba mi tun iwa temi se.....”</i>	And attends to others’ issues worldwide Orunmila offered to help it with its own issues Opiliki was requested to offer a sacrifice So as to be dignified on earth It obliged; after it offered the sacrifice It was instructed not to attend to/help others More than it attends to its own needs. After it was done with all that were required And had all its issues resolved It began to sing a song of initiate....

Such responsibility and control over children includes the uncontested and sometimes unquestionable power to decide the child’s liberty, access to information, freedom and development .Since parents are presumed to know best, they, within their discretion exercise appropriate influence and control of the Childs expressions, privacy, recreation, association and educational or vocational choices. Their duties involve restraining the child from any attitude or influence that is likely to affect it negatively. This message is equally underscored by the warning in Obara Otoku of Ifa at Verse 117<sup>227</sup>:

<b>Ex 36.</b> <i>Obara tutu pepe- A difa fun ose omo orisa- Ose n je aja, ose n mu emu- Ose wa nwu toju tenu borokoto-</i>	Obara is always very cold Ifa divination was performed for Ose, child of a deity Ose ate stew and drank palmwine Ose then began to have its eyes and mouth swell massively
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<sup>226</sup> Wande Abimbola(1977), Awon Oju Odu Mereerindinlogun, University Press PLC Ibadan 2014 p 34

<sup>227</sup> Ifalere O.O(2014), Iwe Mimo Ifa: Esin Akoda Olodumare. Lahoo Productions 2014, ISBN:978-978-52603-0-4p 354

### 4.3.2.3. Shared Rights.

While Yoruba do not underrate the role of the biological parents towards the child, it suffices to note that other parties and persons are also requisite contributors in the making of the total child. The “family” among the Yoruba is traditionally extended. This multi-nature invariably connects every offspring of a nuclear family to the larger setup which includes the community at large. The set-up of the typical extended family of the child includes the parents, the child, its siblings (step), its stepparents, its grand-parents, its uncles, its aunts and cousins as coordinated by the Elders. The extended members of the family in addition to other members of the immediate environment, neighborhood or community have such contributory assess to the wellbeing, control and development of the child.

*Ex 37. Eni kan ni bimo gbogbo aiye ni wo-a person begats* a child, the whole world  
natures it

*Ex 38. Isin wo o, ikoro woo, Ohun a ba dijo wo gigun ni gun-* Little fishes all have their  
turns in viewing a thing; what  
is viewed in unison is usually  
perfectly achieved

### 4.3.3. Nature of Parental Responsibility

#### 4.3.3.1 Reciprocal (rights of parents)

The child’s most important obligation is to take good care of his parents even before, but especially when they become aged. The care given to the child by the parents is therefore perceived as the parental investment for the parents own future benefits. Such dedication/efforts must therefore be appreciated and rewarded when the child is mature, of age and capable of taking care of its parents too.

*Ex 39. Tokete ba dagba tan omu omo re ni mu-* When the bush rats becomes elderly,  
he suckles its child

It is therefore common opinion, that a parent who does not care for his/her children is also preparing itself for a miserable old age or ending. In order to repay the parents for their efforts, the child is generally expected to;

- a. Assist its parents with home chores and economic activities;



- b. Run errands for parents without complaints;
- c. respect its parents and immediate community;
- d. constantly show acts of appreciation of its parental efforts;
- e. positively represent and glorify the family image;
- f. notify the immediate family of impending dangers or threats that he is aware of;
- g. Cater for parents if they become disabled, ill and elderly.

Its common parlance that a young child that refuses to perform its familial obligations is also not entitled to parental provisions.

*Ex 40. Eni ti ko se ko je-* He who does not work deserves not to eat

#### 4.3.3.2. Obligatory.

This position emphasizes that the child is inherently entitled to receive parental attention and nurture. It is to the effect that the parent's duty to care for their child is mandatory and not subject to the child's responsiveness or good character. This therefore augments the believe that the fact that a child is recalcitrant or of bad attitude does not mean it can be abandoned or simply eliminated. Children are described by this "obligatory" school as wards, but not investments;

*Ex 41. Aja ki je oku agan eni bimo omo ni o sin, eni ti ko bi omo na ni yo sin-* The corpse of the barren will not be eaten by dogs, whoever begets children will be buried by same, and anyone who does not have will equally be buried by children.

*Ex 42. Ogede dudu o yabupon, omo buruku o yalupa-* You don't cut a banana in order to ripen it, you cannot also beat a recalcitrant child to death.

*Ex 43. A ki n le omo buruku fun ekun paje-* You cant pursue a recalcitrant child into the lions den

*Ex 44. Omo o la yole eni omo sin lo bimo-* Children are not reliable, only a person buried by his/her children is the parent

*Ex 45. Ko le buru fun baba omo ko lo dowo omo ohun lorun-* It cannot be so bad for a father,

that he refers/prays to his deceased  
child for solace/solution

On this note, the child only owes a divine obligation to make its parents happy and also yield to reasonable parental guidance and supervision. A child who fails in his duties or responsibilities towards his parents therefore risks the wrath of God and is doomed for generational lessons from its own offsprings.

#### **4.3.4. Constituents of Child Care/ Responsibilities**

The presumed breadwinner of the home is the man. As the husband he is expected to maintain his wife and children. However subject to few exceptions, while financial maintenance includes the provisions of necessities, a typical Yoruba father refrains from indulging children with irrelevancies. Restraint in financial exposure is expected to teach the children the essence and rarity of money as a commodity that needs to be earned. In some situations children are equally forced to work in order to earn and understand the inherent economic value of money. In polygamous homes, the father is expected to dissipate any amount as he deems fit or can afford. However, in cases of inadequacies or irresponsibility of the father, the mother augments or provides requisite funds accordingly. The father can expend personally and/or give the mother funds for appropriate use on behalf of the child. Although perceived as improper, in homes where the father earns less than the mother, the mother and the child are free to fend for themselves. However such a father is generally perceived as an irresponsible head. The basic financial dues over the child includes the money for the procurement of the basic needs of the child including food, medical and health care provision, accommodation, clothing, School fees etc.

It is general belief that where the mother is a petty trader or the parents are menial workers, laborers or farmers , the capable child is equally obliged to assist in contributing to the family's income. Child abuse to the indigene is however when a child works, hawks or contributes diligently but is not given the reciprocal care or attention. If a child refuses to assist in his own way, the ko se ko je(no work no feeding) principle may also be appropriately applied.

#### 4.3.4.1. Physical maintenance

This centers on the physical health and appearance of the child. The mother plays the major role of ensuring that the child is fed and clothed. The major significance of feeding amongst the Yoruba is emphasized by the proverb;

*Ex 46. Bi ebi ba ti kuro ninu ise abuse buse-* When one is able to feed even with poverty, then the remaining concerns become insignificant.

Right from infancy the mother breastfeeds the baby and by instinctive response to the conscious and unconscious demands of the child, handles the physical welfare of the husband and the child. It is believed that the overall appearance and presentation of a child/family is determined by the nature of the mother. She is vested with the discretion to dissipate resources in an economical but satisfying ways in order to ensure that the family is well fed. She gives first aid treatments to the child and ensures total health of the child at all times. Her protective harem is meant to restrain the child from harm due from immaturity and interaction with others. For healing of ailments, the Yoruba parents rely on self help and professional care offered by onisegun Ibile<sup>228</sup> (traditional herbalists), neighbours who are health workers in hospitals/ clinics and visits to hospital.

#### 4.3.4.2. Spiritual welfare

The major role of the mother in the spiritual welfare of the child may not be underestimated. She is believed to have a greater spiritual bond with the child. Therefore she is mostly expected to interact between the child and God. It is believed that the mother has a superior influence on the spiritual outcome of the child, so whatever she confesses or attributes on her child often come to pass. The Yoruba attributes unbreakable interactions between a mother's nakedness, breast, uterus etc and the destiny of the child. The mother is expected to ensure that the child is spiritually protected from the repercussion of his immaturity and evil persons/ all other

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<sup>228</sup> An onisegun analyses the symptoms and look for both the physical and spiritual cause and resolution of the issue. Healing procedures include introduction of special diets, use of herbs, spiritual birth, making incisions on the sick child e.t.c

circumstances that can tamper with his/her present and future purpose in life. This position is equally revealed in the first verse of Obara Meji<sup>229</sup> of Ifa as follows,

<i>Ex 47. “oni bara,Ola bara,Adia fun bara:</i>	Persistent concerns about Bara; Ifa divination was made for Bara
<i>Ti n lo soko alero odun:</i>	That embarked on a journey to distant alero odun
<i>Ti n fi gbogbo oju serahun omo,:</i>	In dire need of a child
<i>Oju omo ni n pon bara:</i>	Bara was suffering from barrenness
<i>Oyagan,oyapata:</i>	Totally and completely barren
<i>O romo leyin adie,o bu puru sekun:</i>	She bursts into tears anytime it sees chicks behind a hen
<i>Lo ba meki keeta:</i>	She resolved in proffering a solution to the issue
<i>Olooko alawo:</i>	She went to the gathering of initiates
<i>Se oun le bimo bayi?:</i>	And inquired if at all she could still give birth
<i>Ni o difa si,won ni pupo ni ire omo e:</i>	The divination for her revealed she had a lot of prospective children
<i>Sugbon ki orubo,ki orubo opolopo omo,:</i>	But she must offer a sacrifice for plenteous children
<i>Ki o si rubo ki ki awon omo araye o ma pa awon omo na:</i>	
<i>Ebo opolopo omo ni bara ru,ko rubo ota.:</i>	Bara offered a sacrifice for plenteous children, and not to overcome enemies
<i>Nigba ti o rubo tan,won ni ki ogbe ebon a lo seyin odi:</i>	When she prepared the sacrifice, she was told to take it beyond the town walls
<i>Osi se bee,o si bi opolopo omo:</i>	She did same and gave birth to a lot of children
<i>Sugbon nitori ebo ota ti baara o ru:</i>	But because of the sacrifice to overcome enemies which Bara did not offer
<i>Lodoodun ni awon om araye n pa lomo je:</i>	She lost a child each year to earthly enemies
<i>Ayin sodi lo waa n yi awon awoo re.....:</i>	She thus ironically praises her initiates
<i>Riru ebo ni gbeni:</i>	Offering a sacrifice profits a person
<i>Airu re ki gbeyan:</i>	Refusal to offer same never profits a human

#### 4.3.4.3.Mental/Emotional Development

Both parents strive to train a child who performs his duties ,chores and other relations with mental and emotional alertness. “Foolishness” is perceived as a prominent requisite to failures;

<sup>229</sup> Wande Abimbola(1977),Awon Oju Odu Mereerindinlogun,University Press PLC Ibadan 2014 p 46

**Ex 48.** *Danidani ki bani lagba kekere ni ti bani lo-* Stupidity doesn't begin at adulthood, it starts gradually from childhood.

**Ex 49.** *A bimo ko gbon a ni ko ma ku, ki ni o n pa eniyan bi aigbon-* Why restrain a foolish child from injury/death, what kills other than foolishness

A smart child is a source of pride to the family, while every home loathes imbecility. The child is supposed to be ingrained with the ability to delay, withstand or avoid unwarranted pleasure. An emotionally mature or stable child is capable of restraining himself, has a high level of endurance, is focused and disciplined enough to identify healthy and unhealthy desires. Also *Amumora*(endurance) is extolled, being the ability to withstand pain or discomfort. A male child is in fact expected to be capable of more *Amumora* than his female counterpart.

#### 4.3.4.4. Education<sup>230</sup>

- a. **Formal Education(Eko ile-iwe).** This is the form of education which the Yoruba perceives as western. It connotes that the child must attend a school and learn to read and write in order to meet up with contemporary demands. The willingness of parents especially the father, to send their children to school entails the consequential satisfaction of requisite financial obligations. Formal education entails all academic curriculum as sanctioned by the government and tutored by teachers and other non academic officers in schools.
- b. **Religious education.** This relates to the Childs exposure to divine/spiritual denominational<sup>231</sup> rules and mandates. Its a duty shared by parents and requisite religious institutions. It is believed that a God fearing child loathes unholy attitude and alliances. A child is guided according to the caretakers religious doctrines as all are expected to live in Gods Will in order to evade eternal damnation.
- c. **Apprenticeship/Trade learning.** This an informal form of education that is now common amongst persons with very low income level or minimum academic exposure. Linking a child up with a master of trade is often regarded as an alternative for a child who finds it difficult to cope with academic demands from formal schools. Learning a regular trade

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<sup>230</sup> APPENDIX 3.2

<sup>231</sup> This can be Islamic ,traditional or Christian in approach

or vocation is perceived as cheaper and capable of making the child equally as successful as his formally educated peers. In the contemporary economic situation of scarcity in white collar jobs, it is believed that apart from school work a child should also be exposed to other vocational initiatives in addition to formal education. A child's creativity, success or dexterity in unsalaried exposures is indeed described by many as the most reliable and independent way to unlimited financial breakthrough.

*Ex 61. Atelewo eni ki tan eni je-* a persons dexterity with his/her  
Hand-work does not disappoint him or her

*Ex 62. Ise re omo alaseje, owo re omo ala se la-* A job feeds the worker however a  
trade makes him successful

- d. **Home training (eko ile).** This is the informal form of education that can only be inculcated into the child from home. Home-training is described as the first and original means of instilling *iwa rere*(good character) in the child. It is the most eulogised form of education amongst the Yoruba. The duty to give a child good home training starts from the mother to the father and immediate family members. It is believed that the first process of instilling such training in the child is through the parents and other immediate adults-

*Ex 50. Esin Iwaju ni teyin wo sare-* A horse at the back conditions its race on  
the one in front

*Ex 51. Omo ki ba ipele iya re ko si aso da-* A child cannot be accustomed to their  
mother's cloth and make a wrong style

The refusal to home train a child is regarded as an inherent deficiency which is bound to expose the applicable family to embarrassing episodes within the larger community

*Ex 53. Omo ti won o ba ko ni ile,  
ita ni won o ti ko wale-* A child not trained at home is bound  
to be taught by outsiders

*Ex 55. Omo ti a ko ko ni yo gbe ile ti a ko ta-* The child we refuse to train will  
eventually trade the house we built to  
strangers

*Ex 56. Koo mo re ko le fun o nisinmi-* Train your child, so that it shall give  
you rest.

*Ex 57. Omo osan ni ko popo ba iya e-* An orange fruit causes its tree to be  
clubbed

**Ex 58.** *Ati kekere lati pe eekan iroko,  
to ba dagba tan apa o ni ka-*

An iroko tree must be trimmed in its early years because it becomes untamable unreachable at maturity

Verse 43 of Oyeku Otua<sup>232</sup> an Ifa chapter provides that;

**Ex 58.** *Bi a ba ko omo eni, omo eni a gbon saka saka:* If one's child is trained, such child has to be very intelligent.

*A difa fun sogbon-were tii se omo olokun:*

Ifa divination was made for Sogbon-were, Olokun's child

*Bi a ko ba ko omo eni, omo eni a go ju isu lo:*

An untrained child becomes less intelligent than yam

*A difa fun Obawin tii se omo Ora, Nife.*

Ifa divination was made for Obawin, Ora-Nife's Child

Home training is prescribed as the unique form of education which all rounder makes the child self sufficient. The child with good home training is discernable through his respectful attitude to his family members and all other persons. A properly home trained child possesses the traits of an Omoluabi. It is strongly believed that an Omoluabi will further have no problem prospering in his/her other endeavors including his education, career and marital life. In other parlance, untrained children are basically categorized into two conditions namely, *Abiiko* (born and not trained) and *Akoogba* (trained but do not heed) are common terms used for recalcitrant children perceived as beyond parental control. It is believed that although the parents bear the brunt for not training their direct offspring, it is possible for a child to fall out of societal expectation due to his own refusal to abide and heed to proper guidance. In fact the eventual onus is on the child to rebirth himself as an Omoluabi.

**Ex 59.** *Abiiko Akoogba, Ode ni won ti n ko ogbon wale-*

A recalcitrant child often learn his lessons from outside the home

**Ex 60.** *Ti a bi omo, omo a tun ara e bi-*

a child after being born by the parents ought to rebirth itself

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<sup>232</sup> Ifalere O.O(2014), Iwe Mimo Ifa: Esin Akoda Olodumare. Lahoo Productions 2014, ISBN:978-978-52603-0-4 p 129

#### 4.3.4.5. Social development.

The duty to render the child useful to everyone is basically of the parents although this does not preclude other persons contributions. The main focus here is on the child's attitude and character. The "human character" is the relevant focus of the Yoruba on matters relating to communal living, interaction and development. All form of religions practiced by the Yorubas emphasize the concept of *Iwa Rere* (good attitude/behaviour). A very prominent description of the concept of *Iwa* is as presented in the following poem<sup>233</sup>;

<i>Ex 63. Toju iwa re ore mi -</i>	(Improve your character my dear friend)
<i>Ola a maa n la nile eni -</i>	(Wealth can diminish from the house of a person)
<i>Ewa a si maa tan lara eniyan -</i>	(Beauty does desert the body of a person)
<i>Sugbon iwa ni i ba ni de saare -</i>	(However it's character that doesn't abandon a person even to the grave)
<i>Eefin niwa riru ni i ru -</i>	(Character is like dust, it will hazy up eventually)
<i>Eniyan gbe okeere niyi -</i>	(Living a distance away can give honour)
<i>Sugbon si sunmo ni la fi n mo eni -</i>	(But with closeness, we learn to know persons' real attributes)
<i>Iwa ko ni fi oniwa sile -</i>	(Character does not leave where it is embodied)
<i>Iwa omo l'o nsomo l'oruko -</i>	(It is a child's character that gives the child a name)
<i>Omo dara o ku iwa -</i>	(Even if a child seems fine, there is still a need for character)
<i>Ara dara o ku aso -</i>	(Even if the body looks fine, there is still a need for clothing)
<i>Ese dara oku bata -</i>	(Even if the feet look fine, there is still a need for shoes)
<i>Be niyan dara tikoni'wa -</i>	(If a person seems fine but doesn't have good character)
<i>Opadannu ohun ribiribi -</i>	(He/She is missing something very valuable indeed)
<i>Iwa rere lesu eniyan -</i>	(Good character is a person's jewel)
<i>Suru baba iwa, iwa baba awure -</i>	(Patience is the progenitor of character, Character is the progenitor of blessings)
<i>O ya tete toju iwa re oremi -</i>	(You had better improve your character my dear friend)

It is believed that a child's attitude, approach and manner of response to situations/circumstances, determines its progress or retardation amongst his peers, elders and the community as a whole. A child programmed for societal independence and acceptance is consequently refrained from interacting with persons or in issues that are morally unjustifiable. That a child is socially capable means he is an Omoluabi (a child that is birthed by the lord of character).The social training is towards ensuring that in all its undertakings, the child reflects

<sup>233</sup> A poem written by **Joseph Folahan Odunjo** (1904–1980), a Nigerian writer and educator.



Courage, Hard work, Endurance/Patience/discipline, Kindness, goodwill, Truthfulness, Humility, respect, integrity, diplomacy, ability to decipher, contentment, good communication skills, patriotism, wisdom, diplomacy, willingness to learn and heed to correction. Also same must be wise and thoughtful of issues either by words or in deeds.

Some of the above attitudes are reflected in the following copus;

- Ex 64.** *alagbara ma mero, baba ole-* on the preference of wisdom to stamina
- Ex 65.** *.Omo ti a ba mbawi to n warunki yo parun lojiji-* on the instruction to heed to counsels or training
- Ex 66.** *Ipo lagba ibanuje lojo ori-* Preference of a successful status to mere tales of experience in age
- Ex 67.** *Aifele kebosi ni a reni ba ni jo-* Peoples response to a persons call depends on his presentation
- Ex 68.** *Eni to no ika kan si eloomi merin to ku koju si-* the reminder on repercussion of actions
- Ex 69.** *Suuru ni baba iwa-* Patience is the father of all virtues
- Ex 70.** *Suuru le se okuta jina-* Patience can resolve the toughest issues
- Ex 71.** *Oni suuru ni fun wara kiniun-* a patient person can tame any situation, no matter how volatile or wild
- Ex 72.** *Eni eegun le ko ma roju bi ti n re ara aye ni re ara orun-* teaches the virtues of patience and endurance
- Ex 73.** *Oun ti a o je dale ko ye ka ji je-* it advocates for patience in the course of a due processes
- Ex 74.** *Okele gbigbe pelu ifokanbale o san ju iyan ninu ihahilo-* Preference for poverty in peace to riches in distress
- Ex 75.** *Bi omode ba mo owo we yo ba agba jeun-* a respectful child will interact freely with the wise and experienced
- Ex 76.** *Bi omode ba dupe ore ana, a ri omiran gba-* a grateful child will be readily blessed/rewarded again

- Ex 77. Oruko rere san ju wura ati fadaka lo-* the worth of a good reputation over riches
- Ex 78. Ti isu eni bata a a dowo bo-* The essence of being discreet about ones success
- Ex 79.Boju ba ri enu a dake-* teaches the essence of being cautious with the use Of the mouth
- Ex 80. Gbogbo oun toju ba ri ko lenu nso-* essence of being discretionary with the use of the mouth
- Ex 81. Eni a n ba noja la n wo, aki n wo ariwo oja-* teaches the benefit of being focused
- Ex 82.Tita riro la n kola to ba doju eni tan ni doge-* endurance even in times of painful training
- Ex 83. Atoke loloju jinjin ti mekun sun* -a person with a disability should plan better and ahead of the abled
- Ex 84. Eefin ni iwa ko se fi pamo-* character as an intricate attribute of every persons, it cannot be hidden for long
- Ex 85. Yara lati gbo sugbon lora lati fesi-* explains the essence of being a good listener but thoughtful talker

#### **4.3.4.6. Socio-cultural and Legal Obligations towards children**

- a. **The assessment Esentaiye and other rites-** The traditionalists emphasized that the most important aspect of child care entails that upon the birth of a child, the parents are supposed to consult a Babalawo or Iya Nifa on the prediction and directions to be given by Ifa. It is believed that the name, the process of care, the “dos and donts” in its progress and the childs destiny is revealed by the codes and therefore checking a childs Esentaiye only guides the parents in manners that prevents them from training the child against the childs pre-destiny and spiritual requirements. Also, there exists various practices amongst the several family clans for the confirmation of partenity.
- b. **Naming the Child** .The naming ceremony is for the purpose of attaching a means of identity to the child by which the child may be addressed or connected to the family lineage. Except in extreme situations of illegitimacy where the child is disowned by the father or the father is unknown, the child is expected to bear the fathers surname.

*Ex 86. Tori ijo ti omo o ba daran lo se n loruko-* The child name enables appropriate reference when it gets into trouble.

*Ex 87. Ile la wo ka to somo loruko-* The child is named according to its Background

There are various considerations made on the type of name to be given to the child which eventually describes who he or she represents to the home.

- i. **Amutorunwa**, names that are automatically attached to the child considering the state of its birth.<sup>234</sup>
- ii. **Abiso**-the name given to the child by its parents and others amongs which we have the one he will be called(atemolara).<sup>235</sup>
- iii. **Oriki**. the traditional name attached to the child and as appropriate for ancestral and traditional functions.
- iv. **The religious name**, that is when parents especially muslims or Christians in customary law marriages name their children after a fancied model character from the religious books.

The father and the eldest male member of the parent's family play the lead role during the ceremony where the child is formally introduced to the community and other persons in attendant. The priest coordinates the event and the child is expected to receive its first financial donation on this day. The extent of naming ceremony varies according to the capacity of the parents. In some cases the parents are advised to refrain from holding very large ceremonies for spiritual purposes. It is believed that the name a child is called affects its personality. Every important member of the family is also allowed to give his or her names.

- c. **Registration**. While the national registration programme is a contemporary development to the indigenous Yoruba persons, those who are aware of the process claim awareness through their antenatal / postnatal encounters in hospitals and other public awareness programmes.

- d. **Circumcision.** The circumcision of the genitals of the child is a cultural and societal requirement which Respondents could not lay any historical foundation for. Indigenous persons are aware of the contemporary restrictions on female circumcisions<sup>236</sup>. However, the essence of circumcising both the male and female child is to remove excess skins and in order to render the genital areas more neater and less subject to infection. The form of circumcisions varies from communities but it is believed that some communities for example the *Ijebu tribe* irrespective of the contemporary ban on Female circumcision never had the culture of circumcising female children. Female circumcision is described as optional and subject to the requisite of the guardians immediate traditional practices. It is also common opinion that female circumcision restrains the tendency in girls to indiscretionarily crave for sexual reliefs.

#### **4.3.4.7. Custody residential.**

The child is expected to live in his fathers house. In a marriage it is traditional for the father of the house to determine where his family including the children live and how the child spends his/her time. This also includes the father's discretion to allow the child to permanently or temporarily live with other persons especially family members. Mothers are generally accountable to the fathers on the were-about of their children.

#### **4.3.4.8. Religious Upbringing.**

Subject to contrary agreements between parents, the father determines the faith of the child until its maturity or afterwards. He is believed to be the religious head of his home by which all practices including names and identity of the family reflects the fathers religious code. However, as against this general rule, Yoruba agree, that in reality, where both parents practice different religions, while the fathers is the most prominent in the household, mothers have more influence on the Child's preferred religion, unless this tendency is expressly prohibited by the father.

#### **4.3.4.9. Representation-**

The mother mostly represents an infant in day to day activities, as she serves as the spokes persons and receives compliments on its behalf. Also, subject to more important occasions and

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<sup>236</sup> Harmful traditional Practices Affecting The Health and Welfare of Women and Children 2005, Chapter 60 Laws of Ondo State 2006

issues which may necessitate the fathers intervention, the mother generally stands in for the child in matters beyond the child's capacity. Both parents may serve as the child's guardian ad litem and in fact operate its financial accounts if need be.

#### **4.3.4.10. Liability for Childs misconduct.**

The mothers liability is strict and unending. The failure or recalcitrance of a child is basically adduced as the parents' fault, but more especially of the mother.

*Ex 94. Omo to dara ti baba, eyi ti ko dara ti iya e-* a good child belongs to the father, the bad to the mother

However, in reality, the father is often held liable for the child's extreme misconduct, criminal or tortuous charges. Social misbehaviour, is often addressed as a dent on the father's family name and image. Children are therefore often implored not to commit act that will denigrate their fathers worth/name/image.

#### **4.3.4.11. Punishment**<sup>237</sup>

The child is supposed to be reprimanded for improper acts or attitude. The requisite reaction to his /her misbehaviour is often determined by the level of the impropriety of the act committed. In most situations, mothers due their constant exposure to the child tend to chastise severally, while the father wrath is reserved for severe cases of misconduct. It is believed that the essence of punishment is not to hurt the child but to train it. It is common opinion that children inherently possess wild tendencies and they can only be tamed with canes and whips;

*Ex 88. Aya omode ni were di si, ore ni yo lejade-* children are naturally wild and can only be tamed with canes

Respondents however described the nature of corporal punishment as follows;

- a. That beating a child should not be the first means of correction. Correcting a child often starts from oral warnings, by which if it does not heed, the caretaker may apply other methods which also includes starving the child of necessities or luxuries.
- b. While administering physical punishment, the guardian should ensure that the child is aware of his/her misconduct or actions warranting the punishment.

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<sup>237</sup> APPENDIX 3.3

- c. Excessive corporal punishment can become ineffective and cease to achieve its essence. It is very common for children to become used to such inflictions of pain.
- d. That corporal punishment is in levels. It starts when an infant is lightly slapped with the hand, to the use of slim canes for young ones, and includes the severe beating and canning of teenagers and older children with more designated object such as canes (pankere) or horse whips(koboko).
- e. There is an implied delegation of the duty to chastise on other persons and members of the community who may not hesitate to punish or discipline a naughty or recalcitrant child who has misbehaved.

**Ex 92.** *Omo ti a ko ko ni le ita ni yo ti kogbon wa-* A child not trained at home is bound to be taught by outsiders

- f. Corporal punishment may be imposed by the family, other adults in the community, schools and other prominent disciplinarian or military organizations.
- g. Punishment no matter how severe must be appreciated by the child as its parents way of showing it love and directing it towards good living. It is believed that the child that refuses to amend after being disciplined is paving way for its own destruction.**Ex 93.** *eni ti a ba n bawi to warunki yo parun lojiji ni-*a child that despises counsels is set to perish
- h. Corporal punishment should not be applied on a child when the guardian is extremely provoked. There is the common perception that child punishment must be in moderation, as if a care taker decides to chastise a child in equal to the its misdeeds, he could end up killing or disabling the child.

**Ex 89.** *Ogede dudu o ya abupon, omo buruku o ya alupa-* You do not cut a banana in order to ripen it, you cannot also beat a recalcitrant child to death in order to change it.

**Ex 90.** *Ta ba fi omo we omo a o lu ikan pa-* If one compares children he or she will frustratingly illtreat the inadequate one

**Ex 91.** *Keke logun, awo ile owu<sup>238</sup>;*  
*Abaja logbon, awo won ode Eyo:*

Abaja symbolizes wisdom, initiate of Eyo

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<sup>238</sup> Wande Abimbola(1977), Awon Oju Odu Mereerindinlogun, Okanran meji verse 6, University Press PLC Ibadan 2014 p 57

*Ture Laadota, a di a fun Olunloye:*

*Ti n tikole orun bo wa si taye:*

*Nje, Olunloye mo mo se redun oran:*

*Bi aaya ti n ponmo:*

*Lamere o si ma pon:*

*Olunloye mo mo se redun oran:*

*Agba ti ko binu lomoo ree po:*

*Aipe, aijina:*

*E waa ba ni ni wowo omo:*

Ture is number fifty, a divination was made for Olunloye

Who was making a trip from heaven to earth

Believe problem shall not befall Olunloye

Like a monkey backing its baby

Lamere would back as well

Believe problem shall not befall Olunloye

An elderly person of calm temperament is bound to have multitude of children around them

Not a long time after

You will have with me plenteous children

#### **4.3.5. Limitations on Parental power and obligations.**

##### **4.3.5.1. Maturity.**

Parents have the obligation to cater for their children until maturity. The age of maturity varies, and may be gauged at anytime generally after 16<sup>239</sup> years and subject to the Childs physical growth and appearance.

*Ex 94b. Omobirin n gun mu inu e n dun, ko mo pe*

*nkan ti yo le oun kuro nile baba ohun niyen-*

A young girl may be excited when her breasts sprouts, but she would not know that, the same development is bound to trigger her exit from her fathers house.

Girls generally reach the maturity age before boys. Also parents are expected to have fortify children with appropriate education and knowledge enough to make them independent at maturity. For the girl's maturity begins not only when she starts menstruating but when by social opinion she has the general features and attributes to withstand sexual intercourse, child bearing and marital pressure. On the part of the boy child, he is mature when he becomes physically built and economically capable of taking care of himself and at least his immediate family.

<sup>239</sup> *Okwueze v Okwueze(1989) 5SC 186* where the court held that the age of 16 can be considered to be reasonable age below which a customary court would consider the issue of custody of children of a customary law marriage.

## Attributes of Maturity

a. **Marriage**<sup>240</sup>. Appropriate permission to marry is often subject to physical and economic maturity of spouses especially the man. However, it is uncultural and demeaning for the female to woo the male. It is the traditional responsibility for the man or his family to identify and engage the woman they desire as the man's wife. At marriageable age the girl must have received enough training on marital virtues which includes submissiveness, patience and hospitality. *Ex 95. Obirin so iwa nu won ni ko ni ori oko*-A woman lacks character, but laments that she is not destined to marry.

For the man he must be ready to provide the finances and also learn to be very patient in his interactions with his wife and immediate family members.

*Ex 96. Suru la fi n se oko obirin.* It takes patience to be a woman's husband

While persons are expected to bear children strictly after marriage, this position does not preclude teenage pregnancies and early parenthood especially amongst young persons who are exposed to early sexual interactions due to their family nature or day to day activities on the streets and neighbourhood. Pregnant teenagers are mostly referred to the men who claim such pregnancies. If an expectant father is a dependant too, the responsibility over the young parents is taken over by their grand parents especially the young father's parents. Where no one claims paternity the girls parents nurture the young mother and her child.

b. **Economic Empowerment.** It is generally believed that both the male and female child should be economically empowered for survival. However more attention is given to the boy child considering his primary gender roles. *Ex 96. Ati gbe iyawo o to jo, owo obe lo soro*-The major issue is not marriage, but the ability to maintain the woman and children.

c. **Sexual interaction** Early sexual interaction before marriage by boys is not as strictly prohibited as that of the girls. Despite the contemporary increase in early sexual exposure, a child that matures and settles down (gets married) before having sex, is perceived as more responsible and decent than one that experiments with same outside requisite commitments. The foremost position amongst the Yoruba is that sexual interaction should be differed for marital purposes especially for the girls. However sexual intercourse between very young children or with very little children is highly prohibited.

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<sup>240</sup> APPENDIX 3.4a and b.



#### **4.3.6. Yoruba on Care of Children During Divorce**

A divorce which would rightly be termed as the termination of marriage involves a dissolution of the marital union of a man and his wife<sup>241</sup>. A divorce,<sup>242</sup> in many jurisdictions signify the cessation of the rights and obligations which had prior to the dissolution, made a man and a woman husband and wife. Divorce under Yoruba customary law may be judicial or non judicial. That is, a customary law marriage may also be dissolved without a judicial pronouncement or intervention.

##### **4.3.6.1. A Non Judicial Divorce**

This occurs where the parties without recourse to a court, agree to go their separate ways either with or without the consent of each families, and with or without the return of bride price. Such may also occur when the husband pursues the woman out of the home due to some grievous marital misconduct on a part. Decisions on the custody and care of children in this situation is guilt based. Where there are no extra controversies the man as the legal owner of children often retain the care and control of the mature children, while the woman is given access to them except in extraordinary cases. The absent wife's role is then taken over by the husbands female relatives or by a subsequent wife(s). In other circumstances, the intervention of other parties or elders may be required in order to reach a compromise on the custodial status of the children of the marriage. However, in controversial non judicial divorce, if there is dispute as to who should have the children, women especially when not guilty of misconducts are perceived to be the actual owners of children who should have custody of same till maturity. It is believed that an Abiamo (good mother) if forced to leave her husband's home, must strive to take her young children with her, because the fathers most times cannot handle such domestic responsibilities, and there is a very high tendency for the women who take over her role to maltreat her children. It spells heartlessness when a woman for any reason abandons her young child(ren) in her husbands house. However, no matter the length for which the woman keeps actual custody, it is believed that the children legally belongs to the man's household, by which they also must continue to bear his name.

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<sup>241</sup> Oshisanya L.O 2010;*An Almanac of Contemporary Judicial Statements with Commentaries Volume 11*  
General Civil Law Spectrum Books Limited Ibadan 2010.

<sup>242</sup> *Osborn's Concise Law Dictionary*, Ninth Edition published by Sweet and Maxwell 2001 at pg 139

*Ex 97. Koto oku loku re baba omo lo lomo-*

The fathers right to the child is as definite as a corpse's access to its graveside

*Ex 98. Aya ole la a gba ko seni to le gbomo ole-*

Although a lazy mans wife can be taken, no one can convert his kids

Issues on the care and maintenance of children in cases of non judicial divorces are usually resolved or regulated by family members, elders and leaders in the communities or most times by the personal arrangements of the separating spouses.

#### **4.3.6.2. Judicial Divorce**

The judicial form of divorce is attached to the contemporary judicial system. The customary courts possess the jurisdiction to dissolve customary law marriages and decide consequential issues of maintenance and custody of children of same<sup>243</sup>. Due to its informal status<sup>244</sup>, most of the decisions reached in the Yoruba Customary Court rooms are from the judge's knowledge of the customs after being guided by the facts of the case and also the laws establishing the Courts.<sup>245</sup> They entertain petition for dissolving marriages under native law and custom as contracted within the area of the Court. In deciding the Custody order to be given on specific cases, since enabling laws provides that the welfare and interest of the child must be of paramount consideration, the courts generally grant Sole custody with assess, Joint custody or Shared custody. It is only in exceptional cases of gross misconduct such as maltreatment, incest and violence and others, that the courts will give an order of sole custody without the requisite assess to the children by the other spouse.

The Heads of Courts, subject to the peculiar fact of each case, puts the followings into consideration.

##### **a. The age of the children**

In theory<sup>246</sup> the father is presumed as the legal owner of any child given birth to by his wife, so such children are expected to live with him and not their mother in the case of a

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<sup>243</sup> Customary Courts do not have jurisdiction over issues of child custody where there is no Customary Law Marriage between the parents. Okwueze's Case Supra

<sup>244</sup> The primary efforts are often geared towards the reconciliation of the parties-Olanrewaju Victor v Olarewaju Banji- Suit 10/15,31,July 2015.

<sup>245</sup> The Laws of Oyo State of Nigeria Part 4(18)

<sup>246</sup> Babatunde, E.D. 1992. *Culture, Religion, and the Self: A Critical Study of Bini and Yoruba Value Systems in Change*. Lewiston, NY: Edwin Mellen PresS P8-12

divorce<sup>247</sup>. Customary courts often divide the children between the parties according to their ages. It is believed that if not for divorce, young children are better off with the mother. This implies that little children especially under 7 years are left with the mother while the older ones are given to the father. The custody of the children given to the mother in theory should however revert to their fathers upon maturity.<sup>248</sup> In *Mojeed Ayinde v Safiatu Agbaje*,<sup>249</sup> the petitioner was ordered to maintain her child who was an infant below six years of age and the custody was to subsist until the child became six years old. The recognition of an infant's need for female care gives credence to a mother's claim to physical custody of her young child provided that she satisfies all the requirements for a female custodian.<sup>250</sup> She is generally then entitled to receive custody wages from the father to help her maintain the child. However the entitlement pending custody ends once the child reaches the age of custodial transfer or upon the variation of the court order<sup>251</sup>.

**b. The status /attitude of the party asking for custody**

While the established rule is that the father owns the children and as such they bear his name<sup>252</sup>, in deciding who to take custody of children in cases of divorce, the customary courts consider the presenting status of both parents. This includes their attitude towards the marriage and children and their readiness to take custody of such children. For example if the woman expresses her readiness to keep her children as against her husband who claims such children are bastards. There is a tendency for the court to award the custody of such children to the mother despite the general rules, bastardy being a sensitive and intolerable issue in any Yoruba lineage. In *Kehinde Jimoh v Afusatu Kehinde*<sup>253</sup>, the court denied a man access in a situation where he refused to cater for his wife's anti-natal bills. Upon proof that he had earlier abandoned the woman, the court ordered him to pay up the bills and continue maintaining the child until it becomes six

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<sup>247</sup> In *Okwuezes Case (Supra)*, The court held that the father's absolute right to the custody of his children, will not be enforced, where same will be detrimental to the welfare of the child

<sup>248</sup> *Mojeed Ayinde V Safiatu Agbaje*, Suit 237/2009 Grade C Customary Court At Nalende Area, Mokola Ibadan Oyo State.

<sup>249</sup> Suit 237/2009 Grade C Customary Court At Nalende Area, Mokola Ibadan Oyo State, *Marianne Nwabugwu v Joel C Nwabugwu* Suit No 0/3D/63 Mon Feb 1973 at Oputa pg 69

<sup>250</sup> Suit 237/2009 Grade C Customary Court At Nalende Area, Mokola Ibadan Oyo State.

<sup>251</sup> The Laws of Oyo State of Nigeria 2000 Part 4 18(2) & 45, *Tagbo v Tagbo* 0/ID/71 Friday 10<sup>th</sup> Nov, 1972

<sup>252</sup> *Abiakam & Ors v Anuanwu* (1975) 5ECSLR 305, 310-1, *Nwogugu E.I* 1990; *On Family Law*. Heinemann Studies In Nigerian law, Revised Edition 1990. p 341.

<sup>253</sup> Suit 100/2009 Grade C Customary Court At Nalende Area, Mokola Ibadan Oyo State.

years old when the option to revert custody may be exercised. Often time, in situations where the man is unwilling to have the children<sup>254</sup>, there is the standing practice which tolerates the extended family as probable custodians of the children apart from the parents<sup>255</sup>. The Yoruba law readily awards the custody of children to other members of the man's family when the situation warrants same. For example, when the man is unwilling and the woman is incapable, lazy<sup>256</sup>, or has signified her intention to remarry without a need to take the infant along.<sup>257</sup>

Another practice of the court is that even when custody is given to a financially capable woman this fact does not tamper with her right to the children's<sup>258</sup> maintenance dues from their father. It is settled rule however, that before any of the parent can have custody of any child whether an infant or teenager, he or she must be sane, capable of raising the child, looking after its interests and protecting its physical and moral interests. For this purpose the fact that a mother is already living with another man or she is a serial adulterer<sup>259</sup> may hinder her from having custody of a child even if it is an infant<sup>260</sup>. Basically the financial, social and psychological status of the party asking for major physical rights is often put into consideration. Although the general rule is that, parents may not be deprived of the custody of their children except in situations of established neglect, incapacity (insanity and drunkenness) and ill treatment (incest and extreme physical abuse).The tendency to however deprive an unfit mother of access to her children is higher than that of the father. It is bold saying in Yoruba land that,

*Ex 99. "a lazy man's wife can be taken , but no person can take a lazy man's child away from him"*

Nevertheless a general view of the judicial attitude often revolves around preserving child-parental affinity especially for posterity.

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<sup>254</sup> *Olalere Oladimeji v Olalere Deborah* Suit No 231 2015, 23<sup>rd</sup> September 2015 at Mapo Grade C Customary Court Ibadan

<sup>255</sup> 101/09 at Nalende Area Mokola Ibadan Oyo State.

<sup>256</sup> *Oladele Taibat v Oladele Isiak* Suit No 247/2015 October 2015, Mapo Grade C, Customary Court Ibadan

<sup>257</sup> *Rukayatu Taju V Taiwo Adeniji* 101/09 AT Nalende Mokola Ibadan

<sup>258</sup> *Sikiratu Sina V Sina Liadi* Suit No 772/09 AT Mokola Ibadan.

<sup>259</sup> *Gabriel Adebolu Oladetohun v Grace Olabisi Oladetohun* in Suit No HD/111/70, University of Ife (Nigeria) Law Reports, September, 1972 pg 289

<sup>260</sup> Also if the man is of violent temper, and has been proven to be inappropriate towards the care of his family, he may be deprived of permanent custody see, *Adegbola Tosin v Ikong Thomas*, Suit no 105 2016, 10 May 2016, Ile Tuntun Grade C Customary Court Ibadan.

**c. The status of the children before the divorce**

The whereabouts and the status of the children before the prayer for divorce affects who takes custody eventually between the wife and husband of a customary law marriage. In a situation where all the children had been in the custody of the woman for several years after the man ran away and avoided them, the custody will predictably continue with the woman upon a prayer for same by the woman and establishment of a good case against the man<sup>261</sup>. The status, wishes of the mature children of the marriage before the divorce is usually well considered too, to avoid at best the tendency for a child to lose the best care due to the decision of the court. The maintenance due for the children before the divorce proceeding is considered and there is a very high tendency for the court to award the children especially infants with consideration and adequate financial security after the divorce<sup>262</sup>. The courts also most times in deciding custody matters endeavor to give decisions which protect the patrilineal identity of these children. The courts strive to avoid situations where the woman migrate children from one man to another man in any manner capable of making the children lose their original identity and become strangers in new homes. This fact in addition to others, further re-enforces the reason why the courts often ensure that children relate with their fathers or fathers family.<sup>263</sup> This state of practice is seldomly<sup>264</sup> tampered with unless in rare occasions. In fact in few situations when the custody has to go to the mother, custody is awarded subject to a remarriage of the mother or in other circumstances subject to a contrary action from the child upon its maturity.

**d. The interest and welfare of the child**

In deciding the custody of a child the utmost consideration of a judge is the welfare of the child in question. This in another word means the best interest of same<sup>265</sup>. Obaseki JSC<sup>266</sup> provided a very succinct analysis according to him,

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<sup>261</sup> *Tagbo v Allen (1948) 2 ALLER 413, Tagbo v Tagbo O/ID/71 unreported.*

<sup>262</sup> Part 4(18) The laws Of Oyo State of Nigeria 2000 Vol II Caps 38-54.

<sup>263</sup> *Angelina Ijeoma Okafor v Samuel Maduka Okafor Suit No 0/6D/71 Onitsha Monday 13<sup>th</sup> of Novemebr, 1972.*

<sup>264</sup> *Oputa on Matrimonial Cause, Edited by Ikeazor Akaraiwe 1966-1979 Vol 5 Oputa Law Reports(Oputa LR)P 102*

<sup>265</sup> *Gabriel Adebolu Oladetohun v Grace Olabisi Oladetohun in suit No HD/111/70, University of Ife (Nigeria) Law Reports, September, 1972 pg 289*

<sup>266</sup> *Williams v Williams (1987) 4SC. 32.*

*Where in proceedings before any court, the custody or upbringing of a minor is in question, the court in deciding this question shall regard the welfare of the minor as the first and paramount consideration and shall not consider whether from any point of view, the superiority of the claim of one parent over the other.*

As stated earlier the courts in deciding these cases are given a general discretion to consider in their opinion, what will be in the welfare of the child considering the circumstances of each case.

By the laws,<sup>267</sup>

*“in any matter relating to the guardianship of children the interest and welfare of the child shall be the first and paramount consideration”.*

For an example, the Yoruba practice is that the sex, education, wellbeing and physical tendencies of a child be put into consideration when deciding who to take custody between the estranged parents. The courts often award the custody of the female children to their mothers based on the perception that the girl child has a right to develop her personality under her mother. Importantly this jurisprudence acknowledged the need for the child to be in touch with both parents especially the mother despite the divorce. Divorcing spouses therefore at agreed times can have access to their children after all circumstances have been put under consideration.

**e. Remarriage of Spouses**

A young child is considered safer with its own mother than with a step mother in the case of a subsequent remarriage of the parents. It is however believed that older children upon their parents remarriage have the capacity to choose whichever of the parents they desire to live with.

**f. The Sex of Children-**

Subject to other circumstances, the law considers female children as better with their mothers while, the male children deserve the attention of the father most<sup>268</sup>. For example, In *Okwueze v Okwueze*<sup>269</sup>, The Supreme court emphasized the fact that it is judicially notorious that under the Yoruba customary court the mother usually takes custody of the

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<sup>267</sup> Sections 1&2 Cap 50 CRA LFN 2004, *Mojeed Ayinde v Safiatu Agabje* 237/09 2009 Mokola Ibadan

<sup>268</sup> Section 22, Customary Court Law, Cap 33 Laws of Ondo State.1978

<sup>269</sup> (1989) 5SC 186

daughter, and it is indeed notorious that the father never seeks custody of his daughter, due to the type of care a girls requires.

**g. The previous lifestyle of the children**

Considering the affluence or status of the parents, the courts may consider the existing lifestyle of the children and therefore indulge in decisions which may not destabilize the educational or material status of the child at that point in time.

**h. The wish of the child**

In the case of older children, the court puts the discretion and initiative of the child into consideration. The court will not force an older child to comply with the court order on its custody. Also the courts readily accede to the choice of a child on who to reside with, so far by the discretion of the court, the child is old enough to understand the nature of events. A mix of the above with the facts of the case coupled with the discretion of the Courts enable a pronouncement on custody and such orders become appealable.

**4.3.7. Single Parenthood and Child Care<sup>270</sup>.**

The Yoruba popularly frowns at voluntary options by parents to train children alone. The popular believe is that responsible persons irrespective of the cause of singleness must strife towards finding another partner who will assist them with the care of the children. The impact of single parenthood on the care of the child is dependent on the temperament, discipline, integrity, personality, resources and capacity of the applicable parent. It is also believed that a duty that belongs to two people cannot be successfully exercised by a single person except in few circumstances. However, persons who become single parents as a result of the death or desertion of their partners attract more social sympathy in the course of rearing their children and in contrast to their counterparts in voluntary single parenthood.

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<sup>270</sup> Issues on the guardianship and Custody of indigenous children outside customary law marriages were regulated by the Infant Law Cap 66 Laws of South Western Nigeria 1958.

#### 4.3.8. Death of Parent(s)

Generally, the right to children after the death of a parents vests in the surviving spouse<sup>271</sup>. This position however does not preclude the fact that the father has the legal ownership of children. In many situations, upon the death of the husband, the relatives of the deceased take charge of the children in case a young wife intends to remarry into another family . In circumstances where both parents die, it is the practice for relatives of both deceased's to agree amicably on who takes each child and why. The responsibilities to care are referred to every capable member of the family especially those perceived as economically buoyant .Commonly the husbands family takes priority, with the maternal responsibility vesting on the females, starting from the patrilineal grandmother. The deceased woman's family may however have access to the children or take custody of same, if the patrilineal side does not object. The in locos care givers are prioritised as follows

- i. The siblings of the child where same are mature and capable starting from the eldest child.
- ii. Grand fathers/Great grand fathers ,uncles, brothers or any other person conferred with such roles
- iii. Grandmothers / Great grand mothers, aunties, sisters and any other person they delegate such roles to.

As for the personal estate and properties<sup>272</sup> of the deceased parent(s), same is held by the surviving parent(s) or the applicable guardian in trust for the young children, who are supposed to acquire possession upon their maturity. *In Monisola Aremu Oturarebi v Olowookere Oturarebi*<sup>273</sup> where the father of the deceased husband intended to inherit the house build by his deceased son during his life time for his immediate family. The Court held that in Yoruba land, no custom suggest that a man should inherit his sons personal properties.

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<sup>271</sup> Section 8 of the Infant Law of Ondo State 2008,also see similar provisions in the Infant Law of the South Western State 1958.

<sup>272</sup> The Ijesha Native law on the administration of the movable chattels of the deceased strictly between his/her spouse(s) and children was emphasized in *Madam Olaitan Musibau Alimi v Memunatu Yisa Alimi Suit No ILGC 3/11/98-Oghuru Ilesha, Osun State,13 July 1998*

<sup>273</sup> Suit no ILGC 3/06/98,Grade C Customary Court Ogburu Ilesha,Osun State



#### 4.3.9. Categories of Children

Children are majorly categorized into the male and females sexes. It is believed that all children require equal basic care, as they are also human beings and dependants of their parents.

*Ex 100a. Gbogbo ni omo-* Children are in various genders/children are in varieties

However, the distinction in care arises due to the attribute or peculiarity of each child as identified by societal, religious, biological, hereditary, economic and social factors. The general care as administered on children is therefore presented as follows;

##### a. Unborn children

The care of the foetus is generally given through the mother. The Yoruba believe that it is very important to give the pregnant woman adequate nutrition, proper herbs and appropriate treatment to ease the process of delivery. The hospital is one of several options to child delivery. There are already established units for educating first time mothers on the “dos and donts” in pregnancy e.g. on the types of meals foods that should be avoided, taboos, hygiene, exercises and attitude to sexual intercourse e.t.c. There are unorthodox means of confirming foetal sex. Very importantly, expecting mothers are advise to stick needles, safety-pins or little pebbles inside their clothes in order to deter Emeres and Abikus from switching their children. Pregnant women are also advised to avoid dark places, T junctions, gravesides, wastelands or work in the noon or any other places or period assigned for roaming spirits. Nevertheless in cases of emergency choices during the birth of the child, the mother’s life is preferred to the unborn child’s life;

*Ex 100b. Omi lo danu akeregbe o fo-*

*Although the water has poured, the pot/gourd remains intact*

When there is a paternity dispute over the father of a child in pregnancies, applicable indigenous authorities and also the customary courts decide based on the evidence given by

the parties, their witnesses<sup>274</sup> or superior claims of paternity by another man<sup>275</sup>. Very importantly the legitimacy of such children are finally determined after their birth<sup>276</sup>.

- b. **Female children**-female children are perceived as in need of more sensitive training than their male counterpart. Female children are believed to be more vulnerable to sexual exploitation and molestations. In line with this attitude, it is preferred that a girl child grow under the care, advice and tutelage of a responsible mother or any other female guardian. In the contemporary society the girl child is given the same access to the basic needs of life just as her male counterpart. However, it is believed that no matter how knowledgeable or brilliant the girl child turns out to be, the most important duty she has in life is the ability to maintain and keep her own husband and home. Therefore the prominent training and care the girl child receives, is often channeled towards making her a good wife and mother. This gender code invariably defines her success in the community. It is also believed that girls should not be deprived of finances and attention, as the lack of same, may encourage or expose them to exploitations from marauding males. The focus is to inculcate in the girl child with patience, endurance and submissiveness which ensures that she is not outspoken or pompous whatever her achievements. The girl child must exhibit feminine grace notwithstanding her strength. Female infants are believed to develop the basic motor skills such as sitting, walking, talking etc faster than the boys. They are perceived as naturally better at handling domestic chores and they are trained to multitask. Female children are preferred as the more reliable future caregivers to the parents at old age. It is also believed that female children are vulnerable to witch craft possession than their male counterpart. e.g *Ex 101. Kaka ko san lara iya aje nise lo fi gbogbo omo bi obirin, eye wa n yi lu eye*- Rather than for a witch to become incapacitated, she bears only female children thereby ensuring there are even more witches
- c. **Male children**-the male child is generally given a tougher orientation than the female. It is believed that the male child must be thoroughly built into a full man capable of

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<sup>274</sup> *Bimbo Omole v Gbenga Adewumi Suit No ILGC 3/47/98* at Grade C 3 Ogburu, Ilesha on Monday 25<sup>th</sup> day of May 1998

<sup>275</sup> Other means of proving paternity includes, subjecting witnesses to oath taking, assessing the resemblance between the child and the putative father, reference for blood testing-*Mrs Kareem Taiwo v Olaniyi Kayode* 24 April 2015 at Akesan Grade C Customary Court Oyo town.

<sup>276</sup> *Adebisi Omirin v Folake Omirin Suit No ILGC3/23/96* at Ilesha Grade C Customary Court Ogburu

withstanding any form of responsibility or stress. The man needs to be physically stronger and is trained not to indiscriminately express pains. The male child must be circumcised and should have a closer rapport with the father or any male version in loco parentis. The male child is exposed to the realities of the economic terrain earlier than the females. The parents also vest in themselves, the duty to watch out for his peers and guide him towards successful interaction with persons of like minds and good reputation. The male child is generally preferred due to his ability to retain the familial identity and name after marriage. The male children are perceived as the most reliable heirs to their parents acquisitions and properties. Hence an Ogberete Verse of ifa provides<sup>277</sup>;

*Ex 102. Bi a bi won logun logun:* Even If they are birthed in Scores  
*Babi won logbon logbon,:* Or in a group of thirties  
*Bi ko ba si ako nibe:* If there is no male amidst  
*Bi asan lo ri, Ako ni role:* It is all futility, a male is the heir  
*Abo a yalo, Eyi ni mo bi,:* A female would eventually leave, this is who I birthed  
*Ako ni temi:* A male is my portion

- d. **Hermaphrodites**<sup>278</sup>. This condition is described by respondents as *sokosobo*. It is generally described as an unusual characteristics that may be attributed to natural or spiritual causes. Haemaproditites are hidden and considered as accidents of creation or the handiwork of evil persons for the purposes of punishing their parents. Haemerphrodites are generally forced to retain their obvious sex or isolated from the public. It is however believed that this abnormality may be cured by herbalists if spiritual, or by surgical means if congenital.
- e. **Abandoned children**-Prior to the introduction of Western ideals, it was virtually impossible to abandon children due to the closer level of familiarities and communal interactions. Abandoned children were mostly informally adopted by persons of influence or in need of children. In recent times, the general attitude is to report to the nearest Community leader and as the case may be a police station. Where the police is involved such adoptions are subject to formal permissions by appropriate bodies and handled by Social Welfare Officers.

<sup>277</sup> As recited by an Ifa Priest during an interview at Oshogbo

<sup>278</sup> A condition where the child has both the male and female genitalia or organs

- f. **Ophans.** The care of orphans is very prominent in Yoruba's jurisprudence on good will.

*Ex 103. adie ki ku ka da eyin e nu*-we don't discard a fowl's eggs upon its own death

It is believed that the care to be accorded an Orphan often depends on its parents attitudes and character while alive. Orphans are seen as *Ex 103b Omo gbogbo aye* (everyones child) and same are subject to others or anyones goodwill as inspired by God. It is believed also that orphans from rich background are bound to have more guardians, due to the accompanying benefits and rights of persons in loco parentis to the child inheritance or deceaseds properties. Generally persons are admonished to treat orphans with care because the Supreme Being has special interest in parentless children. In contemporary periods, orphans especially infants are either informally adopted by interested family members or friends of the home. In rare situations where there are no guardians, such children may be handed over to available orphanages.

- g. **Gifted children.** Gifted children are described as those children, whose actions, level of initiative and intellect surpasses their counterparts. It is believed that many of the deities (orisha, ori apesin) were gifted children/ persons. Such children character can be deciphered before or after they are born, if the parents visit Babalawos for their *Esentaye* (prediction of its destiny). Since they do things differently from other humans, their reasoning and dexterities are appropriated as the unique visitation of Olodumare (Supreme God). Upon the discovery of the Childs uniqueness, the parents are expected to protect it from evil persons who have spiritual capacities to tamper with, divert and complicate such brilliancy, destiny and purpose. The child must also be spiritually fortified so that he is not short-lived due to the general envy of his unique star(irawo) by others.

- h. **Autism-** Yoruba preconceive the appropriate motor development in children with different expectation from boys and girls infants. However the earlier the ability to achieve common feat such as sitting, crawling, walking, talking etc, the better it is for the family and child. Where there is unusual delay or lack in coordinated movement, reasoning or fluent speech, the child is presumed as slow, inadequate or disabled. While this term "autism" is still unpopular, the Yorubas do not welcome any form of congenital or post birth deficiency. They pray against same and sometimes attribute such

occurrences to the mothers anti-natal omissions/commissions or spiritual reasons. Children with autism are generally categorized as “ didirin” (imbeciles)

- i. **Disabled children**-disabled are generally perceived to be their mothers primary liability. Congenital disability is attributed to a deficiency in the mothers anti natal treatment or care. The way the parents treat the child's congenital or derived physical challenges is majorly determined by their status, influence and temperament. A child's disability in any form is believed to be a burden from god to the parents. However, prior to the intervention of community homes for the disabled, disabled children are most times abandoned , killed or used for alms begging. It is unfortunate to have a disabled child and only few cases will parents cordially cater for same. In the traditional settings such children may also be left at the care of herbalists who refers to them as Eni Orisha.
- j. **Mysterious children**-mysterious children are those children presumed to have spiritual powers. When such powers are negative, they are subject to varying acts of exorcism. However when such spirits are perceived as positive, the parents and community at large treat the child with utmost respect as advised by the herbalist or Babalawo in charge of its care.
- k. **Illegitimate Children**. Status of “*omo ale*” connotes the birth of a child in a marriage, to anyone other than the husband of the mother. However the status is often not overrated ,when the biological father of a child is known irrespective of the fact that, it was born into another family. How the status of the child is handled is often determined by the actual fathers knowledge of the situation of illegitimacy. The status of illegitimacy maybe known or unknown to the mothers husband. If the father informally adopts an illegitimate child, then same is entitled to the basic care that the legitimate children receive. Otherwise, getting pregnant for another person other than the husband is unacceptable and capable of leading to the end of the marital union. It is also a shameful and condemnable act for a woman to nurture an illegitimate child(ren) secretly, with her husband funds and in her marital home. The position on illegitimate children is however that same should be returned to their biological fathers home.

*Ex 104. Ile to n toro omo ale ibe ni o ti dagba.* When a house is peaceful, watch out, this means the bastard child is not yet grown.

It is however more acceptable for the man to formally nurture illegitimate children in the marriage, as all he needs to do is to acknowledge their paternity in order to legitimize them. Unlike the obvious illegitimate children of the wife, the paternal rule on succession ensures that the fathers offspring whether in the marriage or outside when recognized or acknowledge, becomes entitled to succeed him or inherit his property. On the other hand the illegitimate children of the wife has such personal entitlements, benefits and rights in their own biological fathers house.

1. **Fostered children.** While parents recognize the importance of personal care on their children, there are circumstances when they hand over same to other persons especially family members. Fostered parents are expected to take up the responsibilities of the parents and help with the training of the child till maturity or as agreed. Also such children are expected to perform their duties as children towards their fostered parents. Child fostering may occur;
  - i. When a marriage has broken down and none of the parents wishes to keep the child or the custodial parent is unable to cater for the child
  - ii. When the child's family finds it economically impossible or difficult to cater for the child and therefore needs assistance
  - iii. When the forstoring parent has no child of its own and the natural parents are able to forgo one of theirs for the informal adoption
  - iv. When the fostering parent who is considered as richer, more successful and influential than the natural parents intends that she/he influences the child and train him in a richer and conducive environment.
  - v. If fostering parent owes the natural parents some obligations or gratitude, it is believed that he/she may ease them of familial burden by taking one or more of their children away as a sign of love and affection
  - vi. Parents may voluntarily give out their children to other persons to repay for their indebtedness through the child duties and services to the foster parents.

However, the fostering arrangement is not expected to severe legal ties between the child and its natural parents. Apart from situations of strangers fostering children for economic or other reasons, most fostering arrangement are made with relatives. Often,

parental rights reside and revert to the biological parents as appropriate. A fostered child considers all parents in their various capacities.

- m. **Recalcitrant Children.** These are children who have refused to respond to basic parental forms of discipline<sup>279</sup>. Whatever the level of unruliness, the parent does not conceive the death of such a child;

*Ex 105a. Ogede dudu o yabu pon omo buruku o yalu pa-* You don't cut a banana in order to ripen it, you cannot also beat a recalcitrant child to death

Recalcitrance can either be psychological or physical. It is believed that it is impossible for a well trained child to become recalcitrant but for possible possessions by evil spirits. Other than cases of spiritual causes, this tendency in any child should be blamed on the parents or guardians who also will necessarily suffer the consequent embarrassment. Recalcitrancy arises from lack, either of the basic necessities or of the presence or proper tutelage of a parent or both. There are however suggested ways to rehabilitate a recalcitrant child;

- i. The most important is through prayers because there is nothing impossible for the supreme God. These include the appropriate report of the issue to spiritual leaders or heads for appropriate intervention.
- ii. Subject the child to utmost physical torture, which will preferably leave scars and perpetually remind him or her of the implications of being unruly e.g marks may be made on his body, hands or face after which pepperish ingredients may be applied.
- iii. Such a child may be deprived of basic needs until she/he changes.
- iv. Such may be handed over to an appropriate disciplinarian within the community who employs spiritual, unorthodox or regimented forms of training.
- v. Invite neighbors, elders and other members of the community to help chastise
- vi. Signifying total indifference towards the outcome of the child's lifestyle *Ex 105b. Omo ma pami omo ma pami to bay a adi omo ma pa are re.*

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<sup>279</sup> Scolding, flogging,slapping,counseling etc.

- vii. Disowning the child or sending it out of the home(in the olden days such children may be enrolled into the military)
  - viii. Handling same to Law Enforcement Agencies or Public Remand Facilities
- n. **Domestic Servants (Children).**On a general note child domestic helps are equally entitled to care although they have monetary values.

*Ex 106. Ona lo jin eru ni baba.*-The history might be long, but even a servant is someones child -

However this does not mean that owners of house helps are mandated or required to give servants the same care or attention they give their kids.

*Ex 107. Ibi to wu efufu lele ni dari igbe si, ibi to wu olowo eni ni ran eni lo-*

Some believe that even when masters strive to give servants good care, they are bound to misbehave as they are not real children;

*Ex 108. Idan ni yo pe ara e leru*-Even if adopted as a child, a servant will let itself out as the servant

So the way a domestic servant is treated depends on his or her own attitude to the master and her household. Also the general attitude to maids depends on the goodwill of his/her master. There is no restriction on the age for domestic servitude so far the child is reasonable enough to be sent on errands. It is possible for a little child to be a domestic servant, by which the master should be responsible for its training and development. The attitude to employment of domestic servants however varies. Other persons frown at the employment of other person's children as helps while many perceive same as a means of helping an otherwise hopeless child. Children are preferred in many circumstances due to their smaller statures which connotes reduced expenses, fastness, alacrity and ability to be easily scolded into proper performance.

- o. **Apprentices (children).** Apprentices are children handed over to principals to learn one form of trade or handiwork The child may be made to learn a trade if,
  - i. The parents cannot afford the cost of formal education
  - ii. It is believed that the child is incapable of coping with the rigours of school works



- iii. If the child insists that he/she wants to learn a particular trade
- iv. When the parents have a pre-mandate in forms of prophecies on to the path to the child's economic success.

It is preferable to refer the child to a busy apprentice who is experienced and capable of impacting it rightly. It is believed that upon such handing over, the parents or guardian should hand up some control and thereby enable the principal to mode the child to an independent artisan. Patience is a basic requisite for successful apprenticeship; therefore a child at work must learn to endure every action of the principal, since same is for the purpose of sharpening its skills for future performance. However principals too are expected to threat apprentices with love and ensure that they expose them to the secrets of the trade. Principals are in loco parentis and as such are delegated with the powers to chastise the apprentices.

- p. **Multiple births**<sup>280</sup>. Traditionally the births of multiples are celebrated with cultural rites including dances, special meals and rituals. They are considered as special orishas who deserves the awe attributed to them. Their seniority is decided by their arrangement at birth. The child delivered first is seen as the younger who comes earlier than the older who then comes later. In a multiple birth the rating starts from Taye the youngest, Kehinde the older twin, Idogbe the oldest in triplet, Idoho oldest in cases of quadruplets etc. They are mostly dressed in identical ornaments and the death of any of them is considered as a treat to others longevity. Instead of admitting that a twin is dead, the Yoruba tells an innocent inquirer that the deceased has traveled a long distance to by clothes. The attachment to multiple births especially to twins is further reflected towards the ending part of a the Verse 4 of Eji Ogbe<sup>281</sup> as follows;

*Ex 109. "...Eyeile ni ki Eji Ogbe Kole fun oun Ni ita e,ki oun magbe  
 Oni,Mo bimo meji,mo deiye ile(2ce)  
 Ejiogbe ni eiye yii ye ile looto  
 Niwon ba fi n pe ni eiye Ile  
 Oni ki eiye-ile fi okan ti ko ba fe ninu awon omo na rubo  
 Eiye-ile ni,mi ole fi okan rubo  
 Ejeeji ni mo gbe mi o le pa ikan*

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<sup>280</sup> See orisha ibeji and Orisha ibeta.

<sup>281</sup> Wande Abimbola 1977

*Ejeeji ni mo fera  
Ni eji ba fi ase sip e  
Meji meji ni eiyele yo mabi  
Nigbakugba ti o ba fe bimo”.*

Pigeon requested Eji-ogbe to build a nest for it outside his home for it to reside  
It insists it birthed two chicks and thus become a ‘house-bird’  
Eji-ogbe affirms the bird is worthy of a house  
This resulted in it being called a ‘house-bird’  
He requested the pigeon to sacrifice either one of its chicks  
The pigeon refused to sacrifice either  
Insisting it desires the two and cannot kill one  
It loves the two the same way  
So Eji-ogbe made it a norm  
That a pigeon will have only two chicks  
At any time it gives birth

#### **4.4. Indigenous Yoruba Institutions for the Actualization and Enforcement of requisite Obligations towards Children**

Having it in mind that the Yoruba familial Customary Law system is also potentially polygamous<sup>282</sup>, it is understandable that the structure (whether monogamous or extended) and size of each family determines the parenting approach towards the child. Child rearing begins from the contributions of the primary caretakers at home, where the charity to survive external pressure is initiated. On the primary role of the home in the development of the child, the Yoruba's believe that;

*Ex 110. Ile ni a ti ko eso rode -* Charity begins from home

*Ex 111. Omo ti won o ko ni ile,  
ita ni won a ti ko wa-* a child that is not trained from home will be trained by outsiders...

Also the extent of the child's interaction with other persons is mostly determined by the level of affinity between such third parties and the parents. However, it is also through such exposure with the communal environment apart from the immediate family, that the child aligns its own identity with the values and expectations of the society.

Various social participants perform different but contributory roles in the Yoruba indigenous child care processes. However such contributory roles in the life of the child are not unrestrained, these participants as identified have their socially apportioned influence and expectations.

##### **4.4.1. Parents**

The Biological parents of the child whether within or without marriage are solely responsible for the creation of the child through sexual relations. They are perceived as the primary guardians and courier through whom the child is destined to survive till maturity. As earlier stated they are saddled with the primary task and responsibilities incidental to the birth, rearing and provisions for their children. The role of the father and the mother includes nourishing, protecting and guiding the child in the course of its development to an independent status. However, the fact

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<sup>282</sup> *Chief James Egbuson & Ors v Joseph Ikechiuku* (1977)6 SC.

that these parenting roles are traditionally apportioned between both parents, does not exempt contemporary switches in the duties and responsibilities of each parents. Coupled with the general nurturing, it is through the immediate family that the child is exposed to other requisite persons/ institutions that are relevant for the child developmental process. The external interference with the parental role is therefore considered as secondary and additional.

*Ex 112. Eni bimo oran ni pon-* it's the person that births an infant-terrible that is bound to back same

*Ex 113. Omo olomo o le pa iya oniya –* another person's child cannot stress another's mum to death

*Ex 114. Oju mewa o le jo oju eni-* Ten other eyes (watchers/carers) cannot replace the owners sight (care)

*Ex 115. Ma a se bi baba o le dabi baba ma se bi iya ko le da bi iya-* other's promise to care cannot suffice for the loss of the real parent.

*Ex 116. Ba mi na omo mi ko de inu olomo-* a parent is never sincere about his/her request to another to help chastise his/her child

Nevertheless the ancillary nature of the extra- parental efforts on children is adumbrated by the premises that;

*Ex 117. Eni kan ni bimo igba eeyan ni wo-* Although it's a person that births a child, it takes a multitude to nurture it

The earlier emphasis on parental care of the child , does not preclude a corroborative presumption that such efforts without contributions from third parties are inadequate. Other third persons such as, the siblings, step parents, grand- parents, Parents in laws, friends and other relatives, also reserves the role to ensure a sustained child. Very importantly, the relevance of external intervention is often acknowledged on issues of discipline. Although training starts from home, all members of the society have a role to play in shaping the child's self and orientation towards acceptable norms. Both parents may adopt or alternate authoritative and permissive methods towards the training of the child. However the most important instruction is that all hands should be on deck and opinions be in unity on the best way to train each child. It is believed that the proper training can only be given by parents of different temperament, in which the father is commonly perceived as the disciplinarian, while the mother plays a more

available and liberal role. Both parental attitudes are complimentary and none is considered dispensable. The need for such dual style of child care is behind the Yoruba proverb which says;

*Ex 118. Ti a ba fi owo otun ba omo wi a fi to si fa mora-* after a parent's hand chastises the child, the other hand should draw the same child back into the parent's affectionate embrace.

#### 4.4.2. Step-Parents.

The duties of the step parent(s) towards a child depends on the circumstances in question. In a typical polygyny, each mother attends to the personal care of her child. The role of the step mother(s) in the development of a child depends majorly on the affinity and cordiality between the wives of the father. While a peaceful familial interaction is preferred in situations where the man and his wives reside in the same household, the Yoruba believe that but for exceptional circumstances, a polygamous home is a turbulent setting for any child. It is believed that step parents are prone to tampering with the progress of one another's children out of envy. This mindset is revealed in the popular saying that;

*Ex 119. Ile-olorogun ile ogun ni.* A polygamous home is a place of battle

Nevertheless a Step-mother can step into loco parentis upon the death or divorce of the biological mother. On the other hand, although Yoruba frowns at the woman's tendency to take her ex husband children to new husbands family;

*Ex120. Aiya ole la le gba ko si eni to le gba omo ole-* one can take an irresponsible man's wife but not his children

Nonetheless a Stepfather may informally adopt the children of the new wife. Such adoptions however do not allow for changes, variance or distortions in the children's biological original paternal/ family identity. Since;

*Ex. 121. Eni a fe lomo e wu eni-* The love one has for a parent( especially the mother) determines ones affection towards his/her children

#### 4.4.3. Siblings.

This include the direct brothers and sisters of the child, especially the older ones, who are mature enough to look out and care for the younger ones .Upon the demise of parent(s),the older

siblings if independent are in fact conferred with the responsibility to ensure that the younger ones do well.

On the other hand, Step- siblings are referred to as *Obakan*. The rapport between step siblings is determined by the level of affinity between their mothers or the orientation and control as asserted by their father. *Obakan* consists of children from the same father but not the same mother, while *Iyekan* are of the same mother but not the same father. Subject to peculiar familial rapport the *Obakan* is generally considered as the accepted unit for actions in tangible family matters i.e marriage, inheritance and succession. Meanwhile, *Iyekans* are solely expected to interact based on their maternal ties and affections, since *Iyekans* equally have their own *Obakans* (siblings from their own natural fathers).

#### **4.4.4. Extended Family members**

A general nature of the typical African family is the extended solidarity and harmony between the parents of the child, the generations of grand parents, uncles, aunties, cousins and in-laws. They regard the act of providing for the welfare of the child as a collective duty, which suggests that every member of the extended family in addition to the immediate family, have the responsibility to ensure the welfare of the child. Since no branch of the larger family is dispensable, every one, especially the Elders, hold out for the others. So the inconveniencies that befall one befalls all. Right from the birth of the child the extended family is given access and in some situations may be given temporary or permanent custody of the child in lieu of its parents. For example, the paternal grandmother (or any representative of same) is designated as the familial tutor of the new mother immediately after a child is delivered.

Also, the *Egbe Olobirin Ile* as the larger women's group consists of all the wives of the Child's uncles. The *Egbe Olobirin ile* is described as the inner caucus responsible for deliberating and organizing feminine issues within the family which include marriages and child care. The *Egbe Olobirin Ile* is led by the wives according to their seniority which is determined by their marriage dates. On the other hand the *Iya- Ile* that is, the new child's older aunts/grand mother/great grand mothers and their representatives are presumed to possess more experienced directions on the care of children in line with the applicable rites and generational dictates. This interaction however does not preclude the assisting roles of the child's maternal family members and also the child's family friends and neighbours.

#### 4.4.5. The Family Council

This usually consists of the elderly persons, as headed by the Oldest Male, Bale-Ile (father of the extended family) or his representative, mostly, the “Dawodu”(First Male)<sup>283</sup>. It includes the male heads (*Bales*) of the varying smaller units and their female siblings that constitute the larger extended family<sup>284</sup>. The Council’s role is to ensure the peaceful continuity of the lineage<sup>285</sup>. It is also conferred with the internal arrangements towards settling disputes through relevant adjudicatory purposes. The *Bale-ile* is communally held responsible for the actions and omissions within his family circle .He is to ensure that the offspring of the family members are reputable and do not constitute nuisance to the larger society.

*Ex 122. Agba o si nilu ,ilu baje,bale ile ku ile dahoro-* The town becomes spoilt when there is no elder and the home goes desolate where there is no Bale

The *Bale-Ile* acts based on his own observations or most times, based on reports from concerned relative. In some communities the Mogaji<sup>286</sup>, is designated as the representative of Family Council(s) in an area. The Mogaji who is usually appointed as the oldest or prominent member in the *Agbo-Ile*<sup>287</sup> (family clan) represents *the agbo-ile* in very sensitive, political and complex matters at the township or community level. Among the Ibadan, the Mogaji is the preferred nomination to the Kings stool.

#### 4.4.6. Community

Child care is directly channelled towards the dictates of communal philosophies. Since the child’s immediate community acts as his/her representative at global events, the child must comply with existing codes and be willing to forsake individual idiosyncrasies for communal progress. The child is perceived as a dependant on the system, so there are established traditional practices prescribing the various norms for its care. In reciprocating the allegiance of the child

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<sup>283</sup> *Alh Sumonu Agbabiaka V Akibu Okanlawon Saidu & 11 Ors*(1998)7 SCNJ 305, Chief *T.A.L Akapo Ojora of Lagos v Alhaji H.A Hakeem Habeeb & 16 Ors*(1992) 7SCNJ 119.

<sup>284</sup> In *Moriyamo Adesanya v Otuewu & Ors*(1993) 1SCNJ 77, The Supreme Court held that under Yoruba customary law, where no head of family was nominated by a deceased father of the family or appointed by the members of the family, the eldest surviving male, “the Dawodu” is the head. However, where there is no appointment the eldest male or female if influential can step in to act as the head of the family.

<sup>285</sup> The Bales constitute the more important unit for the continuity of the family identity than the Iyales. In many societies entitlement of the families can only be conferred on the offspring from the male children.

<sup>286</sup> *Lasisi Lasupo Alli v Chief JO Ikusebiala*(1985)1NSCC 662

<sup>287</sup> *Mogaji Latunde V Lajinfin*(1989)5SC 67

and its family, the community offers its solidarity, support systems, social responsibilities and protections. The Community is also basically anchored by the roles of the following establishments;

- a. **Neighbours.** The role of the neighbors in child rearing is in passing. They act as their brothers keeper and there is the perception that;

*Ex 123. Ti ara ile eni ba n je kokokoro buburu ti a*

*ko ba so fun huruhere re ko ni je ka sun loru-*

When a relations/neighbour consumes bad insects and he is not cautioned, his consequent discomfort will give his docile relations/neighboursus restive nights.

Neighbours are expected to report unruly or inadequate attitudes of children to their guardians. Also ,they are allowed to chastise such children moderately on behalf of the parents. They become representatives of parents when the child is out of the sight or confines of the parents or when it is perceived that the child is indulging in acts which its parents or guardians are not aware of.

However such rights and the power of the Yoruba neighbors are fettered by prominent practices and rules. For security reasons children are required to report any favour or act done to them by neighbors. Nevertheless, the stated principle does not affect the overseeing position of all the members of the neighborhood especially the Elderly.

#### b. **Peer group**

The peer group represents the *ore* (friend(s) that a child keeps. A popular Yoruba proverb says

*Ex 124. fi ore re han mi kin mo iru eeyan ti oje-*

show me your friends and I will tell you the type of person that you are

*Ex 125. aguntan to ba ba aja rin yo jegbe-*

A Sheep that keeps a Dog's company will be influenced to also feed on the mess from the wild.

Typical Yoruba guardians/parents strive to ensure that the child interacts with progressive and well mannered persons. It is believed that no matter how cultured a child is, the type of peer influence it is exposed to, will affect his outlook to real life. The peer group represents the cadre to which the child belong and it is mostly representative, for joint references and benefits.



- c. **Elders** : Elderliness is majorly a factor of age<sup>288</sup> and experience as especially reflected by the lifestyle of an adult. An *Agbalagba* is expected to be a blessing to his own family while he equally tutors subsequent generations outside his home. For example, it is believed that,

*Ex 126. Agba ki wa loja kori omo tuntun wo-* a child cannot be wrongly treated where an elder is

*Ex 127 Agba o si nilu ,ilu baje,bale ile ku ile dahoro-* The town becomes spoilt when is no elder and the home goes desolate where there is no Bale

*Ex 128. Agba ti ko binu lomo re po-* An Elderly person of calm temperament is bound to have multitude of children around him.

Any elderly person is presumed to possess superior ability to channel and settle issues relating to the welfare and upkeep of the child based on his older/preferred knowledge and experience of the existing communal rights/dictates.

d. **Religious Centres** –

Yorubas including Christians, Muslims and traditional practitioners also regard their religious leaders and heads as spiritual representatives that are relevant in child care consultation. These are the required institutions for the spiritual and unblemished upbringing of the child. It is the duty of responsible parents and guardians to introduce and submit their children or wards for holy lessons and blessings. In addition, unco-operative children or those perceived as being possessed by evil spirits are often submitted to spiritualists, exorcists or religious sections for cleansing and deliverance.

e. **Teachers-**

Persons who anchor the child religious or academic trainings are often perceived as disciplinarians. Due to the teacher’s perceived dexterity with methods of punishment and discipline, children are seen as more responsive to instructions given by their teachers. Also teachers are described as persons in loco parentis who due to their constant professional observation of the child can decipher the ability or inability of the child in order to advise or train accordingly . Parents freely delegate the control of their children to teachers in order to

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<sup>288</sup> An agba (elder) in this respect will most likely be above the age of 60 years and preferably any man who already has generation(s) of grand offsprings and requisite/positive records of experience. An agba obirin is however expected to be well over the child bearing age.

ensure that they turn out brilliant and intelligent under the regimented and disciplined tutelage.

f. **Traditional leaders/heads**

These are the various persons, designated with the socio- traditional roles relating to children. Such persons are revered due to their expertise and are representatives of the people in Superior Representative Council;

- i. **Iya Abiye** In traditional parlance, the iya abiye, coordinates feminine activities in the community and indigenous/traditional Birth centers. She represents the figure in charge of child delivery and care amongst the locales. She is equally regarded as the head of most female cults or female sect meetings. The *Olori Iya abiye* (Head of women in charge of delivery and survival of children) is the most senior female member of the *Ogboni*<sup>289</sup> confraternity who holds charge for the children and all Iya Abiyes of the applicable communities. The Iya abiyes in every traditional society has the power to consult appropriate orisha or divinity towards exercising her jurisdiction on infertility counseling/treatments, ante-natal, Child birth/delivery and post natal services, children care and counseling ,children healing programmes/procedures and children general welfare services.
- ii. **Baba Ewe/Iya Ewe-** These are the men and women specially selected in religious or social circles, due to their expertise and proficiency in handling young ones. They are attributed with the general tendency to discipline, monitor and ensure that children behave well. A Baba ewe is often someone who has successfully nurtured his own kid and is therefore formally conferred with the duty to contribute and participate in impacting self discipline on the children and youths in his environment. The logo of the Baba ewe or iya ewe is a slim cane, which represent the capacity to chastise naughty children as appropriate.
- iii. **Baale.** The Baale is the uncrowned leader of any community, who performs roles that are very similar to the king but for his non kingly ordination. He is the stool nearest to a

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<sup>289</sup> Ogboni is a fraternal society, indigenous to the Yoruba people. The society is most revered as the most powerful economic, political, religious and social cult. It exercises a superior influence on kings/rulers. Ogboni members used to exercise jurisdiction over high brow offences deserving capital punishments. They also maintained the prisons for offenders. Such powers have however been drastically reduced in recent times.

community area and mostly the first point of records after the family heads. The Baale also performs advisory and adjudicatory roles in disputes settlement after the jurisdiction of the family council. The Baale of the community is the point of recourse before the king and most issues on children and the welfare of same are most likely refer to the bale. Also issues which are or which may become subjects of formal litigation are resolvable by the bale who employs series of ADR methods to ensure that such matters has brought before him are resolved in line with the practices and customs of the land.

- iv. **Oba/King**-He is the sacred ruler amongst the Yoruba, as he achors and sits on the most esteemed stool of each town, community or city. He is the representative of all the sects and religion in his kingdom, as noted by his capacity to wear the crown and other accessories that signifies his uncontested superiority in his area. Although the supremacy of the King orders has been severely tempered by Statutes and English laws, the Oba is still perceived as the reference for wisdom. His palace is mostly located in the centre of his town where he attends to issues of great importance including matrimonial causes and in consultation with his chiefs.

#### 4.4.7. Oral Codes

The Yoruba Oral Traditions consists of Ifa verses, dirge, poetry, proverbs, songs, puzzles, lullabies, folktales, riddles and myths which are passed down the generations. The strength of such oral transfer is emphasized by the saying that;

*Ex 129. Bi omo o ba itan, a ba aroba, Aroba , baba tan-*

If a child doesn't witness history, the child will hear same since such oral information begat history.

Such information are relevant for record purposes and are also used to maintain the moral code and conducts of persons. These Oral mandates, instructions and influence are used to coordinate the subject's conscience while they are also used to demonstrate the consequences of ill behaviors.

These historical statements are inculcated into children, from infancy. So as the child grows, it assimilates such established social morals and ethics.

For example, stories and lullabies are used by narrators to placate, instruct, train and treat the young and infant. **Short stories** come in form of riddles or quizzes by which children are

expected to respond after a proper analysis of the vivid impression as narrated. However, **long stories** are often accompanied with songs about the experiences of other fictitious characters either human or animals, for the purposes of teaching the children lessons on moralities, survival tactics and cultural interaccations.

On the other hand **Proverbs** are statement of comparisons which although seemingly unrelated to the issue at hand reveals the cultural opinion on the applicable matter.

*Ex 129. Kekere ni a ti n pa ekan iroko*

*Bo ba dagba tan, apa ki i ka-*

The roots of the Iroko tree are trimmed early Lest it goes out of hand when old

*Ex 130. Omode to ni oju agbalagba*

*jin Enu e lo wa yen -*

A child that abuses an elder Will realize in a matter of time

**Taboos and Commandments** are instructions which reveal the dos and donts within the society. These are generational information or restrictions that request compliance from faithfuls. The peculiarity of Eewo (taboo) is that, it mostly proceeded by “ A ki I”(we don’t). Some Eewos are usually quoted accompanied by repercussions for contravention. Some Eewo if breached merely attract societal ridicules, some Taboos if contravened allow for redemption and some if disobeyed, leads to very severe consequences with or without provisions for redemptions. Some of the prominent taboos are that;

**Ex 131.** A male child must not be beaten with a broom stick (this will affect the childs male potency)

**Ex 132.**A female child must not fall off its mothers back (the child will become sexually incontinent and must marry up to seven husbands before she settles down)

**Ex 133.** A child must not see some particular masquerades or rites (it will die)

**Ex 134.** A child conceived through sexual intercourse in the forest of open space will become shameless

**Ex 135.** A pregnant woman must not commit adultery with another man other than the father of the child (the child will live a life of penury)

**Ex 136.**A child must not be beaten with foot wears (the child will live a poor life)

**Ex 137.** A pregnant woman should not go out at midnite or midnoon (evil spirits will occupy the foetus/child)

**Ex 138.** A dog must never eat up a new born's placenta (the child will become sexually incontinent)

**Ex 139.** Acts which may constitute generational retaliations from offsprings i.e a child who beats or abuses his parents will bear his/her own child that will beat him up . Such impression is also behind the prohibition of other antisocial acts as incest, premarital pregnancy, parental disrespect e.t.c

**Ex 140.**A mother must not curse a child in her nakedness or with her breast or genitals.(such curses will remain immutable)

However, mere cultural instructions may also be given in similar forms. Although such instructions have no instant expectations, they generally put the subject on a positive cultural standing. For example,

**Ex 141.** Male and female children should be circumscised.(when not circumscised the female child tends to be sexually incontinent.

**Ex 142.** Some parts of the child such as the mouth, the head, buttocks, navel etc must be molded with hot water and some other materials in order to present a cautioned and perfectly shaped child.

**Ex 143.** A child must respect its parents

**Ex 144.** A parent must train its child

**Ex 145.** A child must be given a befitting name on the 8<sup>th</sup> day after birth

**Ex 146.**A male infant should be breastfed for a longer period than the male child.

**Ex 147.** A male infant is not placed in a sitting position earlier than 6 months while the female is four months.

**Ex 148.**A male child should not cry (Ako igi o gbodo Soje)

**Ex 149.**The male child should be preferred in risky and physically demanding encounters (ibi lile la bomo okunrin)

**Ex 150.**A female child must be chaste until marriage

**Ex 151.**A male child must not be dressed in female wears

**Ex 152.** A child must learn to feed, dress and perform all forms of hygienic and respectful activities with the right hand (being the better hand out of both hands).

#### 4.4.8. Alternative Dispute Resolution Processes

The methods and uses of ADR processes such as mediation, arbitration and reconciliation among others, in the course of resolving disputes on childcare is inherent and peculiar to each of the earlier discussed indigenous institutions<sup>290</sup>. Such ADR processes are however believed to have become impossible or shortlived immediately the parties opt for litigation. The formal courts are therefore perceived as acquisitory rather than resolutionary. Hence the saying,

*A o ki n ti kotu bo ka se ore- We cannot return from a court's intervention and remain friends.*

Over the years the mass media especially the television and radio stations have established series of ADR in house and public procedures for intervention in issues relating to marriages and children. Such resolutions processes are anchored by the members of the panel who are respected elderly persons or impeccable character, perceived as experienced enough to resolve issues amongst disputants in line with societal and conscientious dictates. Some of such out of Courts resolution processes are publicized with the permission of the disputants. Such publicity is in order to teach the viewers tangible lessons on conflict resolutions and to act as a form of awareness and restraint on the contesting parties. Most instructions, advice or agreements are made on air, and it is believed that the publicity of the affair is reason enough to influence performance by any reasonable participant or witness. This process may be preferred due to its flexibility and speedy adjudication. The members of the panel are however restrained from interfering in matters that are already in Court or issues that are already subject to police investigations.<sup>291</sup>

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<sup>290</sup> See the discussion on Non Judicial Divorce

<sup>291</sup> Both NTA and BCOS air programmes which may be termed *open court systems* where conflicts (real or imaginary) between persons are resolved by the employment of the Yoruba *omoluabi* philosophy. *Agborandun* is shown on NTA every Saturday at noon for one hour while *So Da Bee* is shown every Sunday afternoon by BCOS for one and a half hours. Both programmes are transmitted in the Yoruba language and are enjoyed by a large number of viewers, primarily because they are shown at the weekend.

## 4.5. Yoruba Customary Law and other Ideas in Parenthood and Child Care

### 4.5.1. Birth options-

The established birth option amongst the Yoruba is through natural delivery of the child which may take place at home, traditional homes, indigenous/religious/ modern maternity homes or private/public hospitals. This procedure by which the baby emerges from the mothers body without surgery is preferred on the perception that it is Gods programme, cheaper and with less side effects. However while the use of Caesarian sessions for child delivery in cases of natal emergencies is reservedly accepted or condemned, the culture generally frowns at the recent trend that promotes voluntary choice of CS as a delivery option without any other necessitating factor precluding natural birth. The preference for natural birth is underscored at the Verse 4 of Oyeku Meji<sup>292</sup> as follows;

*Ex 153. O ye pee, O bo poro*

*A dia fun Oyele akoko*

*Ti won n pe ladie*

*Ti n bimo re lai gbebi*

*Ewe oloyere ki je oruko miiran afi ayunre*

*Yiye nii se tabo*

*Ebo ni se tako*

*Yedi pee o waa bo*

*Omo tuntun lere ayebo*

*Ayebo a domo*

*Bokan oye*

*Okan o le ri bi*

*Ladun ladun n la a bale oyin.*

Ease of Lay and Birth

Ifa divination was made for the first Oyele Akoko

Also called Fowl

It delivers without help

Oloyere leaf does not bear any other name besides ayunre

A female has to survive

Sacrifice makes the lot of males better

An easy delivery

A new born is a reward for ayebo

Ayebo which becomes children

If one does not survive

Another cannot deliver

Plenty sweetness abounds in a bee hive

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<sup>292</sup> Wande Abimbola(1977),Awon Oju Odu Mereerindinlogun,University Press PLC Ibadan 2014 p 15

#### **4.5.2. Maturity age-**

The Yoruba do not have a specific age for marriage, joining armed forces or economic empowerment respectively. The women are expected to reach maturity earlier than men. Mostly the age at which a child is expected to become independent depends on his or her peculiarity. In a typical Yoruba family, the child cannot become independent, married off or left alone unless at the discretion of the parents or guardian unless he is capable of fending for himself/herself. If a woman, she is handed over to an independent custodian who is capable of taking care of her. However the above positions do not preclude circumstantial instances of teenage pregnancies, child labour or situations where young persons are recruited to augment older persons to fight enemies during civil strifes. Maturity in boys is often perceived as a result of the changes in their voices, growth of pubic hair and the capacity to take responsibilities over other persons affairs. The girl becomes mature when at the guardians discretion, she is capable of bearing a child without any complications.

#### **4.5.3. Incest with/between children-**

Incest with children is generally prohibited amongst the Yorubas. It connotes any form of sexual relations by persons who are biologically related especially children. It is a taboo which depending on the level of affinity or consanguinity, is capable of setting the offenders family apart from the general community. Incest is a communal offence that could warrant penalty as high as banishment. However in most situations due to the disgrace attached to such act of indiscretion, family members and all those who are aware, may decide to keep the details of such secrets from the public. It is believed that a child conceived through incest will likely be aborted. However, there is the indigenous expert's opinion on the fact that diabolical, traditional and superstitious persons engage in incest for ritual purposes.

#### **4.5.4. Abortion**

Abortion is generally prohibited amongst the Yoruba by which every child has its own reason for being born. A child is believed to be a living creature right from conception and instances of teenage pregnancies do not inform intentional abortion. However cases of abortion may be tolerated where the child is a product of incest or adultery or in every instances where such a child if born will have no place in the existing milieu.



#### **4.5.5. Celibacy**

Marriage for the Yoruba man or woman is a necessity. Marriage is an accepted institution which everyone must enter. All men and women are expected to marry at the appropriate time, by which persons are not expected to remain single as an alternative to marriage. Men get married even when they are sexually impotent in order to save either their faces or the faces of their immediate relatives, as well as to get one to look after their domestic establishment. However, it is believed that celibacy is entirely antisocial and also a result of modernity and individualism.

#### **4.5.6. Family planning**

The Yoruba majorly refer to the natural means of contraception. As the numbers of children and individual will have is already predestined and no one can stop a child that God intends to put on earth. Nevertheless, since the Yoruba social structure is male-oriented, some of those methods of enforcement of traditional forms of birth control are asymmetrical. The man often decide the number of children he wants .This invariably impose on the woman the duty to comply to the husband's wish.It is believed that any imposed restriction on the man's capacity to procreate or sexually express himself with his wife is capable of leading him into adulterous relations or in fact marrying another woman. It is agreed that although modern contraceptives are popular, however such contemporary methods seems to pose more physical and health hazards to the users especially women, compared to the traditional methods. A prominent restraint on child bearing is also the cultural obligation for the parents especially the mother to restrict themselves when they start having grandchildren. It is believed that parents should always strive to have children when they are still young and agile to cope with child care demands. This attitude is to underscore the fact that children in custody of elderly parents are often more unreasonably indulged than their counter part in younger families. Also, the emphasis on giving birth to the numbers of children that can be catered for by the individual is underscored in Chapter 154 of Osa iwori in the Ifa<sup>293</sup> as follows;

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<sup>293</sup> Ifalere, O.O. 2014. *Iwe Mimo Ifa: Esin Akoda Olodumare*. Lahoo Productions 2014, ISBN:978-978-52603-0-4 p 460

*Ex 154. Osa wonu, Iwori wode*  
*A difa fun Orunmila, o bi omo mefa*  
*Ogbe mefeefa fun Alagbato*  
*Ero Okun, ero osa, e o rifa ijohun bi tin se*  
*Ope de, Onise abise wara*

*Osa inwards, Iwori outwards*  
*Ifa divination was made for Orunmila who had six children*  
*And gave all of them to a surrogate*  
*Everyone, see how the then Ifa does*  
*Ope arrives, one who has a host of deeds*

#### **4.5.7. Single parenthood by choice**

Single parenthood is divided into two categories. The voluntary and the involuntary status. The Yoruba frown on any person either male or female decision to raise children alone and without a partner. Such persons are presumed as promiscuous and are accorded less respect whatever their circumstances. However for involuntary single parenthood either due to widowhood or desertion, such persons are mostly accommodated but however advised and influenced to resettle down with other partners in order to live acceptable societal lifestyles.

#### **4.5.8. Adoption**

The Yoruba society frowns at formal adoption. The tendency to foster and act as guardians to other persons children is so entrenched in the environment, that there is no need for persons to go to take in children whose background they do not know. It is actually preferable that the infertile couples marry other persons in order to sort out their issue than to result into formal adoption or baby buying. Infertility is subject to other superior facts presumed to be the woman's issue. It is believed that there is no permanent ailment of infertility, that all such issues can be resolved at the persistence and efforts of the needy parties. However this does not preclude the fact that the Indigenous Yoruba prefer to opt for informal fostering than go into the public adoption houses to bring children home. In instances where the consanguinity of a child is in doubt, the society regards the child as an outcast. In most situations issues arise on such children's rights to succession and inter communal marriage.

#### **4.5.9. Adoption by same sex**

Same sex relations is prohibited amongst the Yoruba people. They do not regard any union between two persons of same sex as idealistic or legitimate. They also regard the idea of persons of the same sex taking over the care of a child as repulsive and against natural dictates.

#### **4.5.10. Surrogacy**

This type of procedure is perceived in two ways. The financial and the non financial surrogacy. While the financial surrogacy is not accepted as it is believe that a child cannot be bought, the Yorubas acknowledge non monetary surrogacy as a possible intervention between relatives and person of close relationships. However, surrogacy is regarded as a potentially volatile arrangement capable of triggering future issues as envy, revenge and betrayal and blackmails. The general rule is that no human being can exchange the value of his/her biological mother.

#### **4.5.11. Baby Factories**

Parental certainty is of great importance amongst the Yoruba for the purpose of racial survival. Baby factories are perceived as industries which have resulted due to modernization and economic discrepancies. Baby Factories are severally described as a contemporary initiative which could not thrive when the indigenous societal bond was intense. Yorubas regard baby buying as inhuman and frown at all instances that resemble the process. It is believed that a child cannot be bought in the market.

**Example 155:** *Omo o se fowo ra loja-Children cannot be purchased in the market*

#### **4.5.12. Artificial Insemination**

While this is not totally rejected so far it is a modern way of resolving infertility and children are very important to Yorubas. The Yoruba however believe that children from alternative technologies are from machines and procedures and are therefore capable of having other tendencies which may not be as beneficial as that of children from the natural means of conception. The traditionalists infact believe that instead of resulting to technological means,all forms of infertility may be resolved by prayers and appropriate sacrifices, hence by *Verse 5 of Otuurupon Meji*<sup>294</sup> as follows;

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<sup>294</sup> Wande Abimbola(1977),Awon Oju Odu Mereerindinlogun,University Press PLC Ibadan 2014 p 79

*Ex 156. Orogbò lesò, bẹẹ nì kò nì àwẹ  
Agbayun abeso werewere legan  
Eye alukunrin abiye laami laami;  
Adia fun sesengidi  
Ti n sunkun oun ko romo bi  
Won ni ki o kaare, Ojare  
Ebo ni ki o se  
Enikan ki fe omo ku leyin sesengidi  
Omo werewere nile aladi*

Bitter kola has fruits without levels  
Agbayun with plenteous fruits  
Alukunrin bird has broad feathers  
Ifa divination was performed for sesengidi  
Who cried of barrenness  
She was saluted with pleasantries  
Instructed to prepare a sacrifice  
No one finds children scarce behind sesengidi  
Plenteous children in aladi's abode.

#### **4.5.13. Child phonography**

The Yoruba sees this as an invention that comes with modernization. It is seen as a vice and such that must not exist in any decent society with communal bound and respect for children

#### **4.5.14. Immunization**

Immunization is perceived as a routine which must be performed as mandated by the government. The indigenous Yoruba do not see any ailment that cannot be resolved with the use of herbs. As such, some mention instances where children go through negative side effect of immunization and situations where they eventually have the ailment for which they've been immunized against.

#### **4.5.15. Female Circumcision**

Yoruba believe that the refrain from female circumcision is due to the mandatory governmental intervention. The obligation to circumcise female children varies according to each Yoruba society. However, many Yorubas still do not see anything wrong in circumcising female children. They insist that it restrains girls from being wayward and aids smooth child delivery.

#### **4.5.16. Sex Education/teenage contraceptive**

To the Yoruba, there is no need to expose young children to issues relating to sexual intercourse. There is time for everything and so earlier exposure only familiarizes the child with actions and tendencies that corrupts their innocence. To the Yoruba the flavor of childhood is the innocence and but for civilization, children should be protected from sexual innuendos because they cannot participate in same at that age.

#### **4.5.17. Street Hawking**

The Yoruba do not have any reservations against the Child's effort towards reciprocating and augmenting the family resources or any signs that show the child's ability to take care of itself. However, they believe that child abuse is when a child works hard or does hard work but is not judiciously compensated. Childhood is seen as a formative period when a child is expected to work hard and assist its parents as it also grows into an independent adult.

#### **4.5.18. Street begging**

The Yoruba frowns at laziness or any other attempt by an abled person to seek alms from the public. However, such instances of begging are permitted for disabled children or persons who represent deities. An elderly person who begs is regarded as having wasted his early years or as someone who does not have responsible children. The popular mandate is, however, that a person is supposed to freely and unhesitatingly assist another person in need or lack, since such actions are bound to attribute the giver with more blessings from God. Often, regimented offerings to beggars are recommended by traditional spiritualists, as the means by which the giver can appease requisite gods to grant his own positive requests.

#### **4.5.19. Herbal/Traditional Care**

The indigenous Yoruba prefer herbal care to orthodox medicine. It is believed that upon proper incantation, there is nothing incurable with the use of herbs. Herbs are believed not to have side effect and they are perceived as cheaper and familiar compared to the western innovations. Applications of herbs often precede orthodox or may be applied when it is believed that the particular ailment is beyond western clinical capacities. Such traditional medicines are applied on the children orally, through incisions or as applied as in the course of full body birth. The

most common form of child herb is that used to prevent bile in children. It is often applied to all children in the bid to suppress the side effect of their youthful crave for sugary intakes.

## CHAPTER FIVE

### APPLICABLE STATUTORY, INSTITUTIONAL AND INTERNATIONAL REGIMES

#### 5.1. Legislative Sources on the Care of Children under Yoruba Customary Law

As stated in previous sections, the Nigerian childcare laws especially those relating to Yoruba children are not solely customary or indigenous in nature. Apart from the examined customary and indigenous framework, children from the Yoruba group are equally subjected to the jurisdiction of formal laws which include the domestic, the received, the international, judicial and institutional regimes. The mentioned larger framework covers all children. However the research is interested in the parts of this formal rules that are applicable to indigenous children from customary law relation. The examination in this chapter will therefore reinforce the fact that the existing customary law structure for all purposes is bound to interact with above mentioned rules whether favourably or unfavourably. This section contains a descriptive analysis of these formal rules, by highlighting the focal point of each, on children.

##### 5.1.1. Applicable Federal Statutes on Indigenous Children<sup>295</sup>

Governmental interventions,<sup>296</sup> promulgations and all other nongovernmental written rules and regulations are also recognized by the Yorubas as available sources of Child care practices.<sup>297</sup> In Nigeria, Local, State and Federal Parastatals /Laws are established by the government to regulate issues relating to indigenous children. The laws/Institutions applicable to Yoruba indigenous Children are either express or implied, with specific or general jurisdictions over all Nigerian citizens irrespective of culture, affiliation or background. While several Federal and State laws regulate affairs concerning Nigerian children, indigenous children from customary law relations are expressly and impliedly exempted from the jurisdictions of some prominent regulations.<sup>298</sup>

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<sup>295</sup> APPENDIX 3.1

<sup>296</sup> While the indigenes do not have details of applicable Laws, they become aware of such governmental interventions and policies through appropriate sensitization by governmental and non-governmental personnel.

<sup>297</sup> Governmental sources of Child Care laws to the locales, include all formally introduced ideas on children, either National or International. They generally refer to these introduced rules as “Asiko Olaju” (regime of civilization/enlightenment), “Ofin Oyinbo” (Whiteman’s Laws), or “Ofin Ijoba” (Government Laws)

<sup>298</sup> See the provisions of the Marriage Act, Infant Law of Ondo State, Legal Aid Act 1977 LFN 2004, Penal Code, Matrimonial Causes Act and Evidence Act which are not applicable to Customary Courts

### 5.1.1.1. The Constitution

The Nigerian 1999 Constitution is the grundnorm upon which all Nigerian laws or institutions derive their validities<sup>299</sup>. Constitutional provisions on stated Fundamental Human Rights are applicable to Nigerian Citizens irrespective of age , sex and background <sup>300</sup>.The only express reference to Nigerian children (including Subjects of Customary Law) is under Chapter II Section 17(3) (f) of the Fundamental Objectives and Directive Principles of State Policy<sup>301</sup> .That; *“children, young persons and the aged are protected against any exploitation whatsoever, and against moral and material neglect...”*

Also, an incidental provision of the above Constitution which affects indigenous children is at Item 61 of Part I of the Exclusive Legislative List of the Legislative Powers. The Law provides that, the Federal Legislature shall have the Exclusive powers to regulate<sup>302</sup>;

*“the formation, annulment and dissolution of marriages other than marriages under Islamic law and Customary law including matrimonial causes relating thereto”*

Invariably, the latter provision reserves the Federal powers to regulate, Statutory Marriages and Matrimonial Causes. In this regard, issues on indigenous marriages and children from same, are left under the purview of 36 States , 768 Local Governments and several other indigenous Customary Law practices.

### 5.1.1.2.The Child’s Right Act

The CRA represents the UN Convention on the Right of the Child 1989 as ratified in 1991 and enacted by the Nigerian Federal Legislative body in 2003. By virtue of Section 12 of the Nigerian 1999 Constitution;

- i. *No treaty between the federation and any other country shall have the force of law to the extent to which any such treaty has been enacted into law by the National Assembly.*

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<sup>299</sup> Section 1 of the 1999 Constitution of the Federal Republic of Nigeria

<sup>300</sup> See Section 42(2) which states that No citizen of Nigeria shall be subjected to any disability or deprivation merely because of the circumstances of his birth. Also 18(3)on the Educational Objective for free, compulsory, primary education.

<sup>301</sup> By virtue of Section 6(6c) Chapter II of the 1999 Constitution, the above provision is ideal but not justifiable within the Nigerian system.

<sup>302</sup> Sections 4(2) of the 1999 constitution



- ii. *The national assembly may make laws for the federation or any part thereof with respect to matters not included in the exclusive list for the purpose of implementing a treaty*
- iii. *A bill for an Act of the National Assembly passed pursuant to the provisions of subsection(2) of this section shall not be presented to the president for assent and shall not be enacted unless it is ratified by a majority of all the Houses of Assembly in the Federation.*

While the Child’s Right Act 2003 in its citation provides for and protects Nigerian Children and other related matters, the exclusive enactment of same by the National Assembly can only make its provisions applicable within the Federal Capital Territory alone<sup>303</sup>. By virtue of Section 12 Subsection (2)(3) above, the federal legislature cannot enact laws(including international treaties) on matters which are not within the exclusive legislative list, on behalf of the 36 States, unless the bill has been ratified by a majority of all the houses of assembly in the Federation .The Nation wide application of the Child’s Right Act is therefore subject to the ratification of same by the at least ¾ of the 36 States of the federation. Consequentially, the provisions of this Act as received and enacted, although federal in nature, are only applicable in States that have domesticated same. The affected state governments upon ratification of the Act as their domestic laws must then ensure conformity of all other children laws at the State/Local levels with the provisions of the CRL.<sup>304</sup>

The CRA 2003 enacts the contemporary universal regime on the provisions, protection and enforcement of children’s rights to care. The CRA re-inforces the Best interest principle as applicable in matters relating to all children<sup>305</sup>,provides for the basic rights and responsibilities of all children, adopted the provisions of Section 4 of the Nigerian1999 Constitution for children of various categories<sup>306</sup>,identifies and enacts Parental- Child responsibilities<sup>307</sup>,provides for all Provisional, Protective, participatory and anti-discriminatory forms of care for children<sup>308</sup>,Specifies the procedures for enforcing children’s rights to care <sup>309</sup> ,introduced DNA as a process for determining paternity ,provides for rules for determining possession and custody of children,enacts basic rules for wardship, guardianship, fostering and adoption of

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<sup>303</sup> Section 299 of the 1999 Constitution  
<sup>304</sup> Sections 4(5) of the 1999 constitution  
<sup>305</sup> Part 2  
<sup>306</sup> Section 19 and 20 of the CRA  
<sup>307</sup> Part II Section 3 of the CRA  
<sup>308</sup> Part 3-12  
<sup>309</sup> Part 2 and 3 Generally

children, stipulates laws for the administration of day cares and child minding centres, provides for the establishment of family courts then provided for public/ governmental juvenile reform institutions in addition to public, private and community homes for children . As a result of several international, governmental and non-governmental pressures, over 25 States out of the 36 States of the federation have domesticated the provisions Child's Right Act.<sup>310</sup> The provisions of the State CRL, except in cases of irregular variations<sup>311</sup>, are the same as the content of the Mother CRA save for minor adjustments in order to localize it, to suit the applicable States identities<sup>312</sup>. The South Western region<sup>313</sup> of the Country consists of Six States and all these states have domesticated the provisions of the Child's Right Act.

- i. **Ekiti State.** Ekiti State enacted the Child's Right Law in 2006. The Law is presently cited as the Child's Right Law of Ekiti State<sup>314</sup>. By Sections 149-170 of the Ekiti Law, Family Courts have been inaugurated at the High Court and Magisterial Level.
- ii. **Ondo State** The State domesticated the Child's Right Law in 2007 but is yet to establish the requisite parastatals for its enforcement. The applicable Child Law remains the Ondo State Child and Young Persons Law 2006
- iii. **Osun State** localized the Child's Right Act in the year 2007 and same is presently cited as the Osun State Child's Right Law 2007. The State has also established the Family Courts which contemporarily sit over family issues especially those relating to the enforcement or violations of children's rights but excluding divorce cases<sup>315</sup>.
- iv. **Oyo State** Child's Right Law 2006 provides in Part 1 that the best interest of a child to be of paramount consideration in all actions.;

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<sup>310</sup> According to the UNICEF Fact Sheet ; *Child Rights Legislation in Nigeria* as updated in 2011, all States of the Federation have domesticated the CRA except, Adamawa, Bauchi, Borno, Enugu, Gombe, Kaduna, Kano, Katsina, Kebbi, Sokoto, Yobe, and Zamfara.

<sup>311</sup> Such irregular variations occur when Houses of Assembly amend very prominent Sections of the Law to suit cultural and social agenda. Some States reportedly lowered the minimum age for the purpose of marriage. In Gombe State, the CRL in its preamble provides that the Gombe State adopts the CRA 2003, in line with the culture and tradition of people of the state .

<sup>312</sup> Such minor amendments include the necessary inclusion of the date on amendment, name of states, Address and all other matters that do not go to the issue of the Act.

<sup>313</sup> The South Western Zone consists of six States namely, Lagos, Ogun, Oyo, Ondo, Osun and Ekiti. Although the States were created in different years, they are geographically interwoven within the same area and majorly poses similar cultures, ethnic groups, and common history.

<sup>314</sup> C7 Laws of Ekiti State 2010

<sup>315</sup> The jurisdiction to divorce Statutory Marriages is vested in the available High Courts by the Matrimonial Causes Act.

*“in every action concerning a child, whether undertaken by an individual, public or private body, institutions or service, court of law, or administrative or legislative authority, the best interest of the child shall be the primary consideration”*

In its interpretation Section, the law defines the court as the family court established under Section 152 of the same law. Presently, the State government is yet to establish the Family Courts. The existing juvenile Courts structures therefore retained jurisdictions over issues covered by the Child’s Right Act at both the Magisterial and High Court level.

- v. **Ogun State.** The Ogun State Child’s Right Law commenced on the 19<sup>th</sup> of December 2006. It provides for the establishment of Family Courts and the content of the law reflects the exact intent of the Child’s Right Act 2003
- vi. **Lagos State.** The Lagos State Child’s Right Law was enacted in 2007. In accordance with Section 281 of the Law, the State has also established the Child’s Right Law Enforcement Committee in order to achieve implementation of the Law in the state. In line with the mandate of the CRA, the State already has functioning Family Courts<sup>316</sup> at both the Magisterial and High Court Level.

### **5.1.1.3. The Nigerian Police Act<sup>317</sup>**

The Act is the Federal Law establishing the Nigerian Police Force. As regards children, Sections 121, provides that as a general rule, it shall be the general duties of women police officers to act in issues relating to women and children. Part of the institution’s duties shall be, for the purposes of investigating sexual offences against children, recording statements from Children. Other roles include the attendance of interrogation of children by male police officers, co-ordination of school road crossing duties and crowd control where children are involved. Sections 33(2c) provides for the payment of compassionate gratuity to widows and children of the Nigerian police officers.

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<sup>316</sup> The Family Court Law of Lagos State (Civil Procedure) Rules 2012.

<sup>317</sup> The Police Act 1943 LFN 2004

#### **5.1.1.4. Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2015**

It is the Federal law enacted for the purpose of prohibiting the trafficking of all persons including children. It is charged with all facilities for the requisite investigation of human trafficking offences and the rehabilitation of persons including children who are victims of human trafficking. The Act provides that<sup>318</sup> it is an offence of kidnapping, to entice any person under the age of 18 years out( within or outside Nigeria) of the custody of his legal guardian without the permission of the guardian.<sup>319</sup> Also, the law makes it in offence in Section 19(d) to unlawfully take an unmarried person under the age of eighteen years out of the custody or protection of her parents or guardian.<sup>320</sup> In addition, any one who forcefully or fraudulently takes or entices away a child under 18 years with the intention of depriving any parent guardian or other persons who has lawful care of the child or harbours such a child knowing the circumstances of capture is liable to 14 years imprisonment.

In the contemporary quest to protect the raging crime of child trafficking for domestic slavery and agricultural, economic or sexual labour, the Act Prohibits the;

- i. Employment, requirement, transportation, harboring, receiving or hiring out of a child under the age of 12 years as a domestic worker.<sup>321</sup>
- ii. Employment, requirement, recruitment, transportation, harbouring, receiving or hiring out a child to do any work that is exploitative, injurious or hazardous to the physical, social and psychological development of the child.<sup>322</sup>

#### **5.1.1.5. The Labour Act<sup>323</sup>**

This is the Act enacted for the purposes of regulating employment and labour relations in Nigeria. The Act is in furtherance of the ILO mandate on labour regulations, however with a consideration of the peculiarities in the Nigerian Socio-legal environment<sup>324</sup>. It distinguishes between children and young persons<sup>325</sup>, expressly covers and protects both legitimate and

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<sup>318</sup> Section 19

<sup>319</sup> The Penalty for kidnapping under the law is 14 years.

<sup>320</sup> Anyone who does this is liable to ten years imprisonment without an option of fine

<sup>321</sup> 23(1a)

<sup>322</sup> 23(1b)

<sup>323</sup> Chapter L1 1974 No 21

<sup>324</sup> *Health Practitioner of Nigeria and Association of Community Health Practitioners of Nigeria and 2 Ors v Medical and health Workers' Union of Nigeria & Ors*(2008)37 WRN ISC

<sup>325</sup> Section 91

illegitimate children of employees(54(5)<sup>326</sup>,provides for the minimum age of apprentice as 12 years<sup>327</sup>, provides for the employment of young persons as domestic help outside their homes<sup>328</sup>, prohibits the recruitment of children who are below 15 years in industrial undertaking<sup>329</sup>. Various other provisions of the law specify the type of undertaking or business concerns in which a child or young person may be employed, the formal permissions<sup>330</sup> to be taken in cases necessitating the recruitment of young persons. The Law mandates that a contract of apprenticeship in respect of a young person must be in writing<sup>331</sup>, that persons under 12 years may be employed for light agricultural or domestic work performed in the family.<sup>332</sup> The provisions are that children under 12 must not be made to carry loads that are likely to distort their physical, development<sup>333</sup>, only a child above 15 years can be employed for industrial work and maritime employment<sup>334</sup> and the time frame of work hours for young persons and children in employment and business concerns. It protects children under 16 years from night works, underground jobs, machines operations,<sup>335</sup> stipulates that persons under 15 years cannot be employed in any industrial undertaking else by the permission of the minister,<sup>336</sup> enacts that young persons must not be employed in injurious, unhealthy, dangerous or immoral environment, provides that young persons may not be employed against the wishes of the parents or guardian<sup>337</sup>, exempts issues relating to domestic services from the confines of the labour Act.<sup>338</sup> It enacts the general regulations and prohibitions on the employment of Young Persons on Vessels, subject to the fulfillment of some standards and formal permissions.<sup>339</sup> It provides for the appropriate penalties for the breach of the available child protective rules.<sup>340</sup>

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<sup>326</sup> Section 54(5)

<sup>327</sup> Section 49

<sup>328</sup> Section 49(1)

<sup>329</sup> Section 59(2)

<sup>330</sup> Section 48(2) and 52

<sup>331</sup> Section 50(1) Writing\*

<sup>332</sup> Responsibility not employment, 49

<sup>333</sup> Common thing

<sup>334</sup> Section 61

<sup>335</sup> 59(5a) and 60

<sup>336</sup> Section 59(2)

<sup>337</sup> Section 59(7)

<sup>338</sup> Section 59(8)

<sup>339</sup> Section 60(1)

<sup>340</sup> Section 53 and 64

#### **5.1.1.6.The National Human Rights Commission Act 1995 (as amended 2010)**

The Law established the appropriate bodies for the internal enforcement and promotion of person's rights(including children) as advised by the United Nations General Assembly. The Act created a National Commission to serve as a public and extra judicial mechanism for the enforcement of human right and raise the awareness of the citizenry on available constitutional rights, international and regional instrument and other existing regulations. The commission has the jurisdiction over all matters relating to the promotion and protection of the provisions of all applicable International Treaties.<sup>341</sup>

#### **5.1.1.7.Criminal Code**

The followings constitute the general overview of the Nigerian Criminal Code as regards children<sup>342</sup>;

- a. That a guardian must not allow his child or ward between the age of four years and 16 years to reside or frequent a brothel(else he/she will be liable to pay 100 naira or for imprisonment for 6 months or both).<sup>343</sup>
- b. Any one who intends to cause a womans miscarriage through force, poisoning or application of other noxious thing is guilty of a felony and liable for 14 years imprisonment.<sup>344</sup>
- c. Any woman who causes her own miscarriage by administering substances such as in the above is liable for 7 years.<sup>345</sup>
- d. A supplier or procurer of substances for the purpose of causing a miscarriage is liable for three years<sup>346</sup>
- e. Prohibits the use of children for alms and public begging<sup>347</sup>
- f. A father or mother of a legitimate or illegitimate child under 16 years can physically chastise him or her for misconduct or disobedience<sup>348</sup>.

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<sup>341</sup> The United Nations Charter, UNDHR, ICCPR, International Convention the elimination of all forms of racial discrimination, ICESCR,CEDAW, CRC, African Charter on Human Persons Rights Section 5 and every other instrument to which Nigerian is a party including the African Charter on Rights and Welfare of Children.

<sup>342</sup> Criminal Code Cap C38 LFN 2004 which is applicable in all Nigerian states apart from the Northern States which apply the Penal Code.

<sup>343</sup> Section 222

<sup>344</sup> Section 228

<sup>345</sup> Section 229

<sup>346</sup> Section 230

<sup>347</sup> Section 249

- g. A master may physically chastise his servant or apprentice under the age of 16 years for misconduct or default 295(2)<sup>349</sup>
- h. Allows the delegation of the rights to discipline children either temporarily or permanently from the parents, guardian or master, to third parties. For example, school masters are presumed to have been delegated such powers unless a parent expressly withholds such rights<sup>350</sup>.
- i. A medical personal will not be responsible for any act in good faith during a surgical operation for the benefit of the child or mother<sup>351</sup>.
- j. It is the duty of the family head to provide for the necessaries of a child under 14 years within his household .He is responsible for the consequences of his non performance on the life or health of the child whether the child is helpless or not.<sup>352</sup>
- k. Any master or mistress must provide necessaries for his servants or apprentice under 16 years. Hes responsible for the consequences of the omission to do on the life and health of the apprentice or servant.<sup>353</sup>
- l. Prohibits intentional abortion 307<sup>354</sup>
- m. Provides for careful and adequate care during child delivery <sup>355</sup>.
- n. Provides penalty for infanticide(causing the death of her child under 12 months)
- o. Prohibits anyone from causing a still birth <sup>356</sup>
- p. Prohibits anyone one from concealing the delivery of a child.<sup>357</sup>
- q. Prohibits anyone who abandons or exposes a child under 7 years to grievous bodily harm <sup>358</sup>
- r. Protects children under 12 years from acts constituting child stealing, child enticement, child detention, child harboring and all other processes of intentionally depriving parents of

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<sup>348</sup> Section 295

<sup>349</sup> Section 295(2)

<sup>350</sup> Section 302

<sup>351</sup> Section 297

<sup>352</sup> Section 301

<sup>353</sup> Section 302

<sup>354</sup> Section 307

<sup>355</sup> Section 309

<sup>356</sup> Section 328

<sup>357</sup> Section 329

<sup>358</sup> Section 341

their rights to the child custody, unless the action is in good faith and by someone who equally has the right to custody.

- s. Any guardian or parent must provide for a child under 12 years.<sup>359</sup>
- t. Prohibits sexual relations with minors
- u. Provides for caning as a means of punishing a male person who is found by a court to be guilty of an offence but has not attained the age of 17
- v. Allows a blow or other force, not in any case extending to a wound or grievous harm, for the purpose of correction as follows<sup>360</sup> -
- w. a father or mother may correct his or her legitimate or illegitimate child, being under sixteen years of age, or any guardian or person acting as a guardian, his ward, being under sixteen years of age, for misconduct or disobedience to any lawful command;
- x. a master may correct his servant or apprentice, being under sixteen years of age, for misconduct or default in his duty as such servant or apprentice;
  - i. The master of a ship may correct any person on board his ship who is bound to perform any manual labour, for misconduct or disobedience to any lawful command;
  - ii. A father or mother or guardian, or a person acting as a guardian, may delegate to any person whom he or she entrusts permanently or temporarily with the governance or custody of his or her child or ward all his or her own authority for correction, including the power to determine in what cases correction ought to be inflicted; and such a delegation shall be presumed, except in so far as it may be expressly withheld, in the case of a schoolmaster or a person acting as a schoolmaster, in respect of a child or ward;
  - iii. A person who is authorised to inflict correction as in this section mentioned may, in any particular case, delegate to any fit person the infliction of such correction;
  - iv. And (6) no correction can be justified which is unreasonable in kind or in degree, regard being had to the age and physical and mental condition of the person on whom it is inflicted; and no correction can be justified in the case of a person who, by reason of tender years or otherwise, is incapable of understanding the purpose for which it is inflicted

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<sup>359</sup> Section 372

<sup>360</sup> Section 295



#### **5.1.1.8.National Population Commission**

The National Population Commission is established by S. 153 of the 1999 Constitution<sup>361</sup>. The duties vested in the commission by the Constitution at Section 24 and the Third Schedule provides includes the power to undertake periodic enumeration of population through sample survey, censuses or otherwise, establish and maintain machinery for continuous and universal registration of births and deaths throughout the federation,publish and provide information data on population for the purpose of facilitating economic and development planning.

In 2004 the Commission renewed its focus and goals for the purpose of achieving sustainable development through population. Some of the aims as they affect children include , improving the productive health of all Nigerians at every stage of the life cycle,accelerating the response to HIV/AIDS epidemics and other related health issues,achieving a balanced and integrated urban and rural development,achieving a reduction in total fertility rate of at least 0.6 children every five years,increasing the modern contraceptive prevalence rate by at least 2 percentage point per year and also promoting the use of modern and natural family planning methods by couples,reducing the infant mortality rate to 35 per 1000 live births by 2015,reducing the child mortality rate to 45 per 1000 live births by 2015,reducing maternal mortality ratio to 125 per 100, 000 live births by 2010 and to 75 by 2015,achieving sustainable basic education as soon as possible prior to the year 2015,eliminating the gap between men and women in enrolment in secondary school, tertiary, vocational and technical education training by 2015,eliminating illiteracy by 2020.i.e.educate every Nigerian child of full secondary school education,empowering women to widen their economic choices and increase their contributions to the family and the society,immunizing every Nigerian child against preventable communicable diseases,increasing production of food locally,increasing youth employment,providing basic infrastructure in the rural areas to improve the quality of life,protecting the natural environment and promoting economic growth through investment and small-scale enterprises.

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<sup>361</sup> Previously Section 140(g) of the 1979 Constitution also See the National Population Act No 23 of 1989

#### **5.1.1.9. Birth, Death etc (Compulsory Registration Act) 1992**

The law provides for the compulsory registration of all births and deaths of children. It is also the framework for the registration of Adoption Orders, Customary Law Marriages and Divorces<sup>362</sup>. It established birth registrations centres and provides a limited period for the child's registration after its birth<sup>363</sup>. There are also provisions for the registration of deserted children in addition to children born outside wedlock<sup>364</sup>. The law identifies the appropriate officials and persons for ensuring the registration of any child. They are as follows<sup>365</sup>, the parents of the child, persons responsible for naming the child, the occupier of the house where the child is born, doctors at the hospital where the child is born, health workers or officials of the place of birth, persons responsible for baptizing the child, family heads of the child's household, any one above 18 who was present at the time of the birth. The Act provides adequately for the registration of all births in Nigeria irrespective of place of birth, location or circumstances of birth, it allows for the other procedures and details required for such registrations<sup>366</sup>. The Law states that all registration shall be confirmed by the presentation of birth certificates to that effect.<sup>367</sup>

#### **5.1.1.10. Family Economic Advancement Programmes (FEAP)**

It is a programme designed to provide financial and employment benefit for producers of local goods and services. It is specifically established to enhance the financial lifestyle of persons within the low income sector, especially in the rural population of indigenous families. The programmes initiates and co-ordinates the giving of loans and other incentives, in order to enhance manpower, hence, financial productivity at the indigenous family level.

#### **5.1.1.11. Nigerian Children Trust Fund Act 1990**

The Act is for the purpose of providing integrated welfare services and programmes for the benefit of the Nigerian child. The fund is from monies contributed by the government, raised by the board by way of donation or contribution from persons natural or artificial and realized from

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<sup>362</sup> Section 29-24

<sup>363</sup> Section 11

<sup>364</sup> Section 12

<sup>365</sup> Section 8

<sup>366</sup> The National Population Commission is the only agency conferred with the responsibility of registering births in Nigeria. Births are registered through the NPC's Vital Registration Department. The Commission has 36 State offices and other liaison offices in Local Government Areas.

<sup>367</sup> Section 15

investments with the fund for the purpose of satisfying the requirement of Nigerian children in such needy circumstances as may be determined by the board. The Trust is thereafter charged with the responsibilities to make grants to voluntary and also nongovernmental children organizations in the federation ,organize and implement programmes for the welfare of children as embodied in any national development plan for the benefit of children and organize charity dances, shows, exhibitions with other fund raising events as it may deem fit.

#### **5.1.1.12. Armed Forces Act**

This Act which is applicable to army officers provides for the care and maintenance of the children and wife of army officers.<sup>368</sup>Such maintenance provisions cover all children of army officials, whether after divorce, adopted children or children out of wedlock. The Forces Council is to ensure that officers do not neglect their families. If they do, the FC Officer may at his own discretion deduct the apriority maintenance dues from the defaulting officers account<sup>369</sup>.The rules are applicable and regarded as necessary where the child is engaged in a course of education or training even after 18 years. Such monies shall not however be awarded for a child above twenty years. The Customary Courts are also given express jurisdiction under the referenced law, to enhance the transfer of funds and properties of persons subject to the provisions of the Act<sup>370</sup>.In other words the devolution of the Estate of an Officer, may be subject to Customary Rules of succession for the purpose of the widow(er) and child.

#### **5.1.1.13. Nigerians with Disability Act 1993**

The purpose of the Act is to provide for the protection and security of Nigerian with disability including children. This also relates to the determination of standards for the enforcement of their rights under the Nigerian laws;

- a. That equal treatment shall be given to the disabled and other persons and the laws shall ensure that they are well accommodated in to the main stream of the society<sup>371</sup>.
- b. That within the social, economic and political objectives of the government, disabled shall be fully integrated into the society.

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<sup>368</sup> Section 210

<sup>369</sup> Section 211

<sup>370</sup> Section 275

<sup>371</sup> Section 2

- c. They have equal rights, privileges and obligation with other persons under the law and shall be provided with equal and adequate education.
- d. The law recognizes persons with preliminary or permanent certificate of disabilities, capable of restricting their functional ability and also any limitation which causes significant hardship and vulnerability in performing everyday routine.
- e. That disabled shall be provided with free medical and health services<sup>372</sup>
- f. The disabled shall be entitled to a permanent disability certificate.
- g. No tax shall be payable on the importation of health materials to disabled
- h. Disabled shall be provided with free education in public schools at all levels<sup>373</sup>
- i. Provisions of schools and other institutions with disability related curricula and facilities
- j. Provides for the establishment of a national institute of special education.
- k. Ensure that not less than 10% of all educational expenditure are committed to the educational needs of disabled at all levels.
- l. Disabled shall have access to free transportation<sup>374</sup>
- m. Provision of auxiliary social services towards e.g acquisition of prosthetic devices, specialty services, counseling, development, follow up and training services for the betterment and improvements of the disableds emotional and physical image.
- n. All sports facilities , training performances shall be accessible to the disabled.<sup>375</sup>
- o. Telecommunication and media systems shall make provisions to enable the disabled access<sup>376</sup>
- p. To provide public and private funding for legal clinics for the disabled<sup>377</sup>

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<sup>372</sup> Section 4

<sup>373</sup> Section 5

<sup>374</sup>Section 9

<sup>375</sup> Section 11

<sup>376</sup> Section 12

<sup>377</sup> Section 14

#### **5.1.1.14. Universal Basic Education Act 2004/ Compulsory Free Universal Basic Education. UBEC**

The purpose of the law is to ensure a reformation of the Nigerian educational system in order to provide greater access to quality basic education in Nigeria by ensuring a free uninterrupted primary and secondary education for children of school going age, reducing school drop out rate, acquisitions of basic literacy, numeracy and life skill for lifelong education and useful living. It lays emphasis on curriculum diversification to cover individual community needs and aspirations, provision of rudiments of computer literacy, community ownership and participation in schools decision making, the need to ensure continuous teacher professional development, that every parents allow his /her child to complete junior secondary school, enable governments assistance towards uniform and qualitative basic education throughout Nigeria and ensure that every caretaker performs the duty imposed on him under this Act.

#### **5.1.1.15. National Health Act 2014**

This Act defines and provides a framework for the development and management of a concise health system by creating regulated standards for rendering health services, without prejudice to extant professional regulatory laws. The act seeks to promote a spirit of cooperation and shared responsibility among all providers of health services in the Federation and any part thereof, encompass public and private providers of health services, provide for persons living in Nigeria the best possible health services within the limits of available resources; Set out the rights and obligations of health care providers, health workers, health establishments and users; protect, promote and fulfil the rights of the people of Nigeria to have access to health care services. The newly established health system includes all ministries and parastatals of the three tiers of government but extended to include, ward health committee, village health committee, private health care providers, traditional health care providers; and alternative healthcare providers. In addition, the law created Health Care Provision Fund for the management of the health sector. This fund consists of an annual grant not less than 1% National Consolidated Revenue Fund and grants by international donor partners. The funds are to be further managed by the National Health Care Development Agency, as disbursed through each state and the FCT Primary Health Care Development Board for the provision of essential drugs, vaccines and consummates. Also, the National Health Insurance Scheme which will manage the fund for the of

basic minimum package of health facilities and the Federal Ministry of Health will manage the fund for the provision of basic minimum package of health facilities. Through this Act states are also to participate in improving their health sectors through a co-ordinate fund that enables them benefit from the main consolidated funds.

The Act provides health insurance to the class of persons who are deprived, and for the National Health Insurance Scheme to provide health coverage which will cover pregnant women, children who are under five years, the elderly and the physically challenged persons. It envisages improved funding of health care services at the grassroot in order to reduce the need to travel far to access medical services. Very importantly, the law introduced the National Council on Health as the highest policy making in the health sector and the body amongst others functions must ensure the certification of standards in order to reduce quackery, ensure that appropriate healthcare personnel attend to the needs of users and also the appropriate prosecution of offenders under the legislation. The Act allows appropriate human resource development in the health sector and the enforcement and awareness of rights/obligations of users and healthcare personnel. The Act provides that children between the ages of zero and five years and pregnant women shall be immunized with vaccines against infectious diseases, presents the structures for the coordination of a comprehensive national health system, then emphasised that all entities involved in the provision of healthcare be issued Certificates of standards as also verified and certified by the Research Ethics Committee. It is also the structure that co-ordinates the relationship between private and public health establishments in the delivery of health services. Contemporary provisions of the Act relate to the use, manipulation, transfer and transportation of human genetic material, gametes, zygotes or embryos. The law outrightly prohibits the cloning of human beings.

#### **5.1.1.16. The National Health Care Development Agency**

This is the federal government agency established in 1992 and merged with the National Programme on Immunization (NPI) in 2007. It is the domestic development agency for health, given the mandate to enable innovative progress in the development of Primary Health Care through the wider interactions with the Local Government Areas (LGAs). It is charged by the World Health Organisation to;

- a. Improve access to Primary Health Services and ensure that communities have access to available health, maternity, pediatric facilities and health insurance.
- b. Control preventable and communicable diseases i.e polio and reduce the spread, occurrence and impact of diseases through immunizations and other preventive and protective methods.
- c. Mobilize and coordinate stakeholders such as Ministries, Departments and Agencies to support and promote the implementation of Primary Health Care.
- d. Improve access to, and make basic health services available to communities through competent services and basic health facilities.
- e. Promote community participation, ownership and responsibility for health through Ward Development Committees and communication and programmes.
- f. Improve the health care sector and ensure that basic health services are delivered according to established standards and protocols with the users people in view.
- g. Strengthen Zonal structures, State representation, internal communications, monitoring and evaluation, procurement and the financial management system.
- h. Organize systems and structures to deliver effective support services through, for example, PHC guidelines, norms and enabling acts for states and LGAs

### 5.1.2. Local Government Laws/Bye Laws

Section 3 of the Nigerian 1999 Constitution, recognizes 36 States and their Administrative Capitals.<sup>378</sup> Out of the 36 States, 6, namely, Ondo, Osun, Ekiti, Oyo, Ogun, Lagos fall within the South Western region of the country<sup>379</sup>. Section 3(6) of the same constitution further established 768 Local Government Areas as distributed within the 36 States<sup>380</sup>. According to section 7(2);

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<sup>378</sup> Abia(Umaiha), Adamawa(Yola), Akwa Ibom(Uyo), Anambra(Awka), Bauchi(Bauchi), Bayelsa(Yenogua), Benue(Makurdi), Borno(Maiduguri), Cross River(Calabar), Delta(Asaba), Ebonyi(Abakaliki), Edo(Benin City), Ekiti(Ado Ekiti), Enugu(Enugu), Gombe(Gombe), Imo(Owerri), Jigawa(Dutse), Kaduna(Kaduna), Kano(Kano), Katsina(Katsina), Kebbi(BininKebbi), Kogi(Lokoja), Kwara(Ilorin), Lagos(Ikeja), Nasarawa(Lafia), Niger(minna), Ogun(Abeokuta), Ondo(akure), Osun(Oshogbo), Oyo(ibadan), Plateau(jos), Rivers(port Harcourt), Sokoto(Sokoto), Taraba(jalingo), Yobe(Damaturu) and Zamfara(Gusau).

<sup>379</sup>By Section 3(2& 3) each state as named in the first column of Part I of the first schedule shall consist of the LGA opposite it in the second column of the constitution. The head quarters of the governor of each state shall be known as the capital city of the state as shown in the third column of the said Part I of the First schedule opposite the state named. also see part II of the Concurrent Legislative List at section 1.

<sup>380</sup> Part I of the First Schedule to the 1999 Constitution

The person authorized by law to prescribe the area over which a Local Government Council may exercise authority must take the following into consideration, the practicability of the area, the common interest of the community in the area, the traditional association of the community and administrative convenience.

According to the Fourth schedule of the Constitution, some of the residual functions of the local governments are as follows.

- i. The consideration and the making of recommendations to a State commission on economic planning or any similar body on the economic development of the State, particularly in so far as the areas of authority of the council and of the State are affected
- ii. Establishment and maintenance of cemeteries, burial grounds and homes for the destitute or infirm;
- iii. The registration of all births, deaths and marriages;

Notwithstanding the other functions that may be conferred on a local government council by the House of Assembly of the State, they participate in State governance through the provision and maintenance of primary, adult and vocational education, and the provision/ maintenance of child health care services;

In addition, the 1976 Local Government Reform Law and the Local Government Administration Handbook emphasized the jurisdiction of Byelaws over issues relating to marriage, divorce, custody of children and other incidental matters as derivable from the constitution.

It should be noted that the Nigerian Local Government laws apply to all persons and children within its territorial boundary, irrespective of the cultural affiliation. Bye Laws are enacted and therefore not easily amendable but subject to judicial determination and formal legislative procedures. *Ipso Facto*, all other informal practices or customary law to be applied by indigenous Courts must conform to the existing local government laws of an area.



### **5.1.3. Western Region Marriage, Divorce, Custody of Children and Adoptive Bye Laws Order, 1958**

The above represents the general provisions of the contemporary local government laws on children. It provides at Sections 13, that paternal rights shall normally be awarded to the natural father whether or not such natural father is married to the mother. Provided that, for the husband of the mother to be natural father of any issue, same must be born or conceived by the woman during the period over which their marriage subsists. According to 14(1), when making an order with regard to parental rights over a child, the court is expected to make an order with regard to the custody and upbringing of the child, and for that purpose, the interest and welfare of the child shall be the first and paramount consideration. In conclusion, the Law provides at Section 14(2) that in the case of a paternal dispute in respect of the care of the child, the court may direct that the person to whom paternal rights have been granted shall contribute towards the maintenance of the child while the amount of cash contribution shall be prescribed by the Customary Court.

### **5.1.4. Customary Court Laws and Customary Courts Rules.**

A customary court may be defined as the judicial institution either of inferior or superior Constitutional recognition, which has the jurisdiction to apply and adjudicate on the indigenous laws in an applicable community/area and over persons subject to such laws. Customary Courts in Nigeria include the Area Customary Courts, Customary Courts, District Customary Courts and the Customary Courts of Appeal.

A general overview of Section 6 of the 1999 Constitution reveals that within the Nigerian Judicial system, the Customary Court of Appeal is the only Customary Court that is of superior records. This conclusion is based on the express provision at Section 6(3) as follows;

*“the courts to which this section relates, established by this constitution for the federation and for the states, specified in subsection (5)(a) to (1) of this section, shall be the only superior courts of record in Nigeria; and save as otherwise prescribed by the national assembly or by the house of assembly of a state, each court shall have all the powers of a superior court of records.”*

While the Superior Courts are as glaringly preserved by the Constitution, the creation of the inferior courts are vested in the various States in the exercise of their residual powers. By

Sections 6(5),(k) other Courts not stated in the constitution are within the purview of the States Houses of Assembly. The Law describes the inferiors as;

*“such other court as may be authorized by law to exercise jurisdiction at first instance or on appeal on matters with respect to which a house of assembly may make laws”*

However, while the constitution makes no reference to the powers or existence of the customary courts in the country, it states the Customary Courts of Appeal as a superior court of record for any state that requires same. According to Section 280(1);

*“there shall be for any state that requires it a customary court of appeal for the state consisting of the president and such numbers of judges as prescribed by the state houses of assembly”*

At section 282(1),it provides that;

*“a Customary Court of Appeal of a State shall exercise appellate and supervisory jurisdiction in civil proceedings involving questions of Customary law”<sup>381</sup>*

Also by Sections 281;

- a. The governor shall appoint the president of the Customary Court of Appeal at the recommendation of the NJC subject to a confirmation by the State House of assembly.
- b. The governor shall appoint the a Judge of a Customary Court of Appeal on the recommendation of the NJC.

The powers of the Customary Courts of Appeal are further explained by Sections 282 as follows;

- a. To exercise appellate and supervisory jurisdiction in civil proceedings involving questions of customary laws.
- b. Decide issues over jurisdictions as provided by the house of assembly of the state
- c. Subject to a contrary provision from the house of assembly, in any state where the customary court of appeal exists the president of that court may make regulations for the practice and procedure of the customary court of appeal of the state.

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<sup>381</sup> In states without the Customary Courts of Appeals, appeals lie from the Customary Courts to the High Courts, while in States with the Customary Court of Appeal and State High Courts, appeals on issues of customs go to the former while that of procedure goes to the later.

For the regulation of the unrecorded indigenous Courts, the constitution at section 197(1c) further provides for the establishment of the State Judicial Service Commission at the state level and vests the appointment of the members of this commission in the governor of a State subject to the confirmation by a resolution of a State house of assembly<sup>382</sup>. It provides that the judicial service commission of every state shall consist of the chief judge as the chairman, the AG of the State, the grand kadi of the Sharia court of appeal of the state if any, the president of the customary court of appeal if any, two members who are legal practitioners and who have been qualified to practice as legal practitioners in Nigeria for at least ten years and two non lawyers of unquestionable integrity.

The above Commission is therefore endowed with the powers to create customary courts divisions and deal with issues relating to the appointment, promotion, discipline and other conditions of Customary Courts judges and other officials, subject to the approval of the Governor<sup>383</sup>.

Section 202 of the 1999 constitution further provides that;

*“in exercising its power to make appointments or to exercise disciplinary control over persons, the state civil service commission, the state independent electoral commission and the state judicial commission shall not be subject to the direction and control of any other authority or person”.*

In furtherance of the above provision, Part II of the 3<sup>rd</sup> schedule of the 1999 constitution at C (6c) allows the Judicial Service Commission powers to;

*“appoint dismiss and exercise disciplinary control over the chief registrar and deputy chief registrar of the high court, the chief registrars of the Sharia Courts of the Appeal and **Customary Court of Appeal**, Magistrate, Judges and Members of Area Courts and **Customary Courts** and all other members of the staff of the judicial service of the state not otherwise specified in this constitution.”*

Procedurally the aforementioned Indigenous/ Customary Courts operate a very flexible procedural system as they are exempted from the coverage of the Nigerian Evidence Act 2011<sup>384</sup>. Since each State establishes requisite Customary Courts Rules and Laws, the Local Courts are equally bound to operate within the purview of the State/Bye laws of their Jurisdictions. A general assessment of the Civil Jurisdictions of Customary Courts within South Western Nigeria

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<sup>382</sup> Section 198 of the 1999 constitution

<sup>383</sup> Sections 204 of the 1999 Constitution

<sup>384</sup> 252 and 258 of the Evidence Act 2011

reveals that they determine issues on<sup>385</sup> the dissolution of Customary Law Marriages, custody and guardianship of children of Customary Law marriages and Customary Law land ownership, succession and inheritance.

The examined Customary Courts<sup>386</sup> are generally operated and constituted by at least four officials who are the President, Member, Registrar and Clerk(s). All applicable Customary Courts are conferred with the powers to adjudicate on the welfare and guardianship of children within their civil jurisdictions. However such powers are expressly restricted to children of Customary Law Marriages. A general profile of the South-Western Nigerian, Customary Court framework is as follows;

**5.1.4.1. Osun State** operates three levels of Customary Courts namely;

- a. **Customary Courts**-as regulated by the *Osun State Customary Courts Law and the Osun State Customary Courts Rules 2006*
- b. **District Customary Courts**-as established by the *Osun State district Customary Court Law and District Customary Court Rules 2010*
- c. **Customary Court of Appeal** provided for under the *Osun State Customary Court of Appeal(amended) Rules*

All the above rules are by the permission of the President of the Osun State Customary Court of Appeal, who is also a constitutional member of the Judicial Service Commission. Osun State has 111 Customary Court, 9 District Customary Courts and a Customary Court of Appeal located within the thirty local government<sup>387</sup> area of State.

To qualify as a president of a Customary Court in Osun, the person must not be an illiterate and he must be versed in the Customary Law and usage prevailing in the area of jurisdiction of the court, and he must be of good character. On the other hand, the president of a District Customary

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<sup>385</sup> 22,23 Lagos State Customary Law 2011, Section 19, Customary Court of South Western Nigeria, *Salau v Aderibigbe* (1963)WNLR 80

<sup>386</sup> *Madukolu v Nkemdilim* ((1962)SCNLR 341, *Egba Native Administration v E.L Adeyanju* (1936)19NLR 164

<sup>387</sup> Osogbo, Orolu, Oriade, Olorunda, Ola-Oluwa, Odo-Otin, Obokun, Iwo, Isokan, Irewole, Irepodun, Ilesha West, Ilesha East, Ila, Ifelodun, Ifedayo, Ife South, Ife North, Ife East, Ife Central, Ejigbo, Egbedore, Ede South, Ede North, Boribe, Boluwaduro, Atakumosa West, Atakumosa East, Aiyedire, Aiyedade.

Court unless he is qualified to practice as a legal practitioner in Nigeria for not less than seven years must be versed in customary laws and usage.<sup>388</sup>

The power to appoint, dismiss and exercise disciplinary control over any president or member of both courts are vested in the Judicial Service Commission. The State Laws refer to these Courts as of records<sup>389</sup>. The Customary Courts exercise original jurisdictions in customary law issues while the District Courts exercise both original and appellate Jurisdictions.<sup>390</sup>

Section 17 of the Osun State District Customary Courts and Customary Courts (establishment) law, 2006, states that;

- i. In any matter relating to the guardianship of children ,the interest and welfare of the child shall be the first and paramount consideration
- ii. Wherever it shall appear to a customary court that an order made by that court, should in the interest of a child be reviewed, the court may on its own motion or upon the application of any interested person, vary or discharge that order.

In the course of adjudication, referenced courts are mandated to promote reconciliation among parties, encourage and facilitate amicable settlement of cases. They are also expressly prohibited from adjudicating on issues from Statutory Marriages. The Osun State Customary Courts of Appeal exercises appellate jurisdiction over the earlier mention Customary Courts<sup>391</sup>. At the appeal court, a party may appear in person or represented by a legal practitioner. Where a legal practitioner conducts a matter, he is bound to conduct same till judgment unless allowed to cease acting for special reasons<sup>392</sup>

**5.1.4.2. Ekiti State** has Eight Judicial Divisions consisting of Thirty-One Customary Courts in all the 17 local government<sup>393</sup> areas including the Capital City of Ado Ekiti. These Indigenous Courts are not graded and so they all have jurisdiction over judicial dissolution of Customary Law marriages coupled with the incidental power to adjudicate on the custody and guardianship.

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<sup>388</sup> Section 4 of the Osun State District Customary Courts and Customary(Establishment Law)2006

<sup>389</sup> Section 13 of the Osun State District Customary Courts and Customary Courts Rules 2010.

<sup>390</sup> Section 14

<sup>391</sup> Order 1-18

<sup>392</sup> Order 5

<sup>393</sup> Ado-ekiti, Oye, Moba, Ise/Orun, Irepodun/Ifelodun, Ilemeji, Ikole, Ikere, Ijero, Idosi-Osi, Emure, Ekiti-West, Ekiti South-west, Ekiti East, Efon, Aiyekiire

The Customary Courts are established by the Customary Courts Laws 2014 while the Courts procedures are regulated by the Customary Courts Rules 2014.

**5.1.4.3. Ondo State** has Nine Judicial Divisions and Customary Courts within Thirty Six towns. The Grades A and B Customary Courts are as located in all the available Eighteen Local Governments<sup>394</sup> including the Capital City, Akure. The procedures in the Ondo State customary courts are generally regulated by the Customary Court Rules of Ondo State<sup>395</sup>. The substantial Law is the Customary Court Laws of Ondo State<sup>396</sup> as reinstated in the Customary Court Law of Ondo State<sup>397</sup>. The Grades A Customary Courts are conferred with the jurisdiction over Customary Law Marriages and Custody of children. The State has a Customary Court of Appeal as enacted by the Ondo State Customary Court of Appeal Rules at Cap 41 of the Laws of Ondo State 2006.

**5.1.4.4. Ogun State.** Customary Courts are established by the governor in areas as designated by the Chief Judge of the State. Ogun State has 9 Judicial Divisions, 48 Customary Courts in 21 Local Government Areas.<sup>398</sup> Under the Customary Courts Law and Customary Courts Rules of 1986, The Courts are divided into Grade I and Grade II Customary Courts. Both the Grade I and Grade II have jurisdictions over the dissolution of customary Law marriage and causes or matters relating to children under customary law<sup>399</sup>. The identified courts also have criminal jurisdiction over offences relating to marriage, parental rights and duties as also covered by Section 372 of the Criminal Code. To qualify as a judge of the Ogun State Customary Court, the person must<sup>400</sup> be literate in English and Yoruba language, possess S 75 Certificate or its Equivalence,, must not suffer from any physical infirmity, must not be a lunatic or of unsound mind, must not have been sentenced to death or convicted of an offence of dishonesty but granted pardon, must not have been dismissed from the public service or has served a term of

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<sup>394</sup> Owo, Akoko North East, Akoko North West, Akoko South-East, Akoko South West, Akure South, Akure North, Ese-Odo, Idanre, Ilaje, Ifedore, Ile-Oluji, Irele, Odigbo, Okitipupa, Ondo East, Ondo West, Ose.

<sup>395</sup> Cap 41 of the Laws of Ondo State 2004

<sup>396</sup> Cap 33 of the laws on Ondo State 1978

<sup>397</sup> Cap 41 Laws of Ondo State 2006

<sup>398</sup> Abeokuta South, Abeokuta North, Shagamu, Remo North, Odogbolu, Odeda, Ogun Waterside, Obafemi-Owode, Ipokia, Imeko-Afon, Ikenne, Ijebu-Ode, Ijebu North-East, Ijebu North, Ijebu East, Ifo, Ewekoro, Egbado South, Egbado North, Ado-Odo/Otta,

<sup>399</sup> First Schedule to Section 16 of the Law.

<sup>400</sup> Sections 6

imprisonment. Sections 23 of this Law vests the customary court with jurisdiction in any matter relating to the guardianship of children .It states that for all purposes, the interest and welfare of the child shall be first and paramount consideration.By the rules, the applicable laws in customary courts must not be repugnant to natural justice, equity and good conscience nor incompatible either directly or by necessary implication with any written law for the time being and all provisions also conferred by any other laws, bye laws or equivalence. <sup>401</sup>

**5.1.4.5. Oyo State** has three grades of Customary Courts, namely, Grades A,B, and C. The Grade A Courts have unlimited jurisdiction in matrimonial causes and matters between persons married under customary law or arising from or connected with a union contracted under customary law (excluding any such cause or matter relating to, aiding from or connected with a Christian marriage as defined in section 1 of the Criminal Code.)It equally has an unlimited jurisdiction in causes and matters relating to the custody of children under Customary Law. Presently, 165 Grade C Customary Courts exists in the 33 Local Government Areas <sup>402</sup>of the State. The powers of the Courts are conferred upon them by the Customary Courts Laws and Customary Courts Rules. <sup>403</sup>

**5.1.4.6.** Also, a similar rule on indigenous jurisdictions is stated in Section 74 of the Local Government Law and Part 2 of the Chief Laws of the State.The Regulations on the practice and proceedings of the Court are as made by the Chief Judge of the State. Also the law allows the appointment of legal practitioners and laymen as Presidents of Courts, while accredited chiefs, Mogaji and other responsible citizens are qualified to be members only. <sup>404</sup>For a layman to be appointed as president, he/she must be literate in English and has good Education,be a person of good character and integrity, has fair knowledge of current affairs and be intelligent. The law to be administered in the customary courts are <sup>405</sup>

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<sup>401</sup> Section 20

<sup>402</sup>Surulere,Afijio,Akinyele,Atiba,Sakiwest,Saki East,Oyo West,Oyo East,Ori Ire,Orelope,Ona Ara, Oluyole, Olorunsogo, Ogooluwa,Ogbomoso South,Ogbomoso North, Lagelu, Kajola, Iwajowa,Itesiwaju, Iseyin,Irepodun,Ido, Ibarapa North, Ibarapa East, Ibarapa Central,Ibadan south east, Ibadan South West,Ibadan North West,Ibadan North,Ibadan Central, Atibo, Agbeda.

<sup>403</sup> CAP 41 of Oyo State in the Laws of Oyo State 2000.

<sup>404</sup> Section 4 and 6 Oyo State Customary Court Law

<sup>405</sup> Section 15

- i. Appropriate customary law which so far are not repugnant to natural justice, equity and good conscience nor incompatible with any law for the time being in force
- ii. The provisions of within laws as authorized by Customary Court Law
- iii. Provisions of any enactment of any conferring enactment.
- iv. Rules and Bye laws from the Local Government or Area of the Court.

Section 18 of this Customary Courts Law expressly provides that in any matter relating to the **guardianship** of children, the interest and welfare of the child shall be the first and paramount consideration. Also whenever it appears to a court that an order made by such court, should, in the interest of a child be reviewed, the court may of its own motion or upon the application of any interested person vary or discharge such order.

**5.1.4.7. The Lagos State** Judicial Service Commission was established in 1980. With 20 Constitutionally recognized Local Government Areas<sup>406</sup>, Lagos has 51 Customary Courts graded A, B and C as regulated by the Customary Courts Law Chapter 19 of 1972 as reenacted in the Laws of Lagos State 2005. There are further instruments establishing the powers and jurisdictions of the various grades (especially A and B) as at the year 1982. On the requisite qualifications, a person shall not hold office as member or president unless<sup>407</sup>; he is literate in English language, he possesses at least the General Certificate of Education ordinary level or its equivalent, as well as suitable experience, he is a native of the area of jurisdiction. For Customary Court A, he has attained the age of 35 years and he has not been convicted of any criminal offence involving fraud, dishonesty or moral turpitude. In addition, the court shall have jurisdiction over all persons in Lagos State and like the others shall promote reconciliation on civil causes and matters<sup>408</sup>. Causes to be referred to this courts must have arisen due to the fact that;

- i. both parties are natives of the jurisdiction of court
- ii. if the transaction was entered into in the jurisdiction of the court
- iii. one of the parties is not a native but he has agreed to be bound
- iv. the court shall administer the law of the indigenous area of the court.

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<sup>406</sup> Agege, Surulere, Shomolu, Osodi-Isolo, Ojo, Mushin, Lagos Mainland, Lagos Island, Kosofe, Ikorodu, Ikeja, Ifako-Ijaye, Ibeju/Iekki, Eti-Osa, Epe, Badagry, Apapa, Amuwo-Odofin, Alimosho, Ajeromi-Ifodun..

<sup>407</sup> Section 5

<sup>408</sup> 15, 16 & 18.



Independent of a divorce, Section 23 of the law provides that;in any matter relating to the guardianship and custody of children , the interest and welfare of the child shall be the first and paramount consideration. That the court may vary or review the order of the court on custody by an order of a relative or guardian of the child. Also that the execution of sentences and orders shall be conveyed by the bailiffs, messengers of courts or police officers

#### **5.1.5. Customary Courts Manual.**

The available Customary Court Manual provides that, with regard to decisions on custody of children during the dissolution of marriage, decisions on child custody must not be fault based but hinged on such established grounds as follows;

- a. The custody of a young child who is yet to be weaned should be generally awarded to the mother. Even after it has been weaned and is under five years, the court is likely still to lean more in favour of the mother. This of course, will depend on all circumstances of the case, considering the provisions of adequate care for the child and the nature of occupation of the parties. Also there is the popular perception, that the female child is generally better off with the mother and the boy with the father subject to any special circumstances.
- b. If the court is satisfied that none of the parents is capable of giving the child good care, the court may award custody to someone else, eg a relations as guardian.
- c. Whoever has custody of the child must permit the other spouse access to the child unless the court otherwise directs in any special case.
- d. Whenever necessary the court will make an order for the maintenance of the child and may ask either party to make a contribution.

#### **5.1.6. Restatement of Customary Law of Nigeria as Promulgated by NIALS in 2013<sup>409</sup>.**

The restatement formalizes the popular and vital practices in traditional institutions across the communities in South-West, South-East, South-South and North Central part of the country. It

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<sup>409</sup> Restatement of Customary Law of Nigeria 1-67, as adopted and promulgated by the Nigerian Institute of Advanced Legal Studies at Abuja. 29<sup>th</sup> April, 2013 under Professor Epiphany Azinge, SAN.

concludes that the practices in these areas reflect more unanimity than differences on several issues.<sup>410</sup> It recognizes the existence of traditional institutions for family care, that traditional institutions play a strategic role in the administration of justice in the traditional community. The Restatement also explained the fact that Traditional institutions serve as an effective link between the people and the government. Examined Customary law practices and perspectives were on the rights and duties of husbands and wives to their children, rights and duties of children, parental responsibilities towards children, adoption of children under customary law, custody of children during and after a divorce and widowhood/childhood vis a vis marriages .

## **5.2 Institutional Framework for the Care and Protection of Yoruba Children.**

Overtime, governmental and non-governmental programmes have been put in place both at the national and international level to protect children. In contemporary years, stakeholders have strive to ensure that the practices and procedures on children's Parastatal both at the local or general level aligns with the International position on the welfare of all children irrespective of cultural affiliations. Applicable framework on the Yoruba children comprises of Laws, Policies, Institutions and Agencies established for the purpose of bettering the lot of children by attending to the basic rights as enshrined in Universal and Regional Charters on Child Welfare. This Category consists of all arrangement towards the care and upbringing of children by attending to the three important spheres of their lives;

### **5.2.1. Child Welfare Services<sup>411</sup>**

This is the department of the social welfare services which is accessible to all persons irrespective of familial set up. The National child development department is coordinated under the Ministry of Womens Affairs. The Ministries have the following jurisdictions in addition to the co-ordination of other governmental and nongovernmental children establishments across the states;

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<sup>410</sup> P 4

- i. To help build mainstream the concerns of vulnerable persons including children and disabled persons irrespective of gender, in the national and international development process.
- ii. To work as the national vehicle toward the speedy, healthy, maximum and holistic development of Nigerian children and their potentials towards national development and nation building
- iii. Promoting multi sectional programmes towards the realization of childrens rights in Nigeria, with emphasis on the requisites of the CRA 2003 and the Millenium Development goals.<sup>412</sup>
- iv. Creating public Sensitization and awareness about policies and legislations relating to children in Nigeria.
- v. Promoting responsible motherhood and maternal health
- vi. Working towards the elimination of all social cultural practices that discriminates or are detrimental to the development of female children
- vii. Supporting other NGO and CSO in the actualization of childrens rights
- viii. Advocating for the enactment and the enforcement of the CRA 2003 over board
- ix. Formulates and oversees policies relating to the development of persons living with disabilities
- x. Co-ordination of inter state and intergovernmental activities.
- xi. Co-ordinate rehabilitation processes for recalcitrants, delinquents and addicts.
- xii. Training and coordination of child development personnels
- xiii. Advocacy for the adoption and implementation of international conventions, treaties and protocols relating to children.

At the State levels, each of the South-Western States has her Child Welfare department established within the States Ministry of Women’s Affairs or Ministry of Youths, Sports and Social Development. Each State has just one Child’s development department as located in their requisite Secretariats in the Capital City of Ikeja, Abeokuta, Ibadan, Osogbo, Akure and Ado-Ekiti respectively.

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<sup>412</sup> Post 2015 UN Development Agenda especially MDG 1,3,4,5. See, Millenium Development Goals < *Health Topics* ,retrieved from [http://www.who.int/topics/millennium\\_development\\_goals/en/](http://www.who.int/topics/millennium_development_goals/en/) on 14/May/2017

The general powers of the State Child Welfare Services include;

- i. Access and interactions with all persons or familial set up in relations to children within the state, irrespective of cultural affiliations and background
- ii. To act in the best interest of the child in all issues
- iii. Coordinate respective States services and plans for children and families
- iv. Ensure appropriate residential care, maintenance and developmental arrangements for children within the state.
- v. Interfere, mediate and counsel parents on disputes relating to child care
- vi. Represents and advocates in the best interest of the child in issues relating to its abuse, welfare or reformation
- vii. Coordinates adoption and fostering arrangements within the state.
- viii. Help balance the child's needs vis a vis the parents capacity in order to achieve adequate and possible best provisions for child development.
- ix. Interferes and contributes to the development of the less privileged children which include, street children, domestic servants, child beggars and other children exposed to daily hazards and deprivations
- x. Interact with schools and child development centres towards achieving proper training for otherwise recalcitrant and emotionally destabilized children or others who are in need of special attention and care.
- xi. Participates in the committal of recalcitrants and delinquents into remand and other special centres.
- xii. Interacts with community homes towards provisions of adequate care for children in need of care and protection.

### **5.2.2. The Child's Right Implementation Committee**

The CRA<sup>413</sup> established the Child's Right Implementation Committees at the National, State and the Local Government levels. The Committee membership consists of Government Ministries, Department, Parastatals, Non-governmental organizations, Academia, Children, Child experts, United Nation agencies and the Media. Each Committee at all level is endowed with the

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<sup>413</sup> PART XXIII of the CRA 2003

responsibility of reviewing the States Policies for the implementation of the Provisions of the Child's Right Act, to encourage and promote the recognition and observance of the right and welfare of the child at all levels, to serve as the custodian of the records of child abuse and child protection status of the nation, to initiate and suggest state programmes and plans towards the promotion and enforcement of the stated rights of children, to coordinate activities at the various level of government and organize advocacy activities on the rights and welfare of the child, to prepare and submit periodic reports on the right and welfare of the child to government, the United Nation and the African Union and to perform such other functions relating to the right of the child as may be assigned to it from time to time.

### **5.2.3. Hospitals**

Nigerian health institutions consist of the Federal, State, and Private hospitals without prejudice to the available Private and Community health/Maternity centres/clinics. The establishment and activities of the federal and state owned hospitals are as co-ordinated by the Hospital Services Divisions of the Federal and State ministry of Health respectively while the family health department of the same ministry is concerned with the creation of awareness on Reproductive, Maternal, Neonatal and Child Health and the need for healthy nutrition for infants and young children amongst other vulnerable persons<sup>414</sup>. Within the south western geopolitical zones there are three Federal University Teaching Hospitals with pediatric departments namely the Lagos University Teaching Hospital in Lagos State, Obafemi Awolowo University Teaching Hospital Complex, Ile-Ife, Osun State, University College Hospital, Ibadan, Oyo state. In addition, are the children care departments of five Federal Medical Centers as located in Abeokuta, Ogun State, Ebute-Metta, Lagos State, Ido-Ekiti, Ekiti State and Owo, Ondo State. However while there is no Federal pediatric centre in any of the applicable states, individual States within the SouthWestern region establish and regulate their own children specialist hospitals and also the Pediatric sections of the State owned Hospitals. Nevertheless, more childrens hospitals and maternity centers are established by individuals, NGOs and Local Government for the Communities or by individuals themselves.

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<sup>414</sup> Part 1 of the National Health Act 2014

#### **5.2.4. Day Care and Child Minder Services**

The CRA<sup>415</sup> equally provides for the registration of Child Minding and Day Care Centres. These institutions in line with requisites under the law are expected to cater for children below the age of 6 years on daily basis and on behalf of the parents. Although child minders are expected to assist parents with their children, relatives of such parents or foster parents are exempted from the definition of Child Minders. The Law provides for the maximum numbers of children that a child minder or day care centre can accommodate<sup>416</sup>. Child development officers are allowed to inspect premises, children and records including computers in relation to the services rendered by the above referenced institutions.

#### **5.2.5. The Nigerian Police Force<sup>417</sup>**

CRA at Part 207<sup>418</sup> established in the Nigerian police force, a specialized unit known as the specialized children police unit. This unit is meant to exclusively and frequently deal with children and also primarily engage in the prevention of child offences.<sup>419</sup> The Police unit has the powers to interfere with familial affairs in cases relating to child abuse in order to investigate the allegations on whether the child is injured, abused or is likely to suffer same. Such investigations are done with the collaboration of Development Officers e.g cases of sexual assault, physical assault, maltreatment and neglect of children. It is conferred with the power of arrest and prosecution of culprits in child abuses including person or parents involved in domestic violence, the arrest and prosecution of child offenders, to deal with issues on runaway children, missing children, combating unruly children, mob action and helping children in dangerous circumstances, the provision of temporary protective custody for abused or neglected children until a better accommodation is decided by appropriate bodies or same is returned to its parents, reported cases of child stealing, child harboring or child kidnapping and other offences against children as stated in the Criminal Code and also reported cases of Baby or Child Sales and Local or International Child Trafficking Schemes.

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<sup>415</sup> Section 163-173 Part XIV

<sup>416</sup> Section 164-165

<sup>417</sup> As established by Section 214 of the 1999 Constitution. Other paramilitary Organizations with incidental provision and training on issue for relating to children includes the Prisons Services, National Drugs and Law Enforcement Agency, Road Safety/Fire Service Corps, Nigerian Civil Defense corps, NAPTIP, Immigration Services and all other Emergency response teams.

<sup>418</sup> Part XX on Child Justice Administration

<sup>419</sup> Section 207

Persons with the rights and powers to report cases of abuse include the public/concerned persons, government Child Protection Organizations and other Non Governmental Organisations<sup>420</sup>, community or Child development officers, Local authorities, schools and health care practitioners in clinic or hospitals and NAPTIP-in relations to child victims of domestic servitude and child trafficking. Sections 207 to 112 of the Child's Right Act generally describe the powers of the police on children and young persons. It emphasizes the Child's right to fair hearing, and further compliance with due process and other guiding principles of juvenile justice administration.

#### **5.2.6. NAPTIP**

The Agency as established under the Federal Ministry of Justice, is the creation of Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2013. The body represents the Federal Governmental response to addressing the scourge of trafficking in persons in Nigeria and its attendant human abuses. It draws and direct initiatives toward ending human trafficking. Its focus is to investigate, rescue, rehabilitate and reintegrate victim of human trafficking including children. Its highlighted responsibilities are; to coordinate laws on trafficking in persons and related offences; to adopt measures to increase the effectiveness of eradication of trafficking in persons; to enhance effectiveness of law enforcement agents to suppress traffic in persons; to establish proper communication channels, conduct research and work on improving international cooperation in the suppression of traffic in persons; by land, sea and air; to reinforce and supplement measures in bilateral and multilateral treaties and Conventions on Traffic in Persons<sup>421</sup>; to work in collaboration with other agencies or bodies as the Attorney-General of the Federation, Nigeria Police, Nigeria Immigration Services, Nigeria Customs Services, Nigeria Prison Services, Welfare Officials etc towards possible elimination and prevention of the root causes of the problem of traffic in any person; to take charge, supervise, control and coordinate the rehabilitation of trafficked persons and to investigate and prosecute traffickers.

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<sup>420</sup> UNICEF, USAID and other multitudes of affiliated and non affiliated child related NGOs

<sup>421</sup> See the content of the Transnational Organized Crime Convention and its trafficking in Persons Protocol on the 13th December, 2000. Article 5

### **5.2.7. Community Homes, Registered Children Homes, Voluntary Homes and Voluntary Organizations<sup>422</sup>**

Governmental and non governmental children's homes are established to receive children who for<sup>423</sup> specified reasons do not have or cannot be in familial custody. Officials in Children's Homes are therefore conferred with the rights and powers to perform custodial care giving roles as delegated by the Act<sup>424</sup>.

### **5.2.8. Borstal Institutions and Remand Centres**

Such Centres are established for reformatory, rehabilitation and re-integration services etc for children and young persons.

#### **i. Remand**

These are detention institutions meant to house children awaiting trial for a maximum period of three months pending the determination or disposal of issue. Children in need of care and protection or children as reported by their guardians' or parents may also be kept in such home pending investigations and report of child welfare development officers as to the appropriate facilities or home they may be referred to. Remand homes are established for the purpose of reforming, rehabilitating and reintegrating children inmate through the use of training and educational facilities.

#### **ii. Borstal institutions**

Borstal institutions on the other hand are of maximum security and established for young persons. Such institutions are conferred with the capacity to detain inmates for a longer period than in a remand centre but for not more than three years.<sup>425</sup> The Nigerian Borstal Institutions are under control of the Nigerian Prisons Services System.<sup>426</sup> The objects of Borstal training is to bring to bear every good influence, which may establish in the inmates the will to lead a good and useful life on release, and to fit them to do so by the fullest possible development of their character, capacities and sense of personal responsibility.<sup>427</sup> The inmate is subject to

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<sup>422</sup> Part XXI, XVII and XIII of the CRA 2003

<sup>423</sup> 191,194,196 and 198 of the CRA

<sup>424</sup> Section 198

<sup>425</sup> Section 13(1)

<sup>426</sup> Sections 6 & 7,10 Part iii, Appointment of Prisons orders 1958 under the Nigerian Prisons Act

<sup>427</sup> Section 4,part 1, Borstal and Remand Centre Regulation



observations<sup>428</sup> and redirection in such manners as appropriate for his/her development through procedural exposure to vocational training and educational facilities. Such young persons are also allowed to participate and offer appropriate qualifying examinations which they may require upon their discharge in order to realign and re-adapt appropriately into the society. The rehabilitation of such a child is equally done with the knowledge and co-operation of the parents or guardian of the child if any especially the male relatives.

The Minister has the power to appoint visitors and visiting committee including voluntary visitors for the purpose of performing any other functions towards the administration of the institution.<sup>429</sup>The two Borstal institutions in Nigeria are in Lagos and Kaduna respectively. The institution is established to re programme the child into acceptable attitude and also provides information, skills , experience and knowledge towards self actualization and empowerment. Also the minister has the discretion to transfer any young person reported to be of incorrigible behaviour to adult prisons for the remaining term of sentence<sup>430</sup>.Such young person's after their release shall also be subject to supervision in accordance with the provision of the law<sup>431</sup>.

The training,reception,removal,discipline,control,work,religious,education,general welfare and physical maintenance of inmates is as stipulated and regulated under the Borstal and Remand Centre Regulations 1962, LFN 2004.<sup>432</sup>

### **5.2.9. Policies**

The other National Policies aimed at achieving prominent and enduring developmental, protective and provisional rights of children in Nigeria are as follows:

- i. The National Policy on Education 1999 as revised in 2004
- ii. National Strategic Framework and Plan of Action for VVF Eradication in Nigeria, 2005-2010;
- iii. National Policy on Food and Nutrition 2001;
- iv. National Policy on Child and Maternal Health 1994;

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<sup>428</sup> 11

<sup>429</sup> 8&9

<sup>430</sup>Section 12

<sup>431</sup> Section 13(2)

<sup>432</sup> Part 1 and 2

- v. National Policy and Guidelines on Gender in Basic Education, 2007;
- vi. National Policy on Population and Sustainable Development 2004
- vii. The provisions of the National Gender Policy 2007
- viii. National Reproductive Health Policy and Strategy 2001
- ix. National Policy on HIV-AIDS 2003
- x. National Policy on Health 1998 and 2004
- xi. National Malaria Strategic Plan 2014-2020
- xii. National Policy on the Elimination of Female Genital Mutilation 1998 and 2002

### 5.3. Judicial and Court System on Yoruba Customs and Practices

#### 5.3.1. Customary Courts

Customary Courts of each States are established by the Laws as earlier identified in this chapter<sup>433</sup>. By these laws, customary courts are vested with the jurisdiction for the dissolution of customary law marriages and guardian ship of children<sup>434</sup>. They exercise this power by virtue of their civil jurisdictions as conferred by the States Customary Courts Laws<sup>435</sup>. The customs administered are strictly unwritten but must conform with the other written laws including the Bye Laws of their varying Local Government Authorities. Generally the determinant on issues on custody of children is the welfare of the child. The Courts are very conversant with issues relating to, divorce, custody, maintenance and paternity of children. Also most importantly, enabling laws and the nature of applicable customary laws ensures that the courts seek reconciliation between parties irrespective of differences<sup>436</sup>. Appeals from these courts go to the superior courts as provided by the State Customary Courts Laws.<sup>437</sup> The superior courts with appellate jurisdiction on Customary Law include, the Supreme Court<sup>438</sup>, the Court of Appeal, High Courts or the Magistrate Courts. These listed courts can also refer cases to Customary Courts for primary determination.<sup>439</sup> Apart from the situation in Osun State, there are no District Customary Courts in South Western Nigeria, the Chief Judge or a Judge of the High Court sitting in the judicial division of the Customary Court, acting on his own volition or upon an application by a party, may transfer a cause from a Customary Court to another Customary Court, or a Magistrate Court (Juvenile Court) or High Court.

#### 5.3.2. District Customary Courts

Osun State is the only State within the South Western region with provisions for district Customary Courts. This Court has both original and appellate jurisdiction on Customary Law

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<sup>433</sup> Pp 144-153

<sup>434</sup> *Okwueze v Okwueze* (1989) 5SC 186

<sup>435</sup> Section 22 and 23 of the Customary Law of Lagos State 2011

<sup>436</sup> *Yemisi Awofidipe V Aremu Awofidipe* Suit No ILGC3/150/96, at Grade C 3 Customary Court OGHuru, Ilesha. Section 18 of the Customary Court of Ondo State Cap 33 1978, Cap 41 Laws of Ondo State 2006

<sup>437</sup> Part 5 and 7 of the States Customary Court Law 1986, Part 7 of the Ondo State Customary Court Law of 1978, Instruments Establishing the Lagos State Customary Courts Law 1981, 1982 etc, Part 7 Lagos state Customary Law 2005, Part 7 Lagos State Customary Court 2003, Part 8 of the Oyo State Customary Court 1981-1997 etc

<sup>438</sup> Section 22 of the Supreme Court Act 1960

<sup>439</sup> *Labinjoh v Abake* (1924). 5NLR p.33, *Madukolu v Nkemdilim* (1962) SCNLR 341

issues as conferred on it by the law. The Customary Court of Appeal of Osun State may also transfer proceedings, before judgments<sup>440</sup>, from Customary Courts to District Customary Courts that have jurisdictions over the issue.<sup>441</sup> Such transfers becomes stay of proceedings pending when all records are transferred to the other court<sup>442</sup>. Also appeals lay from Customary Courts to the District Courts and from the District Courts to the Customary Court of Appeal<sup>443</sup>. The appellate courts may then confirm, reverse, vary or quash the decisions or proceedings in question.<sup>444</sup>

### 5.3.3. Juvenile Courts

A Juvenile Court for the purpose of the hearing and determination of cases relating to children constitutes of a magistrate sitting with such other persons called assessors as appointed by the chief judge of the state. Section 5 of the Children and Young Persons Act provides the previous rules and regulations on the welfare of young persons in Nigeria. The law relates to persons below 14 years who are defined as children and those between 14 and 17 years described as young persons. It vests the juvenile courts with jurisdictions to determine issues on three categories of children who may be in need of intervention, i.e. children in conflict with the law, children in need of care and protection and children beyond parental control. In dealing with children in conflict with the law, the operation of the Juvenile Courts is such that,

- i. The juvenile court shall be in another room other than the magistrate court in ordinary sittings<sup>445</sup>.
- ii. The court can adjourn in order to verify that the accused is below the age of seventeen years which brings it within the jurisdiction of the Act.<sup>446</sup>
- iii. Young persons shall not be allowed to interact with adult accused persons in the course of court proceedings and processes.<sup>447</sup>

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<sup>440</sup> Osun State District Customary Courts and Customary Courts Rules 2010

<sup>441</sup> Section 24 of the Osun State District Customary Courts and Customary Courts Law 2006

<sup>442</sup> Section 25

<sup>443</sup> Section 39

<sup>444</sup> Section 41

<sup>445</sup> 6.2 of the Children and Persons Act 1958

<sup>446</sup> 6.3

<sup>447</sup> Section 6.4

- iv. May only commit a child to remand in an approved institution unless the child is of such unruly and depraved character enough to be committed in prison<sup>448</sup>.
- v. A child must be given proper fair hearing
- vi. A parent or guardian will be allowed to witness proceedings and as the case may be may guarantee the child's further good behavior or pay damages or cost as ordered against the child<sup>449</sup>
- vii. Children guilty of homicide and grievous offences shall be detained in any manner as the governor general directs
- viii. No child may be imprisoned but if imprisoned must be allowed to associate with adult prisoners<sup>450</sup>
- ix. No child may be sentenced to death<sup>451</sup>
- x. Such proceeding shall be out of public access<sup>452</sup>
- xi. The details of the child in court may not be published by anyone, save by the permission of the court.
- xii. An arrested child if not arraigned immediately must be granted bail unless the offence is of homicide or it is necessary to remove the child from his previous association or its release would defeat the end of justice<sup>453</sup>.
- xiii. Children may be detained in remand homes or prisons<sup>454</sup>
- xiv. Children may be discharged removed or released from such approved institution on the condition of good behavior and further proper lifestyle.

The Juvenile courts still subsists in States that have not effectively established the family courts system.<sup>455</sup> Other ways by which the court deals with child offenders include dismissing such children of the charge or upon entering into legal recognizance, discharging but placing the child under the supervision of a probational officer, committing the child into a corrective care of a relative or fit parent, making a corrective order sending the offender to an approved institution,

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<sup>448</sup> Section 7

<sup>449</sup> Section 10

<sup>450</sup> Section 11

<sup>451</sup> Section 11

<sup>452</sup> Section 6.5

<sup>453</sup> Section 3

<sup>454</sup> Section 15

<sup>455</sup> Oyo, Ogun, Ondo and Ekiti. Although these States have enacted the Childs Rights Act 2003

ordering that the offender be whipped, ordering the offender or parent to pay fines, damages or costs, ordering parents to guarantee child's good behaviour, committing the offender to detention, imprisonment or any other order in any manner as legally permitted<sup>456</sup> and instructing the probation officer to interact between the child and the public, government or court for the time being, in such a manner, as to reform, rehabilitate and re-assimilate him/her. Under the Law, children in need of care and protection include<sup>457</sup> orphans or deserted children, neglected or ill treated children, children without proper guardianship, destitutes whose parents are imprisoned, children in custody of unfit persons such as criminals or drunkards, wandering children with no home or settled place of abode, children begging for and receiving alms or accompanies any person who begs and receives alms, children who frequent the company of a reputed thief or prostitute and those who live in brothel in such a way that can influence their development and her in moral danger.

The court may commit any of the above to an approved institution, to a fit person whether a relative or not or order its parent or guardian to enter in recognizance to exercise proper care and guardianship<sup>458</sup>. Where the complaint is from the parents on the inability to control the child and the court confirms same, the court may commit the child to the care of a probationer officer or any other person for a period not more than 3 years<sup>459</sup>. Upon committals the father, stepfather, mother, stepmother, or anyone cohabiting with the mother of the child may be ordered to make contributions toward the care of the child in the approved institution<sup>460</sup>.

The law also prohibits the sale or barter of a child by the person who has its custody, possession control or guardianship. It expressly provides that the acquisition of children by family members may be allowed if same is in accordance with native law and customs which are not repugnant to natural justice, morality and humanity or inconsistent to any written law. However, irrespective of native law and customs the governor may restrain the acquisition of females under 17 years in like manners<sup>461</sup>. The governor is equally conferred with powers to regulate the activities and exposures or general welfare of the approved institutions.

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<sup>456</sup> Section 14

<sup>457</sup> See the correlation between the Law and Section 218 of the Nigerian Criminal Code

<sup>458</sup> 26

<sup>459</sup> 27

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<sup>461</sup> 30 31

#### 5.3.4. Magistrate Courts

*“subject to the provisions of any other law or act, a magistrate shall hear and determine appeals from the customary courts within his district in accordance with the provision of any other law or, a magistrate shall hear and determine appeals from customary courts within his district in accordance with the provisions of the law or act under which such customary courts are constituted.”<sup>462</sup>*

Magistrate Courts are the intermediaries between the Customary Courts and the High Courts of the States. Since they are not Constitutional Courts, each state of the federation has its Magistrate Laws and Magistrate Courts Rules which provides for the division, functions and jurisdiction of Magistrate Courts and personnel.<sup>463</sup> Available Magistrate Courts in the South Western part of the country are conferred with the civil jurisdiction to appoint Guardian ad litem which includes committee and next friend in respect of any child in need of same.<sup>464</sup> By the general law of contract, an infant may also bring an action for wages or piece of work or for work as a servant, in the same manner and in all respects as if he were of full age. Although Magistrate courts are popularly renowned and enacted as courts of Summary Criminal Jurisdiction, an appropriate judicial or executive committee may direct the magistrate court to exercise its power over issues otherwise outside its original jurisdiction especially on custody/guardianship of children and matrimonial causes between persons married under customary law<sup>465</sup>.

#### 5.3.5. Family Courts

A very prominent initiative of the Child’s Right Act is the creation of the family courts in order to facilitate the hearing, determining and enforcement of the provisions of the Act as relating to children<sup>466</sup>. These recent Courts are endowed with original jurisdictions on issues as earlier covered by the Juvenile Courts. The CRA may infact be safely described as a contemporary replacement of the Children and Young Persons Act<sup>467</sup>. By Sections 149 and 153 of the Act, the Family Courts are to operate at the Magistrate level and the High Court level. Appeals therefore

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<sup>462</sup> Section 31 of the Ekiti State Magistrate Court Law

<sup>463</sup> In Lagos State for example, Section 24 of the Magistrate Courts Law No. 14 2009 of Lagos State and also the Magistrate Court Civil Procedure Rules .

<sup>464</sup> Section 26(d), 97(18) of the Ekiti State Magistrate Court Bill also Section 28, 17(1d) of the Magistrate Court Law (Lagos)

<sup>465</sup> Section 32(c & e) of Ekiti Bill, see also Section 58(2) of the Lagos State Magistrate Law on Juvenilles.

<sup>466</sup> 149

<sup>467</sup> 162

are to proceed from the Magistrate Family Courts to the High Court or Family Courts. The Constitution of the Court entails that there be a Judge and two other assessors including a woman and also another person who is educated in child Psychology. The Original jurisdiction covers;

- i. Issues relating to the welfare and custodial rights of children and young persons, whether from married parents or unmarried parents, irrespective of the applicable personal laws.
- ii. Professional intervention through a proper consideration of underlying problems in order to award appropriate remedies towards the re-abilitation and re intergration of the child to the family/society. According to Section 214 of the rules, the Courts are to apply international standard of Juvenile justice in the determination of issues relating to recalcitrant children. Sections 215 (1) (a) states, that such proceedings must be conducive to the “best interest of the child” and conducted in an atmosphere of understanding, “allowing the child to express himself and participate in the proceedings.” Secondly, by Section 215 (1) (b), the decisions and reactions of the courts should be in proportion not only to the circumstances and gravity of the offence, but also to the circumstances of the child vis a vis the public dictate, needs or safety.
- iii. The Judges are conferred with more initiatives to award such other orders as necessary considering the peculiarity of the child in question. Family courts are equally empowered to use both non custodial and custodial methods of juvenile rehabilitation and reintergration<sup>468</sup>;
  - a. **Non custodial methods.**
    - i. Dismiss the charge against the child offender or discharge the child offender on his entering into a recognizance or the court may place the child offenders under a care order, guidance order and supervision order
    - ii. discharging the child offender and placing him under the supervision of a supervision officer;

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<sup>468</sup> CYPL Sec. 208, towards the allocation of appropriate commitals and disposition method in ways that best meets the circumstances of the child in question



- iii. or committing the child offender by means of corrective order to the care of a guardian and supervision of a relative or any other fit person.
- iv. The child offender can be ordered to participate in group counseling or undertake community service under supervision.

**b. Custodial orders.**

- i. sending the child offender by means of a corrective order to an approved accommodation or approved institution;
- ii. committing the child offender to custody in place of detention provided under the Act,
- iii. making a hospital order or an order prescribing some other form of intermediate treatment and
- iv. making an order concerning foster care, guardianship, living in a community or other educational setting.

In achieving better objectives the Lagos State Family Court Procedure Rule 2012 provides that the above functions may be achieved through the power conferred on the court to consider the overriding objective, which is to protect and care as necessary for the child taking the rights and duties of its parents into consideration. This also includes the consideration of the interest of legal guardians, individuals, agencies, organizations and other bodies legally responsible for the child. Another mandate is for the court to have regard to the welfare and best interest of the child and deal with a case in a just and practicable manner to ensure that such is dealt with expeditiously and fairly; the peculiar nature, importance and complexity of particular issues are specially considered. The court is to have special regard to the need of the child as a party to the proceeding and adjudicate in manners that save time and expenses.

The Rules enable the power of the courts to encourage and facilitate the use of ADR in the resolution of disputes.<sup>469</sup> It also provides for the appropriate restrictions on the use of expert evidence by the Court.<sup>470</sup>

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<sup>469</sup> Order 4 of the Family Court of Lagos State (Civil Procedure) Rules 2012

<sup>470</sup> According to order 12(2)(b), such experts include Officers of the Welfare Department of the Ministry of Youth and Social Development, Department of Child development of the Ministry of Women's Affairs and Poverty Alleviation.

The Family Courts in general refers to six types of proceedings in jurisdictions relating to children<sup>471</sup>:

**1. Emergency proceedings :**

This proceeding is for the disclosure of information as to the whereabouts of a Child under the Child's Right Law or for an order authorizing the taking charge of any delivery of a child under the Child's Right Law and any order for other emergency protection prayers and ancillary reliefs.

**2. Private Law proceedings:**

This relates to proceeding for an order in respect of a child who is the subject of a *care* order. e.g; a parental responsibility order or an order terminating parental responsibility<sup>472</sup>; an order appointing a child's guardian or an order terminating the appointment<sup>473</sup>, appointment of a guardian ad litem<sup>474</sup>, an order giving permission to change a child's surname or remove a child from the Federal Republic of Nigeria; a special guardianship order except where that order relates to a child who is subject of a care order and an enforcement order, for financial compensation and ancillary reliefs etc;

**3. Public Law Proceeding:**

This type of proceedings may be held at the instance of appropriate applications to decide; a residence order relating to a child who is the subject of a care order; a special guardian order relating to a child who is the subject of a care order; a secure accommodation order; a care order, or the discharge of such an order, an order giving permission to change a child's surname or remove a child from the Federal republic of Nigeria; a supervision order for the discharge or variation of such an order or the extension or further extension of such an order; an order making provision regarding contact or an order varying or discharging such an order under S. 52 of the law; an education supervision order, the extension of an education supervision order or the discharge of such an order pursuant to S. 54 of the law and the supplementary provisions

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<sup>471</sup> Order 13

<sup>472</sup> 45

<sup>473</sup> 77, 78

<sup>474</sup> 83

set out in Part III of Schedule II to the Law. Also included is that order varying directions made with an interim care order or interim supervision order; an order varying a supervision order in so far as it affects a person with whom the child is living but who is not entitled to apply for the order to be discharged; an order varying or discharging an interim care order in so far as it imposes an exclusion requirement on a person who is not entitled to apply for the order to be discharged; an order varying or discharging an interim care order in so far as it confers a power of arrest attached to an exclusion requirement; the substitution of a supervision order for a care order; a child assessment order, or the variation of such an order; an order permitting the social welfare office to arrange for any child in its care to live outside the Federal Republic of Nigeria and a contribution order, or revocation of such an order.

4. Proceedings relating to the exercise of the courts inherent jurisdiction (other than applications for the Courts permission to start such proceedings)
5. Proceedings relating to child abduction and recognition, and enforcement of decisions relating to custody.
6. Any other proceeding which may be referred to in a practice direction.

The powers of the Family Courts also relate to the processes on the adoption<sup>475</sup> and fostering of children. The family courts are herein after conferred with the jurisdiction to determine; the qualifications of prospective adopters, the wish if possible of the child about to be adopted, that appropriate consent for adoption has been given in cases of children with living guardians or parents, the capacity of parents to give out a child above the age of 1 year for adoption purposes, enforce penalties for breach of adoption rules, grant interim orders pending the proper adoption and grant adoption requests over children in corrective facilities.

Presently, three<sup>476</sup> out of the six considered States have functioning Family Courts structures. Ondo<sup>477</sup> State is constructing a Family Court Complex. Lagos and Osun State have restyled the

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<sup>475</sup> The effect of Adoption Orders granted by this Courts are as contained in Section 133 of *the Lagos State Child's Rights Law*

<sup>476</sup> Lagos, Osun and Ekiti State.

<sup>477</sup> The Ondo State Family Court Practice Directions.

Juvenile Courts at the magisterial level to Family Courts. Appeals from such lower courts go to the Family Courts at the Higher Court level. Other States have also enacted rules for Family Courts, by which some exist within the previous Juvenile Courts structures pending the establishment of the prescribed family court system.

### 5.3.6. National Industrial Courts

The National Industrial Courts is a court of co-ordinate Jurisdiction with the High Courts of the States. Section 254 of the 1999 Constitution, 2010 Amendment, as altered in the 2011 provides for the establishment, composition, jurisdiction, powers, Constitution and the practice and procedure of the NIC with other related matters.

By virtue of the Section 254 C (1-6) of the 1999 Constitution Alteration<sup>478</sup>,

*“Notwithstanding the provisions of Sections 251,257,272 of the 1999 Constitution and anything contained therein, and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters-*

- a) relating to or connected with any labour, **employment**, trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith;*
- b) relating to, connected with or arising from Factories Act, Trade Disputes Act, Trade Unions Act, Labour Act, Employees Compensation Act or any other Act or Law relating to labour, employment, industrial relations, workplace or any other enactment replacing the Acts or laws:*
- f) relating to or connected with unfair labour practice or international best practices in labour, employment and industrial relations matters;*
- h) relating to, connected with or pertaining to the application or interpretation of international labour standards;*
- i) connected with or related to child labour, child abuse, human trafficking or any matter connected therewith or related thereto;*

In addition to the civil jurisdiction on child labour, child abuse, child trafficking and other breaches of other International Labour standard, by virtue of the NIC Act the Court is that of Original and Final jurisdiction on civil matters involving such matters as highlighted above.

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<sup>478</sup> 2011

### 5.3.7. High Courts

High Courts of the States can not dissolve Customary Law Marriages;<sup>479</sup> however, they have appellate jurisdictions<sup>480</sup> over other Customary Law related Matrimonial Causes, in States that do not have Customary Courts of Appeal. According to Section 272(2) of the 1999 Constitution,

*“the reference to civil or criminal proceedings in this section includes reference to the proceeding which originate in the High Court of a state and those which are brought before the high court to be dealt with by the court in the exercise of its appellate or supervisory jurisdiction”.*

Consequently, appeals from Customary Courts on issues of customs may go to any of the two superior courts, that is, High Court and Customary Court of Appeal of the respective State. Also in a State where the High Court and Customary Court of Appeal co-exist, if an appeal is filed from a Customary Court with grounds which raise issues of procedural and customary law,<sup>481</sup> the grounds raising issues of procedural law should go to the High Court and those raising civil issues of Customary Law go to the Customary Courts of Appeal<sup>482</sup>. As the Constitution provides that the Customary Court of Appeal shall exist for only States that require it, the absence of the Customary Court Appeal in Oyo, Ekiti, Lagos and Ogun State, connotes that appeals from the Customary Courts in the respective States still lie to their State High Courts. In the mentioned States, the powers to transfer matrimonial causes from one Customary Court to another or stall proceedings on same, is also as vested in the Chief Judge, subject to the law made by the Houses of Assembly<sup>483</sup>.

### 5.3.8. Customary Court of Appeal.

As earlier stated this is the court of record that has appellate and supervisory jurisdictions on issues relating to customary law<sup>484</sup>. The Customary Courts of Appeal are exclusively concerned with civil proceedings in customary law, but the High Courts, which are English-style courts, share jurisdiction over matters of procedures. This position has consequently resulted in jurisdictional incongruities between the High Courts and the Customary Courts of Appeal of

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<sup>479</sup> Part IV Section 69 of the Matrimonial Causes Act CAP M7 LFN 2004

<sup>480</sup> Section 272(2),274 of the 1999 Constitution.

<sup>481</sup> *Usman’s Case*(Supra),*Nwaigwe v Okere*(1999)1SCNJ 73,*Mashuwareng v Abdu*(2003)11NWLR (Pt831)403

<sup>482</sup> Section 282 of the 1999 Constitution, See Edu, O.K. 2004, Relevance or Otherwise of Customary Courts of Appeal in the Nigerian Legal System.*Abraka Journal of the Arts. Law and Social Sciences*,75-90.

<sup>483</sup> Section 274

<sup>484</sup> Section 282

States. Customary Courts of Appeal have direct appellate jurisdictions on issues from the customary courts and the district customary courts. Such civil matters consist of every form of customary law decisions including matters relating to the guardianship of children<sup>485</sup>. Presently only Ondo and Osun States within South Western Nigeria have Customary Courts of Appeal. Constitutionally, the President of the Customary Courts of Appeal has the power to make rules for regulation of the practice and procedure of the CCA.<sup>486</sup>

### 5.3.9. Court of Appeal.

The Court of Appeals is the higher court which takes appeal from the High Courts , Customary Courts of Appeal<sup>487</sup> and other Courts of coordinate jurisdictions<sup>488</sup>. According to section 240;

*subject to the provisions of this Constitution, the Court of Appeal shall have jurisdiction, to the exclusion of any other Court of law in Nigeria, to hear and determine appeals from the Federal High Court.... High Court of a State, Sharia Court of Appeal of a State..... Customary Court of Appeal FCT Abuja, Customary Court of Appeal of a State....or other tribunal as may be prescribed by an Act of the National Assembly*

The prominent provision for this purpose is the provision of section 245 of the 1999 Constitution that,

*an appeal shall lie from decisions of the Customary Court of Appeal of a State to the Court of Appeal as of right in any civil proceedings before the Customary Court of Appeal with respect to any question of customary law and such other matters as may be prescribed by an Act of the National Assembly*

The Court of Appeal is constituted by numbers of Judges and facilities that allows the multiple legal interactions of the (English, Customary and Sharia) Laws. According to Section 237(2b), a Customary Court of Appeal shall consist of the president and

*such number of justices of the court of appeal, not less than forty nine of which non less than three shall be learned in Islamic personal law, and not less than three shall be learned in Customary Law ,as may be prescribed by an Act of the National Assembly*

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<sup>485</sup> *Abdulateef Jimoh v Ejimotu Abdulateef OS/CCA/3A/2013- on 31 January 2014, Yinka lawore v Toyin Adelokun OS/CCA/M2/2014 , 26 March 2014.*

<sup>486</sup> Section 284

<sup>487</sup> *Iyamu v Aigbiremwen (1990)3NWLR(Pt 139)411, Golok v Diyapwan(1992)2NWLR(Pt 222)233*

<sup>488</sup> 240,245

There are presently 16 Divisions of the Courts of Appeal in Nigeria with the South-Western division located in Ibadan. The Court of Appeal do not call witnesses but however decide based on the applications of rules as referred or appealed from the lower courts.

### 5.3.10. Supreme Court

This is the National Apex court<sup>489</sup> and it is located in Abuja. Apart from its original jurisdiction,<sup>490</sup> the Supreme Court takes appeals from the Courts of Appeal<sup>491</sup>. This court is the last resort which may decide to uphold or quash decisions from the Courts of Appeal or reassign same for retrial in the appropriate inferior court with jurisdiction<sup>492</sup>. The overriding capacity of the Supreme Court to take appeals including questions of Customary Law from the Court of Appeal is as re-inforced in Part II Section 17(e) of the Supreme Court Act, which states that

*with respect to the exercise of the original jurisdiction conferred upon the Supreme Court by subsection (1) of section 232 of the Constitution or which may be conferred upon it in pursuance of section 232(2) of the Constitution.... the Supreme Court shall observe and enforce **the observance of customary law** to the same extent as such law is observed and enforced in the Nigerian Court*

## 5.4. International Initiatives

This includes the prominent foreign initiatives, assistance or Treaties, Convention and Covenant that Nigeria has signed or ratified in order to protect its Children populace including those in the indigenous settings.

### 5.4.1. United States Agency for International Development<sup>493</sup>

Consisting of the United States departments of Agriculture, Defense, Health and Human Services, Labor, and State, the U.S. Agency for International Development, and Peace Corps, USAID foreign governmental arrangement for the assistance of children between the ages of 0-18 years who live in adversity. Such children especially are those from developing and vulnerable states, children affected by HIV/AIDS and other disasters, orphans, including trafficked and exploited children, recruited as soldiers and all other children who grow in

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<sup>489</sup> 235 of the 1999 Constitution

<sup>490</sup> 232

<sup>491</sup> 233 of the 1999 Constitution also Part 2 Section 13 of the Supreme Court Act 1960

<sup>492</sup> *Labinjoh v Abake (Supra), Pam v Gwom(2000)2NWLR(Pt644)322,Nwaigwe v Okere (2008) 13NWLR(Pt1105)445*

<sup>493</sup> See also similar efforts by the British Department for International Development(DFID)

abandonment and , neglect. The specific objectives of the agency includes;To build Strong foundations and increase the percentage of children surviving and reaching full developmental potential.

1. To encourage and promote family care i.e by reducing percentage of children living outside of family care.
2. Protect children by reducing the percentage of young ones that are harm, violence and exploitation.

#### **5.4.2. International Planned Parenthood Federation<sup>494</sup>**

The Planned Parenthood Federation of Nigeria is a member of the International Planned Parenthood Federation. It is a non-governmental organization established for the purpose of publicizing and promoting reproductive health in Nigeria. Its scope majorly covers issues on family planning, but also accommodates issues of adolescent and young persons sexual health, and safe maternal health. The body campaigns on the advantages of family planning in order to achieve household and national progress and development,advocates for the provision of quality and cheaper assess to sexual health services to communities,establish campaigns against teenage pregnancies and consequences of unsafe abortion specially as relating to persons of low income,funds advocacies towards the prevention, protection and treatment of HIV AIDS and other STI and motions towards the eradication of customs, practices and behaviors contributing to maternal mortality and sexual ill health.

#### **5.4.3. International Labour Organisation**

ILO asserts and reechoes its members states obligations towards it fundamental objectives and principles as embodied in relevant ILO Conventions. <sup>495</sup>The major directives towards children in applicable states is for the purpose of ending child forced labour, child trafficking for domestic

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<sup>494</sup> Also see similar policies and role of the International Conference on Population and Development and the Association for Reproductive and Family Health towards the establishment of Community Family Health /Pediatrics Clinics and centres for indiginous.

<sup>495</sup> The ILO Conventions which embody the fundamental principles have now been ratified by most member states. See the 1998, the 86th International Labour Conference adopted the [\*Declaration on Fundamental Principles and Rights at Work\*](#), the Minimum Age Convention 1973,, Minimum Age (underground work convention 1965,Vocational Rehabilitation of Disabled Persons Convention 1983,Convention for the Elimination of all Worst forms of Child Labour 1999, etc



purposes and the indiscriminate employment of young persons in requisite undertakings<sup>496</sup>. The ILO equally disallows all forms of discriminatory practices against pregnant women and nursing mothers at work places.<sup>497</sup> Its aim is to prevent or prohibit all forms of economic activities capable of stunting the proper physical, psychological and educational development of children.

#### **5.4.4. African Committee of Experts on the Right and Welfare of the Child**

The African Committee of Expert is the monitoring and reporting organ of the ACRWC. In line with the provisions of the charter, the committee consists of 11 experts nominated by their respective government and elected by the Assembly of the AU Heads of States. The committee is vested with the competence to receive petitions against States on issues relating to the welfare of children.<sup>498</sup> The Committee is conferred with the mandate to, Receive and process complaints submitted from any of the state parties on the violation of the principles of the ACRWC, assess and monitor reports from state parties in order to ensure enable compliance with the Childs Charter and make recommendations where appropriate, investigate reports of public or massive violation of Child's right and enhance the interpretation of the African Charter on the Right and Welfare of the Child towards enabling the viability of the rules, mandates and principles of the Charter amongst State Parties.

#### **5.4.5. United Nations Initiatives applicable to Nigerian Indigenous Children<sup>499</sup>**

The **United Nations** (UN) is an international organization created in 1945, shortly after the end of World War II. The UN was formed by 51 countries in order to encourage resolution of international conflicts without war and to form policies on international issues. Article I of the

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<sup>496</sup> See the general protection of children and young persons under the Nigerian Labor Act 1974

<sup>497</sup> Section 54 of the Nigerian Labour Act and also the CEDAW 1979.

<sup>498</sup> It as established by Article 32, 33(1) of the African Charter on the Rights and Welfare of the Child (ACRWC). Its first members were elected in July 2001 after the coming into force of the ACRWC on 29th November 1999.

<sup>499</sup> Justice for Children International [www.jfci.org](http://www.jfci.org) Save the children [www.savethechildren.org](http://www.savethechildren.org) Child Labor Coalition [www.stopchildlabor.org](http://www.stopchildlabor.org), Child Rights Information Network <http://www.crin.org/resources/index.asp>, Action Against Trafficking and Sexual Exploitation of Children (ALTEN) <http://atsec.tripod.com/atsecbangladeshchapter/id1.html>, concerned for Working Children [www.workingchild.org/hm/cwc.htm](http://www.workingchild.org/hm/cwc.htm) Free the Children [www.freethechildren.org](http://www.freethechildren.org) Global March Against Child Labour [www.globalmarch.org](http://www.globalmarch.org) HAQ: Centre for Child Rights and Campaign to Stop Child Labour [www.haqrc.org](http://www.haqrc.org) International Federation of Free Trade Unions (Child labour section) [www.icftu.org](http://www.icftu.org) ILO – International Programme of the Elimination of Child Labour [www.ilo.org/ipec/index.htm](http://www.ilo.org/ipec/index.htm) The World Bank- [www.worldbank.org](http://www.worldbank.org) International Initiative to End Child Labor [www.endchildlabor.org](http://www.endchildlabor.org)

Charter of United Nations specifies the purposes of the UN as, maintaining worldwide peace and security, developing relations among nations, fostering cooperation between nations in order to solve economic, social, cultural, or humanitarian international problems and providing a forum for bringing countries together to meet the UN's purposes and goals. So far the organization has established separate committee and organs for the purposes of enabling the implementation of its requisite Conventions, Covenant, Treaties and Protocols relating to the protection of children irrespective of culture, race or background.

#### **5.1.4.1. World Bank**

The World Bank is an international financial institution that provides loans to countries of the world for capital programs. It is a component of the World Bank Group, which is part of the United Nations system. The bank's stated mission is to achieve the twin goals of ending extreme poverty and building shared prosperity. Its activities are focused on developing countries, in fields such as human including children development, agriculture and rural development, environmental protection, infrastructural sustenance, large industrial construction projects, and governance. The body through its organs, International Bank for Reconstruction and Development with the IDA association provide loans at preferential rates to UN member countries, as well as grants to the poorest countries.

#### **5.1.4.2. United Nations Children's Fund**

The above is a permanent organ of the UN, created by the United Nations General Assembly in 1946, the essence of the fund was to provide emergency food and healthcare to children in countries that had been devastated by Wars. It relies on contribution and donations by government and private donors in order to achieve its mandates. In 1953, UNICEF's was renamed United Nations Children's Fund with its purview expanded to cover the provisions for the needs of children in developing countries. In Nigeria UNICEF contributes to major issues relating to the care of children with the requisite Universal mandates on the protection of children from violence, exploitation and abusive situations. Issues including child labor, child marriage, child recruitment into military, child trafficking, female genital mutilation, landmines, and sexual violence. Also part of his tasks includes ending preventable deaths and developmental problems of children through healthcare, nutrition, water, and sanitation programs ,promoting

basic education and gender equality, including early childhood education, enhancing the primary and secondary education quality, and ensuring equitable access to education for both boys and girls , the provisions of humanitarian aid during crisis and emergencies with a focus on saving the lives and protecting the rights of children suffering through as a result of natural disasters or human causes, then all issues relating to children and the need to expand their opportunities to reach their full potentials. The contemporary and ultimate aim of all UNICEF-supported activities is programmed towards the elimination of all forms of discrimination against women and children irrespective of their cultural or social affiliations. These objectives are hinged on the UN tenets on the Universal nature of the rights of children to protection, provision, survival and non discrimination.

#### **5.1.4.3. United Nations Standard for Minimum Rules For the Administration of Juvenile Justice(Beijing Rules)**

The UN Standard Minimum Rules for the Administration of Juvenile Justice has further become the background idea behind the contemporary administration of juvenile justice as practiced in states that have domesticated the Child's Right Act. The basic guidelines as suggested by the regime for state parties juvenile systems are that the process of juvenile administration should "emphasize the well-being" of young people and ensure that any reactions should always be in proportion to the circumstances of both the offenders and the offence; encourage the use of diversion programs which remove young people from the criminal justice process and implement supportive or community services; ensure the right to privacy and procedural safeguards including presumption of innocence; ensure that proceedings are conducive to the best interests of the child and that young people have the opportunity to participate and express themselves freely; use inquiry reports on social, family, and educational background to identify and provide appropriate social services; avoid institutionalization as much as possible by using other measures such as counseling, probation or community service; use institutionalization only as a last resort; and focus the goal of institutionalization on assisting young people in becoming productive members of society. One major focus of the proclamation is emphasized in its Chapter 1.3, with emphasis on the condition that,

*"sufficient attention shall be given to positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community groups, as well as*

*schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law”*

#### **5.1.4.4. United Nations Population Fund.**

UNFPA is the lead UN agency for delivering a world of maternal health and qualitative lifestyle vis a vis child births. Its mandate is to enable a world where every pregnancy is wanted, every child birth is safe and every young person's potential is fulfilled. It aims to increase women and young persons access to healthy and productive lives. It seeks to end issues on sexual reproductive health which is a major cause of death and disability of women in the developing world. Its mandates also include the implementation of the plans against increase in risks of HIV infection, childbirth mortality, unplanned, child marriages, female genital mutilations and other harmful practices against women and female children.

#### **5.1.4.5. United Nations Economic Scientific and Cultural Organisation**

This is a Specialized Agency of the UN as constituted in 1945<sup>500</sup>. The main objective of UNESCO is to contribute to peace and security in the world by promoting collaboration among nations through education, science, culture and communication in order to further universal respect for justice, for the rule of law, and for the human rights and fundamental freedoms. It aligns with the universal principles against discriminatory practices based on race, sex, language or religion. In support of this objective, UNESCO's principal functions relate to children and young persons in the course of promoting intellectual co-operation and mutual understanding of people through all means of mass communication, giving fresh impulse to popular education and to the spread of culture; maintaining, increase and diffuse knowledge; encouraging scientific research and training and applying sciences to ensure human development and the rational management of natural resources.

#### **5.1.4.8. World Health Organization**

The Constitution of the WHO came into force on the 7<sup>th</sup> of April 1948. With the head quarters at Geneva, the primary objectives of the organization are to direct and coordinate international

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<sup>500</sup> was adopted by the London Conference in November 1945, and entered into effect on 4 November 1946

health within the United Nations' system. The mission includes the promotion of State Parties health systems, reduction of non-communicable diseases and provisions on intervention, surveillance and emergency response to international call on health issues. The body has so far coordinated efforts from different sectors/partners in applicable countries including Nigeria. It has provided available funds and foundations towards the attainment of their various child health objectives and support national policies and strategies on child care in south western Nigeria.

In addition to the major specialized bodies, the UN consists of specialized committee established for the purpose of ensuring and furthering the implementation and achievability of Mother Treaties and Conventions;

- i. **The Human Right Committee** is vested with the jurisdiction to monitor compliance with the provisions of the International Covenant on Civil and Political Rights and the optional protocol to same<sup>501</sup>.
- ii. **The Committee on Economic, Social and Cultural Rights** in respect International Covenant Economic, Social and Cultural Rights.<sup>502</sup>
- iii. **Committee on the Elimination of Discrimination against Women** to attends to issues relating to the realization of (CEDAW)
- iv. **Committee Against Torture** works on the popularization and workability of the UN Standard Minimum Rules for the Administration of Justice( BEIJING RULES)
- v. **The UN Committee on the Right of the Child (CRC)**<sup>503</sup>The committee consists of 18 independent human rights experts from member states elected to serve for a four year term subject to re-election. Members of the committee are not representatives of their own government but are nominate and elected by the state parties. The Committee mandate is to monitor the implementation of the conventions on the rights of the child

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<sup>501</sup> Article especially at article 24 and 27.

<sup>502</sup> Especially at Article 10-15.

<sup>503</sup> The CRC is one of the UN human rights treaty bodies. The Committee was created by the Convention on 27 February 1991. It meets in Geneva and normally holds three sessions per year consisting of a three-week plenary and a one-week pre-sessional working group. In 2010, the Committee considered reports in two parallel chambers of 9 members each, "as an exceptional and temporary measure", in order to clear the backlog of reports. It also publishes its interpretation of the content of human rights provisions, known as general comments on thematic issues. More information at <http://www.ohchr.org/EN/HRBodies/CRC/Pages/DiscussionDays>. retrieved on 17th February 2017

and additional protocols.<sup>504</sup> The Committee is vested with the jurisdiction to monitor and examine the periodic reports from states that have acceded to the convention and protocols .It is expected consider individual complaints on the violation of the UNs principles on Children and to carry out investigations on reported massive or systematic disregard of children's rights.

- vi. **Committee on the Rights of Persons with Disabilities** is in charge of the viability and realization of the ideals behind the Convention on the Rights of Persons with Disabilities and the Optional Protocol as adopted on 13 December 2006, which also entered into force in May 2008. Nigerian signed same in March 2007 and ratified it on September 24 2016

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<sup>504</sup>The Committee also monitors implementation of the Optional Protocol on the Involvement of Children in Armed Conflict signed by Nigeria on 8<sup>th</sup> September but yet to be ratified, and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography signed on the same date as the previous optional protocol but yet to be ratified. On 19th December 2011, the UN General Assembly approved a third Optional Protocol on a communications procedure A/RES/66/138 OF 19 DEC 2011 which entered into force on April 2014. The latter protocol explains the essence of the UN Committee on the Right of the Child, and enables individuals to file complaints about violations of the provisions of CRC and the two earlier protocols. See Part 1 and 2 of the mentioned protocol. more information on [https://treaties.un.org/doc/source/signature/2012/CTC\\_4-11d.pdf](https://treaties.un.org/doc/source/signature/2012/CTC_4-11d.pdf). retrieved on the 14th February 2017

## CHAPTER SIX

### SUMMARY, FINDINGS, CONCLUSION AND RECOMMENDATIONS

#### 6.1.1. Summary

##### Objective 1.

In achieving the first objective, the research identified eight main sources of the indigenous child care rules and attitude. The identified sources, may generally be classified into the Written Laws /Sources and Unwritten Customary Laws Sources. The former consists of the prominent Manuals, Rules, Codes, Laws, Acts and Restatements that regulate and describe the care of children within the Yoruba Customary Law regime. The Child related Legislation as presented are as provided on the Federal Exclusive Legislative list, the Concurrent and the Residual categories. Among other considerations, there is an examination of Chapter II Section 17(3)(f),Section 42(2) and Item 61 of the Exclusive legislative List of the 1999 Constitution. Apart from the grundnorm, the researcher examined twelve other child related Federal Acts/Codes including the Child's Right Act 2003 and the Labour Act 1974. Without prejudice to the overreaching status of the CRA 2003, the work expressly excludes the infant Laws of States as same is only applicable to children of statutory marriages, likewise the provisions of the Marriage Act and the Matrimonial Causes Act. On the other hand, the latter part of the section consists of the informal sources which are mainly, Divine, Natural, Traditional or Deitic. For this purpose, the thesis relied on the processes as described by Ifa Texts, Traditional Rulers/Leaders, Community Leaders, Herbalists and indigenous child care experts who interact with children on daily basis. God the Supreme being is a co-coordinating factor as generally referenced. In addition to Ifa/Orunmila, the study examined the child related roles assigned to Seven prominent deities, and also categories of children affiliated with negative forces that roam around. The Sources of Yoruba child care rules also include Ancestral Practices, Natural Instincts, Cultural Values and Positive Rules by Kings/ Leaders.

## **Objective 2**

This part relies on Customary Courts Cases, Records, Laws and Rules. Further resource include the provisions of oral and written Ifa codes. The section is informed by the oral interview of Customary Court Presidents, Traditional Rulers/Leaders, Community Leaders, Traditional and Modern Child Care Providers, Herbalists, Child Developmental Officers, Police Officer in charge of child welfare and also written anthropological texts and sociological data. In achieving the second objective, the Section describes who a child is in the Yoruba jurisprudence. It explains the primary roles and entitlements attributable to parenthood. This part further describes the nature of such entitlements and powers, whether vested, personal or shared. The nature of the Childs responsibility to parents and vice-versa is also discovered to be either reciprocal or obligatory. Importantly parental responsibility or influence on children in Yoruba land is better measured when the parents are married but without prejudice to circumstances of divorce or single parenthood. The work after the typical parental-child interaction, discusses the subsisting rule on the care of children during divorce or afterwards, after the death of parent(s) and in situation of voluntary or involuntary single parenthood. This part is concerned with the entitlements of children from the parents as same relates to the rights and obligations of third parties to intervene. In addition to the enquiries on the Yoruba perception on child education, punishment and social development, the work explains eight other vital concepts constituting the existing child care requisites. The section discussed the various limitations to parental powers over children and further identified thirteen categories of children and the Yoruba indigenous attitude to their peculiarities.

## **Objective III.**

This part is based on an examination of the 1999 Constitution on the judicial organs of government. The work basically considers applicable Acts, Laws and Case Laws. This extends to the assessment of the existing structures of Customary Courts and requisite interviews of senior officials and Leaders of Customary Courts both at the original and appellate levels. Other provisions and policies were derived from Records of Conferences, Law Books and Internet Sources. Also further information on the International Bodies was obtained from Institutional Records consisting of both the Office filed and internet sources. The section demarcated between the existing Judicial and Institutional framework for achieving standard indigenous child welfare



in Nigeria. The main gist relates especially to rules that are generally applicable to all children, but with special consideration of those ones that affect indigenous children subject of Southwestern Nigeria. The identified Frameworks cover the distinct approaches to the Protective, Provisional and Developmental care of children. The institutional Frameworks consist of the National and States Child Welfare Departments with Eight other Parastatal including their attendant Rules and Laws of establishment. The analysis on applicable Judicial Institutions considered the Jurisdictions of the Nigerian Courts of records on child care and also the interactions between such Superior Courts and unrecorded Inferior Courts. More emphasis is however placed on the regulations of the South Western Family Courts, Juvenile Courts, and Customary Courts of Appeal, District Customary Courts and Customary Courts and their affiliations to the CRL of applicable States. The final assessment in this part is as regards prominent national policies and international initiatives especially for local children. Without prejudice to numerous Governmental and Non Governmental Bodies, the work overviewed five different International assisting bodies including the UN with seven of her Children Organizations.

#### **Objectives IV and V.**

The last two Objectives were achieved through requisite incursion into Law Books, Judicial Precedents, contributions of Traditional Rulers, healers and community leaders. The work equally relied on the experience of indigenous mediation and reconciliation experts on the basic principles constituting the indigenous Yoruba child care regimes. Due to the fact that the Yoruba Law does not totally engage formal Human Rights structures, the work in quested into the prominent traditional methods for the actualization and enforcement of requisite child care obligations and duties. This section identifies the parents as the prior obligor towards ensuring that the child's needs are met and that same is protected from harm, deprivation and discrimination. Apart from the parents, the Community, prominent Oral Codes, the work discussed fifteen other indigenous Institutions and personas through which the Yoruba provides children with necessary care. Finally, with reference to some foreign Rules and ideas, especially from a cursory assessment of some contemporary concepts as enacted in the South African Children Act 2005 and Canadian Assisted Human Reproduction Act 2004, the work examines the indigenous Yoruba status on trending modern or international ideas on child care.

## 6.2. Findings

### 6.2.1. On the Standard of Care

The Yoruba Law acknowledges that, the fear of God(the supreme being), the instinct towards racial and family perpetuity ,the shame of infertility or barrenness, the pain/discomfort of conception/ labour pains/child delivery ,the innocent/dependent/vulnerable nature of children and the need for reciprocal affection from the child to the caregivers especially at old age, warrant that children be given appropriate care<sup>505</sup>. The work did not identify any structured indigenous standard for the care of children. On the other hand, care takers economic and financial capacity greatly determines the level of care accruable to indigenous Yoruba children<sup>506</sup>. This situation seems to be tolerated by the Section 14(2)CRA, as the Act itself at Section 2(1) also provides that the care and protection to be given to the child shall be in consideration of the rights and duties of parents, legal guardians, other individuals, institutions, service, agencies etc responsible for the care of the child. Moreover the fact that the status, income and rights of parents affects the welfare of the child, necessitates that State parties, Government, Nations and Institutions provide assistance to parents guardians in charge of children. This position is in line with the Part XV of the CRA 2003, Article, 11,21,42 of the African Charter on the Rights and Welfare of the Child ,Article 18(1) on African Charter on Human and Peoples Rights and also other social welfare schemes established to sustainably alleviate the impact of familial lack on children. Such programmes include the Nigerian Social Development Policy, UBE, National Economic Refund Programmes, Family Economic Advancement Programme ,Primary Health Development Programme, Poverty Alleviation Programmes and contributions from other Non- governmental organizations both Local and International. As at 2013 Nigeria, during the Universal Periodic Review, the country re-emphasized her commitment towards the Economic transformation blueprint for Nigeria's Vision 20 in the year 2020, by which she seeks to guarantee the eradication of extreme poverty of Nigerians in additions to other demands.

The Yoruba indigenous approach to child care is not child right/ duty based. Rather, it emanates from the affection, responsibility/entitlement perspective.<sup>507</sup>This position has instigated the

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<sup>505</sup> Appendix 5, example 4,8-11, 14-15, 29-32,34,35, 39 and 155.

<sup>506</sup> Appendix 5,example 19

<sup>507</sup> Appendix 5, examples 9, 18,29-44).

efforts of available international regimes such as the United Nations Convention on the Right of the Child 1989, the African Charter on the Right and Welfare of the Child and other Child Right Regimes, towards the articulation of such varying standards in values into Universal guidelines. Such International rules, prefer that the acceptable standards are promoted and compulsorily included in the National Laws of State Parties as directions for child care. The incidental discrepancies in Universal Rules and African values are expectedly pre-empted by various preambles to available International Children Charters especially the Article 11 and 31 of the African Charter which ominously seeks the preservation and strengthening of positive values, while harmful practices to children are discouraged.

The Yoruba Customary Law allows liberal intervention of third parties in the child care process<sup>508</sup>. However, the parents or guardians of the child as the case may be, have the primary charge over the child and therefore often act as its primary representatives in all contractual, legal and social matters relating to its welfare. As they are presumed to know what is good for the child their consent is required in respect of tangible relations with the child<sup>509</sup>. Between both parents, the Father is mostly referenced or held responsible for the child's contractual, criminal or tortuous actions to outsiders<sup>510</sup>, while the mother especially takes the blame for the child's moral ineptitude<sup>511</sup>. The mother of the child is conferred with more responsibilities for the physical appearance and spiritual care/ upkeep of the child. Such position of the mother compared to the fathers is as typified.<sup>512</sup>

Meanwhile, the father is presumed as the primary economic or financial care giver to the child. As such, the child identity is highly patrilineal. Subject to extreme situations where the father of the child is unknown, or when such a father disowns the child, it is mandatory that the child bears the father's name.<sup>513</sup> Also for other societal purposes the child is mostly acknowledged from his paternal lineage. All actions over the welfare of the child are therefore conducted in manners that do not jeopardize the child's paternal identity. This position in reality tallies with formal restrictions on the indiscriminate change of children's bio data as modern laws do not

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<sup>508</sup> Example 37, 38, 53-59, 92 and 123.

<sup>509</sup> Example 112, 114, 115 and 116.

<sup>510</sup> Example 86

<sup>511</sup> Example 51 and 94

<sup>512</sup> Example 112, 114, 115 and 116.

<sup>513</sup> Example 97 and 98

oppose the father's superior right to decide the child's name. The cultural position is also prominently reflected in the Customary Courts' insistence on the obligation of the father to financially maintain the children of a marriage even after a divorce. The father's primary financial role invariably varies from the statutory position on the equality of the rights/liability of parties (parents) towards the maintenance<sup>514</sup>, custody and care of children. The Yoruba system theoretically emphasizes the patrilineal identity of children, but in practice, assigns the mother with the virtual ownership/custody of children<sup>515</sup>. This position differs from the popular impression that the system is totally patrilineal as majority of respondents agree that children are generally better off in the custody of their mother as against the father who has the tendency to marry more than a woman, or is most often too busy for domestic chores about children. In polygamous families, the actual role of the mother towards her own children is more pronounced as the Yoruba emphasizes the dangers and paternal disengagements that are inherent in a home where the child has step mothers<sup>516</sup>.

Very importantly, the status and attitude of the immediate family of the child especially the parents, greatly influence social and communal interactions with the child.<sup>517</sup> Children exist in various categories and with distinct attributes, but the exposure, literacy, social status, religious temperament and attitude of the primary care givers determine the welfare of same<sup>518</sup>.

This latter position of course is against the National policies which strive to protect children from discriminatory practices based on the idiosyncrasies, cultures and allegiances of care givers which are not beneficial to it<sup>519</sup>.

Yoruba do not encourage voluntary single parenthood. The culture in fact differentiates between voluntary and involuntary single parenthood. However, the status and care of a child born to unmarried parents, is determined by the consequent acknowledgement of its paternity by the father. Such acknowledgement determines the onus on the father to maintain the child and the

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<sup>514</sup> Section 71 of the Nigeria Matrimonial Causes Act on Maintenance

<sup>515</sup> Example 28, 51 and 94.

<sup>516</sup> Example 119

<sup>517</sup> Example 103,112,116,121.

<sup>518</sup> Example 101a-109.

<sup>519</sup> National Policy on Child and Maternal Health 1994, National Child Policy 2007, 2007/08; National Policy and Guidelines on Gender in Basic Education, National Gender Policy 2007, National Reproductive Health Policy and Strategy 2001, National Policy on Health 1998 and 2004, the National Policy on the Elimination of FGM 1998 and 2002, National Adolescent Health Policy 1995, National Policy on Maternal and Child Health 1994,

child's right to the father's estate and surname. In the case of an unclaimed child (which is extremely derogatory), the child uses the mother's father's name, he or she is also adopted as a member of the mother's family. Contrarily, the status and rights of single parents and their children although not expressly determined by any other law, are as protected by Sections 40(2) of the 1999 constitution which provides against discrimination on the basis of birth or status etc, this position is also as reflected in CEDAW and other contemporary International anti discriminatory regimes<sup>520</sup>. In addition the provisions of Section 68,69,129(c) of the Child's Right Act 2003 re-emphasizes the equal capacity of single parents to access, maintenance, custody and adoption of children respectively.

There are distinct and varying family rites for the induction and celebration of child birth, by which the child is expected to bear the name given to it by the father<sup>521</sup>. Although such ideas are not expressed in formal laws, the naming of children corroborates international and statutory requisites on the right of the child to have an identity. The consultation of Ifa and Esentaiye at the birth of the child also influences parental attitude towards the child<sup>522</sup>. The Ifa corpus is highly instructive and philosophical on the directions for child care and upkeep.<sup>523</sup> However Ifa as a deciding factor on the care of children<sup>524</sup> is not expressly identified by any formal regime. On the other hand, the general position is that all such institutions in respect of child care must conform with Universal mandates which allows for only attitudes and practices that are in the best interest of the child. Such unconcerned attitude to traditional programmes in Ifa is invariably encouraged by the Omnibus mandate from formal legislations on the protection of pre-existing African cultures and values that are not detrimental to the child<sup>525</sup>. Interestingly the National Health Act 2014 which seeks to encompass all health/care providers accommodated Alternative Health Care givers, but the extent and feasibility of such amalgamations of orthodox and unorthodox methods of research and healing, calls for further research. Although respondents are aware of the contemporary prohibition of female circumcision, the practice on both male and female remains a part of the rites for child induction. Notwithstanding the

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<sup>520</sup> especially Section 41 of the Nigerian 1999 Constitution.

<sup>521</sup> Example 86 and 87

<sup>522</sup> Examples 1a and b

<sup>523</sup> Example 1, 35,36,47,28,102,154.

<sup>524</sup> Example 1a,b,35,36,47,58,102 and 154

<sup>525</sup> Very importantly the provisions of the International Covenant on Economic, Social and Cultural Rights 1966, the UNESCO Declaration on Cultural Diversity 2001.

acknowledgment of the fact that both sexes deserve basic care and upkeep, there are distinct gender roles, assignment and expectations from the male and female children<sup>526</sup>. This position of distinction by the Yoruba does not conform with Section 40(2) of the 1999 constitution has re-emphasized by all available modern and International child regimes on the equality of children whether male or female. The existing gender classifications has therefore instigated various gender emancipation programmes including the public enlightenment on the need to eradicate all forms of discrimination between children of different sexes vis a vis their rights to education, inheritance, leisure and economic empowerment. As at the Universal periodic review 2013 recommendations were infact made to Nigeria to intensify its efforts towards gender equality and improving the status of women and girls’.

The study further discovered that the need for children to work in order to cater for themselves or to augment their family income is relatively permitted upon the basis that such children should be judiciously compensated by guardians. In such instances the popular notion is that early economic exposure of children does not in any way signify a challenged future or eventual turn out. The unpredictability of the effect of the childhood circumstances or background on the child's status later in life is exemplified by<sup>527</sup>. Despite the international campaign against child labour, the Yoruba position on the employment or labour capacity of children and young persons tallies with the provisions of Article 2(1,3,4) of the ILO Minimum Age Convention and thereafter, the Nigerian CRA 2003 and Labour Act 1974 in relation to State members whose economic and educational facilities are insufficiently developed.

“Omoluabi” as a prominent and important concept embodies the in- exhaustive prescriptions for “*Iwa Rere*”(Good attitude) which is the cultural expectations from a total child<sup>528</sup>. The multiple constituents of this concept is such that has not been formalized by any formal regime. Ironically the Yoruba affirms that without *Iwa rere* (good character or attitude), all other forms of training, education or achievements are worthless.

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<sup>526</sup> Example 101 and 102.

<sup>527</sup> Example 33

<sup>528</sup> Example 63-85

Child or Parental responsibilities under customary law is either strictly reciprocal or fundamental.<sup>529</sup> On the other hand there are no such double standards within the formal Child's Right regimes. Available formal laws emphasize the fundamental/inherent rights of children to care without prejudice to the accompanying responsibility of children towards their parents and communities. Nevertheless, such formal universal standards do not record child's responsibilities as requisites for child care.

Meanwhile, a child under Yoruba law has no specific age delimitation, but the legal capacities of same are decided by maturity, conversational intents and peculiar circumstances. This identified uncertainty also permeates the National and International regimes. Examined formal laws also provide varying ages for childhood and maturity. Although the Child's Right Acts like the UNCRC and the ACRWC prescribe 18 years as the age of majority, Sections 28 (1d) , 29 of the CRA of the accommodates the varying provisions of Section 58(1),(3),(8) to Sections 63 of the Nigerian Labour Act 1974. This pertains to the varying employment responsibilities for children under 12 years, 14 years and 16 years respectively since such standards are equally permitted by the ILO especially the Minimum age Convention 1973. A general overview of the Section 30 of the Criminal Code, Section 50 of the Penal Code, Section 57(2 &3) of the Nigerian Matrimonial Causes Act , Section 1(1) Electoral Act 2006, Section 77(2), 117(2) of the 1999 Constitution reveals that the age for maturity, employability, criminal responsibility, marriage and the capacity to vote varies within available statutes. Also under Common Law , the age for capacity to Contract remains 21 years. In addition, there is minimal avenue for the child's total privacy outside the caregivers concerns or awareness. Also at the will of adults and guardians, children are restricted from participating in occultic interactions or involvement in perceived anti-moral transactions. Although the Child's Right Act at Part II especially at Sections 3,6,7,8,9,12 provides for the child's total right to privacy, thought, association, movement, recreation/Leisure, the same rule at Section 19 and 20 confers on the caregiver, the duty to guide and ensure that the child complies with its responsibility towards the cohesion of his family and community, solidarity of African people, and also respect his parents, superiors and elders at all times by assisting them in case of need.

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<sup>529</sup> Example 39-45

Orphans are categorized as the most prominent of children in need of care and affection. After the death of parents the care of Orphans revolves around their surviving relatives as categorized. The general rule does not allow the neglect of children of the family after the death of their parents.<sup>530</sup> Orphans are high ranked on the categories of person to receive charity. Such charity includes ensuring that they equally develop as righteous candidates of the community by fostering them or informally adopting same. Orphans are generally categorized as “everyone’s liability”. However eventual care depends on the mercy of the living persons. The situation is however contemporarily addressed by present government and Non-governmental orphanages and institutions, where orphans who do not have guardians or persons to take responsibility for them are catered for. The work records a virtually similar indigenous attitude to autistic children, hermaphrodites and fully disabled children. As same are generally regarded as sources of stress, ridicule and social discrimination, the standard of care apportioned to any of the above varies and depends on the parents/guardians temperament, societal status, means and educational/religious exposure. Moreover Section 15 of the CRA equally provides that all persons in charge of children in need of special protection measures shall provide same within available resources. This position is however without prejudice to the provisions of the Nigerians with disability Act 1993 and even the UN Convention on Persons Living with Disabilities. The study also records a highly superstitious attitude to children perceived as exceptional (gifted) or mysterious<sup>531</sup>.

### **6.2.2. Interactions with Modern laws**

The contemporary combination of customary law and statutory principles by indigenous caretakers arose issues on the implication of double decked marriages on spousal and children’s rights. However, while the customary law hinges the right of parental care and maintenance on the mere acknowledgement of the father, the Matrimonial Causes Act despite the affirmation of bastardy, provides that, in the course of deciding the maintenance of children of a statutory marriage, the court shall have regard to the children of the household which includes every children(even illegitimate).However, High Courts do not have jurisdiction to dissolve customary law marriages and decide issues ancillary to same. Moreover, the theoretical implication of Section 40(2) of the 1999 Constitution is that no child may be discriminated upon as a result of

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<sup>530</sup> (Example 101 and 102).

<sup>531</sup> These includes geniuses and other children perceived as endowed with spiritual gifts of prophecy,healing etc.



the circumstances of its birth. Also Section 69 of the CRA provides for the parental responsibilities for children even when the parents are not living together.

The Yoruba considers governmental intervention as the last resort for child correction and rehabilitation. Corporal punishment is retained as a means of punishing/chastising children especially when such have refused to heed to oral warning or forms of reprimands<sup>532</sup>. This position is equally as reflected by Sections 295 of the Nigerian Criminal Code and the extant Children and Young Persons Law. Nevertheless a general purview of the Universal rules reveals the prohibitions on the application of corporal punishment by Juvenile Justice Systems. The status of recalcitrant children as exemplified <sup>533</sup>reveals that without prejudice to extreme situations when guardians reports their wards, to formal Correctional facilities, Institutional juvenile Justice System often relate to children who directly conflicts with the Laws or those arrested for committing crimes. The study records a preference for child character and religious training over other forms of training presented including formal education. For this purpose Yoruba do not only tend towards the rigors of education, but on the impact of education in the humane, social and economic empowerment of persons. Interviewees distinguished between the traditional concept of employment and success, while the study compares same with the modern campaign on formal education as the main route to success or gainful employment.<sup>534</sup> This position although not contradictory to any underlying intent of Local Statutes, questions the priority of existing Universal Rights Laws on formal education. The CRA 2003 reveals an overt mandate on “pro-formal education” as laced with penalties. Also of importance is Section 18 of the Fundamental Objectives and Directive Principles of State Policies, Section 27,28 and 29 of the Concurrent list of the 1999 Constitution, African Charter, Section 15 of Child’s Right Act and the distinct International Covenants on Persons Rights. Unfortunately, without prejudice to the objective of the UBEA 2004, the existing Constitutional provisions guiding Federal Government policies towards education with emphasis on section 6(6c) reveals that the right to education is actually not fundamental or enforceable in Nigeria and it is an obligation that the government and parents have over the years been morally inclined to perform. The indirect import of the above aligns with the Pre-CRA position of Old Western Region on Education as

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<sup>532</sup> Example 88-9

<sup>533</sup> Example 105a and 105b

<sup>534</sup> Example 62

glimpsed from their Education Law, which provides that pupils were to be educated in accordance to the wish of parents and in accordance with age ability and aptitude.

Also the mandate to formally register the birth of the child is a contemporary social responsibility for parents .Consequently, this status of events seems to underscore the publicity and follow up of officers of the National Population Commission towards ensuring that all persons within Nigeria have a recorded bio-data. Indigenes are not very conversant with the definite nature and functions of child related International Organizations. The work records a general unawareness of available Federal and State Statutes on Children by indigenes. The mode of inter family fostering of children amongst the Yoruba is informal and the research does not record any awareness of the CRA provisions on the procedures for the fostering of children. However, respondensts refer to community leaders and area police officers as the appropriate authorities to report to before adopting an abandoned child in need of care and protection. The above positions however indigenous do not totally tally with the formal obligations under local and international anti-child trafficking regimes, whereby the government must ensure that transfers of obligations and rights over children are accessed and co-ordinated by the applicable legal parastatals.

The study records an overwhelming agreement with the contemporary campaigns on the benefits of breast feeding children. However, there is a prominent reservation against the contemporary influence on female circumcision, use of herbs/traditional medicines, corporal punishment and modern contraceptives. Respondensts tend to subscribe that unfamiliar but prominent issue on baby factories; alternative reproductive techniques, celibacy and abortion are implications of civilization which includes foreign ideals and contemporary legislations. The study records major rejections of the ideas on adoption of children by same sex parties, incest with children, sexual intercourse with immature children, abortion, permanent celibacy, economic surrogacy, baby factories, child pornography, sex education or teenage contraceptives. The above stated position is similar to the provisions of the Nigerian Criminal Code and also the Same Sex Marriage Prohibition Act. On the other hand while the study does not record exactly similar disapprovals in the UN Child Rules,<sup>535</sup> it is trite to note that the UN CRC, the CRA 2003 and

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<sup>535</sup> Nevertheless Section 17 of the CRA provides for the right of the child to sue persons for damages in respect of any harm done to it before, during or after its birth. Although without reference to the outright extermination of pregnancies/foetus , the Act allows the enforceability of the childs rights against being harmed at birth.

additional UN protocol expressly prohibits child pornography, sexual intercourse with minors and incest with children. Moreover as at 2013, Nigeria, under the Universal periodic review<sup>536</sup> notwithstanding the recommendation against discrimination based on sexual orientation, reiterated that legalizing same sex marriage would be a war to the society. Finally the study records the conditional consideration but lack of preference for Caesarian Sessions for child delivery, modern family planning methods, adoption of children, non economical surrogacy, artificial insemination, immunization<sup>537</sup>, street hawking, child domestic servitude and street begging.

### **6.2.3. Customary Court Attitude to Child Care**

Customary courts within the southwestern Nigeria have jurisdictions over children of Customary Law marriages as same relates to their general welfare, paternity and familial security .For the determination of the custody, care and maintenance of the child in the course of the parents' divorce, the court exercises its discretions in utilizing multitudes of principles which may be patrilineal, feministic, communal or as decided by the child. However, the establishing rules provide that all such approach must be in the welfare of the child. Often times, the custody of infant children especially the female child is awarded to the mother(tender years, attachment and gender matching principles ).Awards of custody is made with appropriate consideration of the behaviour, attitude and mental capacity of the parent (best interest principle).The man is expected to financially maintain his children during and after the marriage. The wishes of a mature child may be taken into consideration in the course of determining the parent to have physical custody. The courts do not make mandatory orders in respect of mature children unless in exceptional cases. The court ensures that the children paternal identity is preserved and that same are not irrevocably separated from any of their biological parents especially the father. The Courts also strive to retain the previously beneficial condition of the children before the proceedings(attachment principle).The Courts may give an order for divided, sole, shared or joint custody. Importantly no express rule precludes the customary courts from awarding the responsibility of the child to third parties if there is the need to do that.

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<sup>536</sup>Universal Periodic Review – Media Brief, Tuesday, 22 October 2013, Nigeria, Represented by 22-member delegation headed by H.E. Mr Mohammed Bello Adoke. <http://www.ohchr.org/EN/HRBodies/UPR/Pages/Highlights22October2013pm.retrieved> 17 February 2017

<sup>537</sup> According to section 13(4) of the CRA the neglect or omission to fully immunize a child is an offence.

Applicable Customary Courts do not articulate on the “best interest principle”. This is contrary (Section 1 and 14(1b) of the CRA 2003. On the other hand, the Establishment Laws enable them to consider the “general welfare of the child”. The Prominent Customary Court Manual was provided for the South Western Region in 1963 and also of note is the Ondo State Customary Court Manual 1989<sup>538</sup>. The available Restatement of Customary Rules is The NIALS Restatement of Customary Laws 2013.

#### **6.2.4. Judicial frame work for the care of indigenous children**

There are multitudes of incongruities, inequality and differences in the structures, jurisdiction and constitution of courts with jurisdictions on issues relating to indigenous child welfare. Available judicial frameworks for the enforcement of the concurrent and residual laws on children are dissimilar in establishment and powers. Also in practice, indigenous Children from Customary Law Marriages do not have personal access to available Constitutional/Family Courts. This situation is obviously not in consonance with Sections 14(2) of the CRA 2003. Family Courts as established by the CRA are functional in only two out of the six identified states. Although the contemporary recourse to the CRA<sup>539</sup> in many South Western States has displaced the need for the Children and Young Persons Act, Chapter 32 Laws of the Federation of Nigeria and Lagos 1958. Available Children’s Welfare Courts although aware of contemporary dictates in Juvenile Justice Administration, retains pre-existing but renamed Institutions. However, all researched States including those with completed family courts structures and those who do not have, contemplate a complete restructure of children welfare institutions in order to fit into the CRA mandate.

Only three States<sup>540</sup> out of the six South-Western States have functioning Customary Courts of Appeal. This position is however of no obvious impact as the provisions of Sections 280(1) provides that the court may be established by any state that deems it fit to have it. In states with

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<sup>538</sup> Available Customary Courts Laws are the Oyo State Customary Courts Laws and Rules 2000, Osun State Customary Courts Laws and Rules 2006, Osun State District Customary Court Law 2010, Ogun State Customary Court Law of 1986 as re-enacted, Lagos State Customary Court Law as Re-enacted in 2005 and 2015, Ekiti State Customary Law 2014, Ondo State Customary Court Rules and Laws 1978 as reenacted in 2004 and 2006 respectively.

<sup>539</sup> Available Childs Right Laws are the Oyo State Childs Rights Law 2006, Ekiti State Childs Rights Law 2006, Ondo State Childs Rights Law 2007, Osun State Childs Rights Law 2007, Lagos State Childs Rights Law 2007, Ogun State Childs Rights law 2006

<sup>540</sup> Osun, Ondo and Oyo.

Customary Courts and Customary Courts of Appeal, there remains an unsettled age long controversies on the appellate jurisdictions of the above mentioned courts of co-ordinate jurisdictions to entertain cases from customary courts. In South Western States with Customary Courts, District Customary Courts and Customary Courts of Appeal, a general assessment reveals that Custody Cases seldom get to the Customary Courts of Appeal.

The judicial jurisdiction on incidence of child labour or exploitation depending on the facts and circumstances are shared between the National Industrial Court, the Magistrate Courts, Family Courts and High Courts. Applicable States have varying provisions on the requisites for becoming Customary Court President/Officials. Child Care proceedings in Customary Courts are highly and discretionarily transferable to other Courts of co-ordinate or higher jurisdiction (Footnote 214). Also, the study observes no formal link or interaction between the available Child Welfare Departments and Customary Courts.

#### **6.2.5. Legislative Framework for the Care of Indigenous Children**

There is a Constitutional reprobation of the right to enforce governmental obligation on children. A consideration of Section 6(6c) of the 1999 Constitution on the Powers of the Judiciary outrightly withdraws all powers of persons or institutions to mandate advocate or insist on the enforcement and governmental compliance with Chapter II Section 17(3f) of the same Constitution. This is the Chapter on the Fundamental and Directive Principles of States Policy towards the welfare of Children. Also, by virtue of Item 61 of the Exclusive Legislative list, Children of Yoruba customary law marriages are expressly excluded from the exclusive jurisdiction of the Marriage Act and the Matrimonial Causes Act. Apart from the Marriage Act and the Matrimonial Causes Act, all examined Federal Laws are equally applicable to Indigenous Yoruba Children.

The Child's Right Act 2003 a replica of the UN Convention on the Right of the Child 1989 as domesticated in accordance with Sections 12 of the 1999 Constitution of the Country remains the National Framework consisting of the general guidelines toward achieving the best interest of the child. As at the time of the Research Lagos, Oyo, Ogun, Osun, and Ekiti have enacted their own Child's Right Laws in line with the National Act but with requisite localization of the content to fit into individual States identity. Also, Customary laws are variously subject to the sanctions

from other formal and written legislations that do not contradict the Constitutions or other Superior Enactments. Meanwhile, the Child's Right Act 2003 makes no express or specific reference to Customary Courts as institutions for the enforcement of children's rights .

#### **6.2.6. Institutional and Indigenous Frameworks for the Care of Indigenous Children**

God the Supreme Being is the main source of child care rules. As children are regarded as biological offspring of their parents, so are they perceived as gifts from God. Typical parents therefore are by instinct poised to seek the welfare of their kids. Moreover since, the greater mandate is to please God, parents are obliged to raise their kids to fulfill the standards for an Omoluabi (A child birthed by God of Character).

The existing indigenous institutions are multiple, consisting of human, structural and oral constituents. More especially, they lack structural and regimented child welfare enforcement organs. The considered framework respects deities with a sacred sense for mysteries and unexplained. It is believed that spirits and ancestors exist in the invisible world and are capable of influencing the physical realm. Worship, religion, spirituality, beliefs, rituals, rites, sacrifices, self denial, discipline and exorcism equally play prominent roles in the approach to child care. This situation creates some problems on the enforcement of modern laws especially as provided by the Section 2(2) of CRA which mandates that every person, institution service agency ,organization or body responsible for the care and protection of children shall conform with the standard established by appropriate authorities especially in the areas of health, safety and welfare ,number and suitability of their staff and competent supervision

The Federal Ministry of Women's Affairs co-ordinates national policies and laws on the welfare of Nigerian Children. At the state level, existing Child Development Departments within the Social Welfare Offices of Ogun , Oyo, Osun, Ondo, Ekiti States Ministry of Women's Affairs and the Lagos State Ministry of Youth and Social Development play intermediating roles on issues relating to the custody, guardianship and welfare of children at the indigenous level. Also the Social welfare departments despite complaints about funding, acts as representatives of the child vis a vis available child care related institutions such as the Police, the Courts, Parents, Hospitals, Community Houses, Orphanages, Borstal Institutions, Remand Homes, Schools, Community and the Government. Such interventions by Child Development Officers in children

matters are as generally required by the CRA, High Courts and other Nigerian Laws such as the, MCA, CYPA, Borstal Institutions Act, Prisons Act, Labour Act, NAPTIP etc. Finally, the Nigerian Police Force as further allowed by the Child's Right Act remains the major Institution for Reports, Arrests, Investigations and forceful enforcements in the course of achieving indigenous children's care. Without reference to the efficacy of Police powers to arrest parents and guardians for breaches of child laws, the Yoruba Law records no similar institution for mandating child care.

The registration of child birth is a duty conferred on Local governments by virtue of Part 1 of the Fourth schedule of the 1999 Constitution on the Functions of Local Government. Nevertheless this position is without prejudice to the constitutional establishment of the National Population Commission and with the further powers of the Birth, Death ETC (Compulsory Registration) Act 1992 No 69 in line with Section 5 of the CRA 2003, Article 15 of the Universal declaration of human right 1948, article 24 of the International Covenant on Civil and Political Right, Article 7 of the CRC 1989 and Article 6 of the ACRWC 1990. However the highly compulsory mandate on indigenous parents and guardians to formally register children after birth, remains an unfamiliar demand, to interviewees.

Yoruba considers the biological parents of the child as the primary duty bearers in the first instance, as regards care and provision of maintenance. Where parents do not live together, these duties shall be carried out jointly, unless it would not be in the general welfare of the child. Where the biological parents is deceased, or the biological parents do not live together as a nuclear family and the absent parent(s) play no role in the child's life, the other relatives, guardian, step-parent, siblings or foster parents may assume parental duties over the child.

### 6.3.CONCLUSION

Flowing from the objectives of the research and without prejudice to applicable formal Laws as also considered, the study aligns with previous works in respect of the facts that the applicable system is typically unwritten, superstitious and flexible in such manners, that it also has the ability to adapt to external influence. A systematic resemblance amongst all the examined interacting Laws and Institutions is that, they all acknowledge the need to care for children, upon which the performance of such obligations is heavily influenced by the caretakers status. In addition to the driving attribute of “Omoluabi”, the work discovers that Yoruba Child Care System is heavily multi-philosophical, as prominent reliance is placed on Human and Oral Frameworks. Nevertheless, the regime however restrained or censored continues to thrive independent of regimented rules. More so, the limitless cultural provisions on the welfare of the child suggests that available Coded Laws only highlight the prominent values within the limitless Yoruba Jurisprudence. As indigenes remain uninterested in the details of the existing modern/international Regulations, the research discovers that the Yoruba Customary Law is yet to fully assimilate many recently popular suggestions on the care of children. Furthermore, specific incursion on Yoruba Children reveals that apart from the indirect provisions of the Chapter 20 of the Nigerian Criminal Code on Ordeal, Witchcraft, Juju and Charms, no other formal Child’s Right Law provides for the special protection of children from cultural metaphysical hazards. Notwithstanding the general prohibition of acts that are abusive or detrimental to the child e.g FGM and other Cultural Practices, the work discovers that indigenous Yoruba children are still well within the beneficial or non beneficial discretion of superstitious caretakers.



## 6.4. RECCOMENDATIONS

As previously advised in other works, due to the existing ideological and administrative unco-ordination among International, National, State, Local Government and Customary Laws, the present study re-iterates the dire need to examine and refinetune the whole system of Rules affecting indiginous children .For Example ,there is the need to re-examine the provisions of the Criminal Code on Corporal Punishment and Criminal Responsibility ,the Labour Act on Child Employment, the Marriage Act on Child marriage, the Constitutional discrimination on Customary Law Marriages etc vis a vis the provisions of the acclaimed Child's Right Act 2003.

Apart from improving on the non- cordial relationship between the Child Welfare Departments and Customary Courts, the work observes the need to better fund field based institutions such as the Departments of Child Welfare, Police Child Welfare Departments and the National Child's Right Implementation Committee.

At this state, the neutral attitudes from respondents warrants that appropriate Organizations and institution intensifies on the campaigns to familiarize indigenes with State Legislations, especially those prohibiting child hawking; child begging; child trafficking( in the form pawning or illegal fostering) and all forms of child labor and economic exploitation of children. The above fact also requires the publicity of penalties in respect of harmful traditional/superstitious practices affecting children, withdrawal of children from schools for hawking or begging or marriage, female genital mutilation (FGM). The work confirms the earlier report by UNICEF in 2007<sup>541</sup>, that only a few percentage of children are actually registered at birth. The applicable authorities therefore should intensify previous efforts at publicity and house to house registration .For this purposes, traditional birth centers, churches and other indigenous institutions involved in the care of children should be carried along.

The flexibly of proceedings and decisions at the customary courts on custody of children reiterate the existing discrimination between children of statutory marriages and their counterpart under customary law. Some practices at the customary court appear to contradict the principles

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<sup>541</sup> United Nations Children's Fund (UNICEF) in Nigeria. *"Information Sheet: Birth Registration"* @ [www.unicef.org/nigeria/overview](http://www.unicef.org/nigeria/overview). retrieved 7th May 2017. Contrary to Article 7 of the Convention on the Right of the Child, Adelani (2007), *FG to Begin Campaign On Birth Registration.* Daily Champion Lagos, 12 July 2007. *Agha Ibiam(2007),Lagos Launches National Birth Registration.* This Day Lagos, 3 September 2007.

of equality before the law. Instead of subjecting some children to less sophisticated systems of law which allows for easier divorce and cheaper matrimonial costs, the study advocates that all children irrespective of the marriage contracted by parents be subject to the jurisdiction of the Family Courts. The study discovers that the polygamous influence on customary courts has excused parents from making special provisions for their many children who become eventual victims of their parents remarriage or tendencies to have more step siblings. Customary law may not be tolerated as the rationale for substandard attitude to children. In the presence of poverty, illiteracy and other agents of underdevelopment, the law on divorce should do well in ensuring that each child is given the best care, when the parents decide to go apart.

For the main time, in order for the customary courts to achieve standards, instead of the discretionary approaches to the welfare of the child, more efforts should be made to ensure that the principle of best interest also becomes their guiding factor. This invariably calls for a process of harmonization between various laws and the proper public education of affected person in this regard i.e Customary Courts Presidents should also be exposed to requisite Child's Right trainings and the prevalent Customary Courts Manuals should either be retrieved or updated. The concepts of the best interest principle should also be built into child care community-based programmes. In addition, Courts system should also be reorganized so that the High Courts solely administer English law, while the Customary Courts of Appeal exclusively administer all aspects of customary law. Such exclusive jurisdictions will invariably solve some theoretical conflicts and procedural incongruities in the administration of Nigerian customary law.

For the main time, procedures on child care, custody or maintenance at the Higher Courts of records may also be reviewed to encourage and enable amicable settlement of child related disputes at anytime during the proceedings. As it is under Yoruba Customary Law where various informal dispute resolution processes abound, the High Courts should also engage other human institutions towards ensuring that the emphasis on court orders is only when there is no enforceable child custody/maintenance deed between the parties or where it is obvious to the court that after much efforts, the divorcing or the applicable parents are not amicable on the settlement of children.

While confirming the NHRC<sup>542</sup> report that the Universal Basic Education programme has improved the rate of enrolment of pupils in schools. The study discovers that amongst the indigenes, extended family supports individual educational attainment, and therefore the repayment of these benefits to the family was important to the sponsors. The National Framework on Education must also encompass the indigenous preference for adequate utilization of skills in any manner that enables the child to fend for itself and its parents and at large live a fulfilling financial life. While employment in well paying white collar jobs is a welcome idea, the system should work towards encouraging curricular which also attends to the children alternative initiatives for financial survival without prejudice to the mandate for formal education. Also the study supports trending views<sup>543</sup> that the National Policy on Education should guarantee that the initial language in primary education must be the mother tongue of the child. In addition there is also the need to include curriculum that reflects the State interest in inculcating in children the estimable values of Omoluabi as cherished by the Yoruba.

There is the continuous need for the public awareness of the available governmental facilities for children living with disabilities and autism. Indigenous Caretakers should be familiarized with possible biological, psychological, developmental and environmental stressors, that trigger in adequacies or in coherence in children. This step may protect such children from their guardians superstitious efforts at healing and exorcism. Moreso, it has become pertinent for appropriate jurisdictions to identify other forms of harmful superstitious practices and codify same with penalties. A very similar approach is as entrenched in the Indian Drug and Magic Remedies (Objectionable Advertisement) Act 1954 and also the Maharashtra Superstition and Black Magic Act 2013. An extensive awareness program would also be required for indigenous children to know that there is a choice. For this purpose the police, local authorities, family courts and other

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<sup>542</sup> No 56 of the Summary of Stakeholders Compilation in ; Nigeria : Children's Rights References in the Universal Periodic Review-, 4th Session February 2009 @ <https://www.crin.org/en/library/publications/nigeria> retrieved on the 7th February 2017

<sup>543</sup> Unrepresented Nations and Peoples Organization (UNPO) Submission to the UN Office of the High Commissioner for Human Rights Universal Periodic Review: Nigeria, September 2008 (4<sup>th</sup> session) 1, also UNESCO Universal Declaration on Cultural Diversity (Adopted by the 31st Session of the General Conference Paris, 2 November 2001), International Convention on the Elimination of All Forms of Racial Discrimination(Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965, entry into force 4 January 1969).

recognized institutional frameworks may be better poised for an efficient child complaint system. Such innovations must severally educate children on what constitutes child abuse and the options they have if they need help. This also applies to the other persons, upon the concerns that a child is being abused or subject to harmful superstitious practices.

While the Child's Right Act 2003 is considered as a good legal and policy basis for the promotion and protection of the rights of children, the generality of its ideals and rules vis a vis the Yoruba cultural specifics, calls for a more familiar terrain. There is also a need to redraft the applicable Nigerian children's law in line with other African based regimes as co-ordinated within the African Charter on the Right and Welfare of the Child. A typical culturally sensitive Act is the Botswana 2009 Children's Act which is an overt attempt to reflect the provisions of the CRC and CRC in a domestic law without losing touch with indigenous social realities. The Botswana Act is considered detailed and also comparable to other progressive enactments in its neighbouring African countries. Such other encompassing laws include the South African Children's Act 38 of 2005 and the Lesotho Child Care and Protection Act 2011.

There is also the need to re-examine common criticisms about the UN Convention on the Right of the Child (CRC) and other International rules, which includes that;

- i. The CRC is excessively liberty rights based and not about children care per se
- ii. The CRC exaggerates children rights against the African culture of respect for adults and for parents
- iii. The CRC in isolation, and without recourse to other indigenous considerations may lead to complacency because International Treaties alone are not enough to improve conditions of indigenous children
- iv. The recent trends on child's right, do not tally with traditional views on punishment, sexual exposure, economic independence, gender roles, discipline and Training.
- v. The available institutional and formal juvenile justice system is not as encompassing and wide as what obtains under the non institutional and indigenous systems of child care.
- vi. The provisions of the CRA remains theoretical for as long as parents and other child caretakers are not empowered and assisted towards the achieving ideal life styles.

## BIBLIOGRAPHY

### BOOKS

- Abimbola, W. 1973. *The Literature of Ifa Cult, in Sources of Yoruba History* ed. Biobaku SO published by Oxford University Press
- Agbede, I.O. 1997. *Repugnancy Doctrine ;A Reappraisal in Current Themes in Nigerian Law*, University of Lagos
- Agbede, I.O. 1991. *The Different Systems of Law: Nature and Basis of Conflict of Laws In Nigeria*
- Ajisafe, A.K. 1946. *The Laws and Customs of the Yoruba people*, Kash and Klare bookshop Lagos 1946
- Adebesin, F. 1921. *Laws and Customs of Egbaland*. ENA Press Abeokuta 1921
- Abimbola, W. 1975. *Iwapele: The Concept of Good Character in Ifa Literary Corpus in Yoruba Oral Tradition*(Ile Ife)ed Wande Abimbola 1975
- Adesanya, 1973. *Law of Matrimonial Causes*, Ibadan University Press 1973
- Aguda, 1989. *The Limits of the Law*(London,1980) pp52.54
- Ayittey, B.N. 1991. *Indigenous African Institutions*, USA Transitional Publishers 1991
- Anyebe, A.P. 1985. War Without Arms. Fourth Dimension Publishers, Enugu p21.
- Akinjogbin, I.A. 1967. *Dahomey and its Neighbors 1708-1818* Cambridge University Press
- Allot A., Contran E. 1971. *A background paper on Restatement of Laws in Africa*, Faculty of Law, Ife, Integration of Customary and Modern legal Systems in Africa(1971)
- Alemika E.E.O., Chukwuma I.C. 2001. *Juvenile Justice Administration in Nigeria: Philosophy and Practice*, Published by Centre for Law Enforcement Education (CLEEN)Lagos, Nigeria p 10
- Adewale, S.A. 1986. *Ethics in Ifa* : S.O. Abogunrin, ed. Religion and Ethis in Nigeria. Ibadan, Nigeria, Day Star Press, 60-71
- Allot, A. 1960. *The Future of African Law* (London 1960).
- Allot, A.N. et al. 1966. *Essays in African Law*, Gluckman M(ed) p154
- Abumere, P.I. 1991. *Atukhiuki Among the Esans in Bendel State: A Case study in Belief System in the Customary Law as a means of Social Control* . Essays in African Law, Gluckman M(ed) 1991
- Adesanya, S.A. 1973. *Laws of Matrimonial Causes*, Ibadan University Press 1<sup>st</sup> Edition pg 227

- Bohannan, P. 1957. *Justice and Judgment and the Tivs*, Oxford 1957
- Bromley, P.M. 1981. *Family Law*, 6<sup>th</sup> Edition, London Butterworths 1981.
- Babatunde, E.D. 1992. *Culture, Religion, and the Self: A Critical Study of Bini and Yoruba Value Systems in Change*. Lewiston, NY: Edwin Mellen Press
- Bolaji, 1962. *Idols in Yoruba Belief*, London 1962,
- Benard, I. Hom 1977, *Tiv Customary Law of Marriage and Divorce A Case Study*(1977)
- Driberg, 1934. *The African Conception of Law Journal of Comparative legislations and International Law* 3<sup>rd</sup> series Vol 16 p230,237 Dias, RWM (1964) *Jurisprudence*, 2nd ed (Butterworth), p508.
- Donnelly, J. 1989. *Cultural Relativism and Universal Human Rights, Human Right in Theory and Practice* 109 at 118-21 (Jack Donnelly ed 1989)
- Emiola, A. 2011. *Emiolas African Customary Law*. 3rd Edition Emiola Publishing Ltd Ogbomosho
- Eades, 198. *The Yoruba Today* Cambridge university press),
- Eekelaar, 1992. *The Emergence of Childrens Rights*, H.D Krause (Ed), *Child law : Parent, Child and State*
- Elias, T.O. 1963. *The Nigerian Legal System*, Routledge and Kegan Paul Ltd London p307
- Elias, T.O. 1956. *Nigerian Legal System*. Routledge & Kegan Paul Ltd London p12
- Elias, T.O 1972. *Towards a Common law in Nigeria*, *Law and Social Change in Nigeria*(1972),
- Elegido, J.M. 1994. *Jurisprudence*; Spectrum Law Pub Ibadan(1994)
- Elegido, J.M. 2010. *Jurisprudence* ed. Aguda Spectrum Law Series p 1-46
- Franz Boas, Ehrlich E, *Fundamental Principles of the Sociology of Law*(1912)
- Franz, Boas 1911. *The Mind of Primitive Man* New York: Collier Books. page 149,
- Fadipe, N.A., 1970. *The Sociology of Yoruba: Nigeria*, Ibadan University Press. Pp. 183-189
- Graveson, *Conflicts of Laws* Sweet and Maxwell London 361-392
- Gulliver, A.G. 1963. *Social Control in an African Society* ,London 1963
- Gluckman, 1967. *Judicial Process Among the Barotse*, (Manchester 167) p 126
- Holleman, J.F. 1974. *Issues in African law* (The Hague, 1974) p 13
- Ibidapo-Obe, A. 2005. *Syntheis of African Law*, Concept Publications  
33,34,190,197,199,202,192

- Loveridge, A.J. 1949. OBE Judicial Adviser, Gold Coast on his Address titled The Future of Native Courts given at the Colonial Office Summer School held in Connection with the Second Training Course for Colonial Service officers at St Johns College, Cambridge, in September 1948.
- Layonu, A.I. 2012. *Aspects Of The Nigerian Legal System: Customary Law*(as tradition) in A Modern Society
- Lambert, H.E. 1956. *Kikuyu Social and Political institutions*,Modern Law Review 663.
- Mason, J.K. *Medico-Legal Aspect of Reproduction and Parenthood*.1<sup>st</sup> Edition Dartmouth Publishing Company Ltd USA 250-279
- Malinowsky, 1926. *Crime and Customs in Savage Society*, London.
- Nwogugu, E.I. 1990. *On Family Law*,Heinemann Studies In Nigerian law, Revised Edition.
- Nwogugu, E.I. 2011. *Family Law in Nigeria*, HEBN Publishers Plc.
- Obilade, A.O. 1990. *Nigerian Legal System*,Spectrum Law Series p 93.
- Ojomo, M.A. 1989. *Towards a Nigerian Common Law*, in M.A Ojomo, Fundamentals of Nigerian law.
- Olaoba, O.B. 2002. *Introduction to African Legal Culture*, Hope Publications Ibadan at p 14.
- Olaoba, O.B. 2008. *Yoruba Legal Culture Problems and Prospects of Studying Yoruba Legal Culture*, New Age Publishers Ltd Lagos p108-125.
- Onukah, M.C. 2003. *Family Law*,1<sup>st</sup> Edition Sprettrum Law Series Ibadan at p178,181-183
- Obi, S.N.C 1966. *Modern Family Law in Southern Nigeria*, Sweet and Maxwell 1966
- Obilade, A.O. 1990. *Nigerian Legal System*, Spectrum Law Series
- Olaoba, O.B. 2008. *Yoruba Legal Culture Problems and Prospects of Studying Yoruba Legal Culture*, New Age Publishers Ltd Lagos p108-125.
- Olurode, I., Olusanya, O. 1994. *The Nigerian Heritage: The Yoruba Example* , Reboni Publications Ltd. Reprinted in 2011
- Oputa on Matrimonial Cause*, Edited by Ikeazor Akaraiwe 1966-1979 Vol 5 Oputa Law Reports (Oputa LR)P 102
- Oyewo, T. 1999. *A Handbook on African Customary Laws of Marriages , Inheritance and Succession*,1<sup>st</sup> Edition. Nator Publishing Company p43
- Park , W. 1968. *Sources of Nigeria Law*, Sweet and Maxwell London P 68
- Pound, R. 1922. *Introduction To The Philosophy Of Law*.

- Sagay, I. 1999. *Nigerian Family Law; Principle, Cases, Statutes and Commentaries* Malthouse Press Ltd First Publishers Lagos 546 -557.
- Savigny, F.C. 1814. *Vocation of Our Age*.
- Slomnicka, 1982. *Law of Child Care*, Macdonald and Evans Ltd.
- Thomas Hobbes, Grotius 1583-1545,
- Executive Board, American Anthropological Association 1947 "Statement on Human Rights" in *American Anthropologist* 49(4) 539-543
- Robert H. 1976. *Law and the Study of Social Control in Small Scale Societies*(1976) 39,
- William Bascom. 1961. *Ifa Divination Communication between gods and Men in West Africa*(Bloomington,1969) p 121,

## **JOURNALS**

- Ajibola, J.O. 1982. Administration of Justice in the Customary Court of Yoruba Land *University Press Ltd Ibadan p 36*
- Audi, T. 2006. Child Custody (Hadanah) under Islamic Law in Nigeria: Looking at the Best Interest of The Child. *Ahmadu Bello University Zaria Journal of Private & Comparative Law*. P 219 Vol 1 No1.
- Alemika, E.E.O., Chukwuma I.C. 2001. *Juvenile Justice Administration in Nigeria: Philosophy and Practice*, Published by Centre for Law Enforcement Education (CLEEN) Lagos, Nigeria. p 10
- Akiwowo, A. 1983. Ajobi and Ajogbe "Variations on the theme of Socialization. *Inaugural Lecture Series, 46 University of Ife Nigeria*
- Abdulmumini, A. Oba 2008. Juju Oaths in Customary Law Arbitration and Their Legal Validity in Nigerian Courts *p43 Vol 52 Number 1*
- Abdulrazaq, F.F. 2007. Custody of Children in Nigeria; A Comparative Analysis of Relevant Laws *The University of Ilorin Law Journal* Vol 3 and4 pg 153-163
- Abifarin, O. Hammed, H.A. 2012. Gender Issues in Child Custody in Matrimonial Causes in Nigeria. *Journal of Commercial and Contemporary Law*. Vol 3 June 2012. Published by the Department of Commercial Law Faculty of Law Imo State University. Owerri



- Ajayi, F.A. 1960. The Interaction of English Law with Customary Law in Western Nigeria. *Journal of African Law* at 103
- Anyebe, M.A. Ajomo 1989. Comparative Analysis of African Customary Laws” Paper presented at the All African Law Ministers Conference Abuja 1989
- Aguda, 1989. Towards a Nigerian Common Law, in Ajomo (ed), *Fundermentals of Nigerian Law*, Lagos Nigerian Institute of Advanced Legal Studies. 1989.
- Adewoye, O.O. 1987. Proverbs as Vehicle of Juristic Thought among the Yoruba, 3&4 *OAU L J*
- Bennet, T.W., Vermeulen T. 1980. Codification of Customary Law By TW Bennett and T Vermeulen *Journal of Afican Law Vol 24, No 2 Autumn 1980*
- Abdulrazaq, F.F. 2007. Custody of Children in Nigeria; A Comparative Analysis of Relevant Laws *The University of Ilorin Law Journal Vol 3 and 4 pg 153-163*
- Brooke, N.J. 1954. *Journal of African Administration Vol VI, No 2 April 1954 pg 67*
- Centre for Reproductive Rights 2005. Legal Grounds, Reproductive and Sexual Rights in African Commonwealth Courts. Centre for Reproductive Rights 2005 p79-82
- Driberg 1934. The African Conception of Law, *Journal of The African Society 34 Supplement July 1955 p 230*
- Dike, K.O & Ajayi, J.F. 1968., African Histography, *International Encyclopedia of the Social Sciences (New York 1968) , David I Sills (ed) Vol 6 p 394.*
- Blair, D. M. & Weiner M.H. 2005. Comparative Exploration, 39 *Fam. L. Q. R*
- Eso, K. 1991. Towards Certainly in our Laws, *Towards a Restatement of Nigerian Customary Law, Vol 10 Federal Ministry of Justice Law Review Series pg 51-53*
- Eekelaar, 1992. The Emergence of Childrens Rights in Child Law : *Parent, Child and State* H.D Krause. ed 1992
- Fajana, A. 1996. Some Aspects of Yoruba Traditional Education, *ODU Vol 3, No 1, July 1966*
- Gower, L.C.B 1964. The Nigerian Statutes and Customary Law, *The Nigerian law Journal Vol 1 No 1 Nov 1964*
- Native Courts and British Justice in Africa, *Africa Vol xiv No 8 October 1944 pg 449, 451*
- Hans-H, Munker 1998. Which Values for Africa at the 21<sup>st</sup> Century? *African Marburgensia Special Issue 17, 1998.*
- Olaide, Adigun 1991. The Equity of Nigerian Customary Law. *Towards A Restatement of Nigerian Customary Law, Vol 10 Federal Ministry of Justice Law Review Series.*

- Obilade, A.O. 1991. The Relevance of Customary Law to Modern Nigerian Society, *Towards a Restatement of Nigerian Customary Law , Vol 10 Federal Ministry of Justice Law Review Series,*
- Olawoyin, O.O. The Effects of Repugnancy Clause on the Validity of Customary Law, *Annual Law Review*
- Ogungbe, M.O. 2001. Family Law in Disarray Law to the Rescue.46<sup>th</sup> *Inaugural lecture OOU Ago Iwoye Tuesday 2 June 2009*
- Olatunbosun, A.I. 2005. An Appraisal of the Socio Economic Provisions of the CRA. 2003. *Nigerian Journal of African Law.* 2NJAL .153-163
- Olatunbosun, A.I. 2007. Women’s Human Rights Gains or Pains to Humanity. *The Calabar Law Journal* Vol XI, Faculty of Law Calabar 60-77
- Owasanoye, B. 2005. The Regulation of Child Custody and Access in Nigeria, *39 FAM. L.Q.R.* p405 -423
- Owolabi, A. 2002, Maintenance under the Nigerian Statutory Family Law. A Critical Appraisal University of Ibadan *Journal of Private and Bussiness Law*, IJPBL vol 3, p42
- Peel, J.D.Y. 1978. A Yoruba Concept of development, *Journal of Development Studies*,14:2-165
- Robinson, 1948. Administration of African Customary Law, *Journal of African Administration* Vol 1 No 4 1949
- Sonia, Harris-Short 2003. International Human Right Law, Imperialist, Inept and Ineffective; Cultural Relativism and the UN Convention on the Right of the Child, *Human Rights Quarterly* Vol 25 No 1 Feb 2003.
- Schulte-Tenckhoff 1997. The Right of Persons Belonging to Minorities To Enjoy Their Own Culture, Comment on Human Rights, Sub Committee on Prevention of Discrimination and Protection of Minority,3<sup>rd</sup> Session 28-30,UN Doc, E/CN ,4/Sub.2/AC 5/1997/WP.7.
- Taylor, Smith & Nairn 2001. Rights Important to Young People, Secoundary Students and Staff Perspectives, *International Journal of Childrens Rights*, p. 13.
- Tomlinson, M. 2002. Opening Remarks Address delivered by the World Bank Country Director at a workshop by World Bank Abuja, Nigeria on Culture and Development, March 18-19
- Ibraheem ,T.O. 2006. An Examination of Maintenance under the MCA , *VOL 1 No 1 Oct 2006* 85-101.1990.P85-101at p 85

- Utana, A.A., Osibajo, Y. & Oshipitan, T. 1991. Customary Law and The Land Use Act, *Towards a Restatement of Nigerian Customary Law , Vol 10 Federal Ministry of Justice Law Review Series. P102*
- Udom, Azogu 1991. Women and Children A Disempowered Group under Customary Laws. *Towards a Re- Instatement of Nigeria Customary Law. p113*
- Yadudu, A.H. 1991. Customary Law and the Nigerian State: Policies, Dilemas and Options, *Towards a Restatement of Nigerian Customary Law, Vol 10 Federal Ministry of Justice Law review Series .p 46*
- Yusuff, A.O. 2009. Best interest in trial: medical decision making on behalf of the incapable child. *Akungba Law Journal Vol 1, No 3 January 2009 p 17-36.*
- Yussuf, O.A. 2010. Contemporary Issues on the Nigeria Land Scape. *A Compendium in Honor of Prince Lateef Fagbemi. 1<sup>st</sup> Publication Lex Vison.*
- Yusuff, J.A. 2007. "Custody of Children after divorce under the Shari'ah, Customary and Civil Laws in Nigeria: *A Comparative Analysis*", (MCL dissertation International Islamic University, Malaysia, 29-30

## **NEWSPAPERS**

- Adelani, 2007. FG to Begin Campaign On Birth Registration." *Daily Champion Lagos, 12 July 2007.*
- Agha, Ibiem 2007. Lagos Launches National Birth Registration. *This Day Lagos, 3 September 2007*

## **DICTIONARIES/THESURUS/COMPENDIUM/ALMANAC**

- Oxfords Advanced Learners Dictionary 6th Edition
- Osborn's Concise Law Dictionary Ninth Edition Published by Sweet and Maxwell 2001
- Webster Dictionary
- Blacks Law Dictionary
- The Holy Bible.
- Holy Quran .
- Bamgbose O.J. 2013. Digest of the Judgement of the Supreme Court, Safari Books Ltd 2013

Oshitokunbo, L.O. 2013. An Almanac of Contemporary Judicial Restatement: with Commentaries, vol iii, Revised Edition, Spectrum, 2013

Ifalere, O.O. 2014. Iwe Mimo Ifa: Esin Akoda Olodumare. Lahoo Productions 2014, ISBN: 978-978-52603-0-4

Wande, Abimbola 1977. Awon Oju Odu Mereerindinlogun, University Press PLC Ibadan 2014

Adegoke, A.K. 2014. Owe Yoruba Pelu Itumo ati Iloo won, ISBN 978-53343-2-6

Local Government Reform Law and the Local Government Administration Handbook

Restatement of Customary Law of Nigeria 1-67, Nigerian Institute of Advanced Legal Studies at Abuja. 29<sup>th</sup> April, 2013

### INTERNET SOURCES

Post 2015 UN Development Agenda especially MDG 1,3,4,5, Millennium Development Goals < *Health Topics*, retrieved from [http://www.who.int/topics/millennium\\_development\\_goals/en/](http://www.who.int/topics/millennium_development_goals/en/) on 14/May/2017

Justice for Children International [www.jfci.org](http://www.jfci.org) –Retrieved- June 16, 2016

Save the children [www.savethechildren.org](http://www.savethechildren.org) -Retrieved on September 13, 2016

Child Labor Coalition [www.stopchildlabor.org](http://www.stopchildlabor.org) -Retrieved on May 22, 2016

Child's Right Information Network <http://www.crin.org/resources/index.asp> -Retrieved on June 16, 2016

concerned for Working Children

<http://www.ohchr.org/EN/HRBodies/CRC/Pages/DiscussionDays>. retrieved on 17th February 2017

[Optional Protocol on the Involvement of Children in Armed Conflict](http://www.ohchr.org/EN/HRBodies/CRC/Pages/DiscussionDays) More information at

<http://www.ohchr.org/EN/HRBodies/CRC/Pages/DiscussionDays>. retrieved on 17th February 2017

247 [www.digitalcommons.law.utulsa.edu/fac\\_pub](http://www.digitalcommons.law.utulsa.edu/fac_pub) -retrieved February 4 1015

No 56 of the Summary of Stakeholders Compilation in ; Nigeria : Children's Rights References in the Universal Periodic Review-, 4th Session February 2009 @

<https://www.crin.org/en/library/publications/nigeria> retrieved on the 7th February 2017

[https://treaties.un.org/doc/source/signature/2012/CTC\\_4-11d.pdf](https://treaties.un.org/doc/source/signature/2012/CTC_4-11d.pdf). retrieved on the 14th February 2017

<http://www.ohchr.org/EN/HRBodies/CRC/Pages/DiscussionDays>. retrieved on 17th February 2017

Action Against Trafficking and Sexual Exploitation of Children

(ALTEN)<http://atsec.tripod.com/atsecbangladeshchapter/id1.html>- Retrieved-September 23, 2017

Concerned for Working Children [www.workingchild.org/htm/cwc.htm](http://www.workingchild.org/htm/cwc.htm)-Retreived June 13-2017

Free the Children [www.freethechildren.org](http://www.freethechildren.org)-Retrieved September 23 2017

Global March Against Child Labour [www.globalmarch.org](http://www.globalmarch.org)-Retrieved on September 14,2017

Centre for Child's Right and Campaign to Stop Child Labour [www.haqcrc.org](http://www.haqcrc.org)-Retreived May 2016

International Federation of Free Trade Unions (Child labour section) [www.icftu.org](http://www.icftu.org)-May 2016

ILO – International Programme of the Elimination of Child Labour

[www.ilo.org/ipecc/index.htm](http://www.ilo.org/ipecc/index.htm)The World Bank- [www.worldbank.org](http://www.worldbank.org) –Retrieved-May 8 2017

International Initiative to End Child Labor [www.endchildlabor.org](http://www.endchildlabor.org)

United Nations Children's Fund (UNICEF) in Nigeria. "Information Sheet: Birth Registration" @ [www.unicef.org/nigeria/overview](http://www.unicef.org/nigeria/overview). retrieved 7th May 2017.

Onwueguzie & Johnson(2004),*Mixed Methods Research: A research Paragim Whose Time Has Come Educational Researcher Vol 33, No 7 14-26* Retrieved from [www.sagepub.com](http://www.sagepub.com) on 30 September 2016

Quantitative-vs-Qualitative Research [www.researchgate.net/](http://www.researchgate.net/) retrieved on 30 September 2016

[www.unicef.org/iran](http://www.unicef.org/iran)

Universal Periodic Review – Media Breif, Tuesday, 22 October 2013, Nigeria, Represented by 22-member delegation headed by H.E. Mr Mohammed Bello Adoke.

<http://www.ohchr.org/EN/HRBodies/UPR/Pages/Highlights22October2013pm>.retrieved 17 February 2017

IRB - Immigration and Refugee Board of Canada: Nigeria: Divorce law and practices among Christians, including grounds, procedures, length of process, property dispositions, child custody and consequences for the woman and her family [NGA104209.E], 02 November 2012 (available at [ecoi.net](http://ecoi.net))

[http://www.ecoi.net/local\\_link/231461/339960\\_en.html](http://www.ecoi.net/local_link/231461/339960_en.html) (accessed 05 February 2015)

## APPENDIX 1

### 1. Research Questions (Guide Lines).

#### Pre Interview

- a. A brief introduction of interviewers
- b. Request for respondents names, ages, designations and years of experience
- c. Explanation of the purpose of interview i.e That it is for a PhD research on the content of the Yoruba law of child care
- d. Notice that the respondents voices will be recorded
- e. Inform respondents that their individual responses will be treated as confidential
- f. Permission to take and disclose pictures of the interview
- g. Permission to disclose names ,designation and ages of respondents
- h. The length of interview is approximately 20 -30 minutes

#### ORAL INTERVIEW.

1. What is the Source of the Yoruba law of child care from?  
Is it supernatural, written or unwritten
2. **Who has the obligation to provide for children's;**
  - i. Social, cultural and economic needs
  - ii. Physical needs
  - iii. Spiritual needs
  - iv. Psychological, emotional, intellectual needs

#### **Who has the following rights under Yoruba law?**

- a. Custody(Physical possession(residential))
  - i. care/possession of children upon death of parent(s)
  - ii. care/possession of children during divorce or afterwards
  - iii. who determines the religion of children
  - iv. when can custodians(parents, guardians) be deprived of custodial rights.
- b. **The right to discipline children**
  - i. how can a child be disciplined

- ii. **who** can discipline a child?
  - iii. **are there public** Yoruba institutions for recalcitrant children.
3. **What is the institutional framework for enforcing child's care obligations**(who or which institution can force parents to perform this duties when they refuse to do so).
  4. **When can a parent represent his/her child.**
  5. **What is the reason behind circumcising both sexes.**
  6. **Age for sexual exposure/intercourse (both sexes)?**
  7. **What is the Yoruba perception of child Education/Training?** (How important is it and what institution can enforce same on behalf of the child upon parents default)
  8. **What are the responsibilities of a child to her parents.** ( is a child who fails in his responsibility entitled to care from parents).
  9. **How do Yorubas care for the following children**
    - a. Unborn children
    - b. Female children
    - c. Male children
    - d. Hermaphrodites
    - e. Gifted children
    - f. Mysterious children
    - g. Bastards
    - h. Domestic servants(children)
    - i. Apprentices(children)
    - j. Multiple births
    - k. Recalcitrant Children
    - l. Disabled children
    - m. Wards
    - n. Fostered children
    - o. Adopted children
    - p. Abandoned children

10. How familiar is the Yoruba culture with the idea of,
- a. Adoption to accommodate single parents and Same Sex partners
  - b. Baby Factories
  - c. Surrogacy
  - d. Artificial insemination
  - e. Artificial family planning techniques for women and men
  - f. Birth options- Natural options/Caesarian Section
  - g. Breast feeding
  - h. Maturity age-for marriage, armed forces, economic empowerment.
  - i. Incest
  - j. Abortion
  - k. Celibacy
  - l. Single parenthood by choice.

## **9. FURTHER QUESTIONS**

Yoruba Children's freedom of Privacy, Expression, Association, Recreation, Cultural and Artistic activities.

### **NOTE**

1. The need to know the State Laws regulating the activities of each Customary Court.
2. That examples, references and decided Customary Court Cases are important to the research work.
3. The Name, Area and the Grade of each Customary Court.



## APPENDIX 2

### 2. IBEERE ISE IWADI

- Nibo ni ilana ibile Yoruba loori taa lo leto lati se itoju omo ti wa?
1. Ireti ibeere yii ni lati mu wa siranti awon oludahun, ilana ofin Yoruba lori omode. Olufesi yoo ni lati so okan ojokan igbe aye omoniyan to se agbekale ofin to ni se pelu itoju omo.
    - a. Ilana to ni se pelu ohun to koja oye eniyan
    - b. Ilana to ni akosile, papa julo ti o wa ninu iwe ofin ile Nigeria.
    - c. Ilana ti ko ni akosile
  - Ki ni eto liana ofin ibile Yoruba lori ta lo letoo lati gba omo sodo?
2. Ta lo ni awon eto yii,
    - i. Lati ni omode ni akata re
    - ii. Lati satona iwa omo
    - iii. Lati so esin ti omo yo o se
    - iv. Lati pinu ibi ti omo yoo gbe
      - a. Nigbawo ni a le fi eto merin yii dun baba omo
      - b. Nigbawo ni a le gba eto yi lowo iya omo
      - c. Taa lo letoo lati gba omo sodo lasiko ikora eni sile tabi iku obi eyokan tabi obi mejeeji.
  3. Ise itoju, Idari, idaabo bo omo.(Taa ni tabi Igbekale Yoruba wo lo le paa lase fun obi lati se awon ojuse yii,nigba ti won ba ko lati se e?
  4. Eto lati ba omo wi
    - a. Taa lo le ba omo wi?
    - b. Bawo la se n ba omo wi
    - c. Nje ari agbekale Yoruba to je ti gbogbo o ogbo fun ibawi omo papa julo awon omo to ti ya ipa anle
  5. Nibo, bawo at igba wo ni obi(baba tabi iya) le soju omo won ni ile Yoruba
  6. Ki ni idi Pataki ti a fi gbodo ko omo ni ila
    - a. Omo okunrin
    - b. Omo obirin
  7. Bi ojo-ori wo lo ye ki omo bere sii ni ibalopo?
    - a. Ojo ori wo ni omokunrin le ni ibalopo?

- b. Ojo ori wo ni omobirin le ni ibalopo
  - c. Iru ipo wo ati igbawo ni a le gba omo obirin laaye lati ni ibalopo?
8. Ki ni ero Yoruba lori eko, eko ile tabi ekose omo?
- a. Ki ni itumo pe omo ni eko?
  - b. Pelu alaye, Ewo lo se Pataki ju ninu eko ile, eko ile iwe ati eko ise owo
  - c. Nje oni igbekale tabi enikankan ni ile Yoruba to le paa ni dandan fun obi ti ko ba fe se, lati fun omo ni eko yala eko ile ni, eko ise nio tabi eko ile- iwe.
9. Ki ni ojuse awon omo si obi.(Nje omo ti o oba kuna ninu ojuse re ye fun itoju obi)

• **AGBEYEWỌ EKO YORUBA LORI ITOJU OMO NI ISORI ISORI**

- i. Omo to wa ninu oyun
  - ii. Omobirin
  - iii. Omokunrin
  - iv. Akiriboto
  - v. Akanda
  - vi. Aramonda omo
  - vii. Omo Ale
  - viii. Omo Oko
  - ix. Omo Ebi
  - x. Omo odo/Iwofa
  - xi. Omo Ekose
  - xii. Ibeji,Ibeta ati bee bee lo
  - xiii. Omo to nipe nija eya-ara
  - xiv. Omo Orukan
  - xv. Omo to won gbewa fe oko/omo ti obirin b anile
  - xvi. Omo taa gba to
  - xvii. Omo ti won gbe sonu
  - xviii. Ipanle tabi Odaran to je omode
- Bawo in ilana ofin ibile Yoruba se n gba ero ode oni lori itoju omo mora si?
- i. Eto awon ololufe eya kanna lati gba omo to

- ii. Awon Abimo ta
- iii. ilana ifetosomobibi agbelero fun obirin ati okunrin
- iv. Ami Ara ati Ara finfin, Ila kiko
- v. Yiyani ilana ibimo
  - a. ilana adanida
  - b. Ilana ti ise abe
- vi. Fifun omo loyan
- vii. Ojo ori fun igbeyawo, ise ogun jija(armed forces), ironilagbara oro aje.
- viii. Jije ako ati abo po(haemaphrodites)
- ix. Ibalopo laarin ebi e.g laarin baba ati omo re obirin
- x. Oyun sise
- xi. Igbeyawo omode
- xii. Awon to ko lati ni iyawo nitori igbagbo won
- xiii. Abimofunni e.g ti won n ba obirin miran gbe oyun oko re
- xiv. Oyun Agbelero e.g ti ko nilo ibalopo laarin okunrin ati obirin
- xv. Awon obi ti o n da omo toju

### Note

- 4. Subjects should state their name, sex , designation and years of experience.
- 5. There is need to know the State laws regulating the activities of each Customary Law.
- 6. Examples, References and Cases as decided are very important to the research work.

The Name, Area and the Grade of the Customary Court is important

### APPENDIX 3

3. The following Tables present the responses of at least 48 Subjects to some specific queries on the Yoruba Rules of Child Care.

**Table 3.1**

**Distribution of the subjects responses on the sources of Yoruba Law of Child Care rules.**

S/N	Sources of Rules of Child Care	Frequency	%
1	God	19	40%
2	Government Laws	8	17%
3	Natural Instinct	4	8%
4	Cultural Practices and Tradition	9	19%
5	Kings	2	4%
6	Parents	2	4%
7	Deities	2	4%
8	Unknown	2	4%

**Table 3.2**

**Distribution of Subjects Responses on preferred form of Training.**

S/N	Form of Training	Frequency	%
1	Formal Education	11	23%
2	Religious Education	3	6%
3	Home Training	27	56%
4	Vocational Training	7	15%

**Table 3.3**

**Distribution of Subjects responses on Effectiveness of Punishment.**

<b>SN</b>	<b>Form of punishment and effectiveness</b>	<b>Frequency</b>	<b>%</b>
1	Insults and Verbal Threats	24	50%
2	Beating, Slapping/Flogging/Spanking/Caning	17	36%
3	Physical Drilling	2	4%
4	Deprivation of necessities	5	10%

**Table 3.4a**

**Distribution of Subjects responses on the acceptable marriage age for girls**

<b>SN</b>	<b>Marriage Age</b>	<b>Frequency</b>	<b>%</b>
1	10-15yrs	Nil	0%
2	15-20yrs	17	36%
3	20-25 yrs	28	58%
4	25-30yrs	3	6%
5	30 and above	Nil	%

**Table 3.4b.**

**Distribution of Subjects responses on the acceptable marriage age for boys**

<b>SN</b>	<b>Marriage Age</b>	<b>Frequency</b>	<b>%</b>
1	10-14yrs	Nil	0%
2	15-19yrs	Nil	0%
3	20-25 yrs	12	25%
4	25-30yrs	30	62%
5	30 and above	6	13%

### Yoruba Cultural Attitude to other trends in Child Care.

SN	Item	Total disapproval/ Frequency=%	Conditional disapproval/Frequency	Approve/ Frequency	
1	Adoption	34 =71%	5=10%	9=18%	
2	Adoption by Same-Sex	48 =100%	Nil	nil	
3	Baby Factories	48= 100%	Nil	nil	
4	Surrogacy	39= 81%	7=15%	2=4%	
5	Immunization	11=23	7=15%	30=62%	
6	Artificial Insemination	34=71%	12=25%	2=4%	
7	Caesarian Section	21=44%	13=27%	14=29%	
8	Incest	47=97%	1=2%	nil	
9	Induced Abortion	42=87%	6=13%	nil	
10	Celibacy	45=93%	3=6%	nil	
11	Voluntary Single Parenthood	39=81%	9=18%	nil	
12	Modern Family Planning Methods	18=37%	13=27%	17=35%	
13	Child Economic Services	13=27%	28=58%	7=15%	
14	Sex Education	28=58%	12=25%	8=17%	
15	Teenage Contraceptive	46=96%	2=4%	nil	
16	Female Circumcision	18=38%	10=21%	10=21%	
17	Street Begging	35=73%	13=27%	nil	
18	Street Hawking	13=27%	25=52%	10=21%	
18	Herbal Care	2=4%	1=2%	45=94%	

## APPENDIX 4

### 10. LIST OF RECORDED SUBJECTS.

#### OSUN

1. Osun State Customary Court Ojo Oba-3 Members Group Interview.3F
  - a. Igbalaye Mulika (Senior Reg)
  - b. Akinlotan Olufunke(Higher Reg)
  - c. Omoti Bukola (Senior Reg)
2. Chief Reg/Deputy Chief Registrar Osun State Customary Court of Appeal Igbona. F
3. Osun State Customary Court Oke Fia-President @Kunle Agboola
4. Indigenous Birth Attendant-
5. Yeye Osun F
6. Yeyesaloro of Ijeshaland F.82yrs
7. Papa Ogundeji (Community Leader) in Oshogbo M
8. Babalawo Falere Fatunbi (2<sup>nd</sup> in Command to the Araba of Osogbo Land Yemi Elebuibon)
9. Mrs Taiwo Omotoso OAUTHC

#### OYO

10. Sodaabe Panelists-three members group interview
  - a. KUNMI IDOWU 81,
  - b. IBIJOKE ADELEKE GOMEZ 74 =2 F.
  - c. Confidential F
11. Oyo Special School
12. Baba Ewe of Oyo Land
13. Fatai Yusuf Ibadan Community Leader
14. Waheed Yusuf Community Leader 75YRS
15. Olubadan of Ibadanland
16. Olatunji Folajinmi
17. Olaore Reformativ Centre
18. Customary Court Clerk Oja Oba
19. Customary Court Chair Nnalende F

20. DCNO Oni and Sons Pediatric Hospital AKINBODE 69F
21. Welfare Officer Iyaganku- Mr IBILADE AT
22. Customary Court President Ile-Tuntun. Henry Agbaje 74yrs
23. A Lawyer at the Centre for African Studies University of Ibadan.
24. The Matron at Chesire Nursing Home Ibadan F.57
25. Mr Biodun Adekanbi
26. Officer in Charge of Child Welfare Iyaganku F
27. Oba Ogboni
28. Iya Abiye Ogboni F
29. CC OYO SALAWU ADEPOJU/OGUNDIYA TITUS 70
30. 2 Legal Historians

#### **OGUN**

31. President Customary Court Isabo Aderinto Lawal 74yrs
32. Baba Oyekunle Community Leader 80
33. Herbalist, Mosudi Adebayo Community Leader60
34. Herbalist-Elewe Omo

#### **EKITI**

35. Court clerk
36. Alfa- Community Leader 60
37. Babalawo Ogundeji 74
38. Ademola Adelabu 68

#### **ONDO**

39. Customary Court Clerk F
40. Community leader 72YRS
41. Community leader F 70Yrs

#### **LAGOS.**

42. Customary Court President
43. 2 Community Leaders



## APPENDIX 5

### List of Examples

#### Ex 1a. Esentaiye

*Chapter of its life*

#### Ex 1b. Odu

*Code*

#### Ex 1c. Ore yeye Oşun

*Blessings of mother Oşun*

#### Ex 2. Twins all come from Isokun

*Monkey relatives, who love to do tree jumps/plays  
Who jumps here and there, then jumps into a wretched man's home  
And make a wretched man rich  
Famous children who command their parents into respect  
Stepmothers do not fancy you at sight, but you are dual worlds to your mother  
He who wants twins should signify  
Twins are peacocks  
I danced for having them, I rejoice for having them  
Ejire persons of Isokun  
Monkeys who like to play on trees  
Twins see the rich and refuse them, twins see the wealthy home but will not go there  
They go to the poor's home; they make the wretched prosperous; they make the poor rich  
As Taiwo gets to life first, then Kehinde follows suit  
Omokehinde is the senior, because Taye was sent on the errand  
To come first and check the world, if it's good or not  
The world is sweet as Honey  
Taiwo and Kehinde I greet you  
Let me prosper*

#### Ex 3. Kadara Taiye o papo mo ti Kehinde

*Twins don't have the same fate or destiny*

#### Ex 4. Airomobi ni mu agba daba Abiku

*It is the horrors attached to infertility that pushes a barren adult to risk having an Abiku*

#### Ex 5. Abiku so oloogun deke

*Abiku turns medicine men to liars*

#### Ex 6. Eni ti ko ti siwo omo ko gbodo fi were se yeye

*Someone in their fertile years should not laugh at the plight of an insane person.*

**Ex 7.** Abiamo ki gbo ekun omo e, ko ma tati were

*A good parent is bound to become alert at the instance of their child's cry.*

**Ex 8.** Abini tun bini, Abere tun bere ni ki je ki a pe omo egbon eni lomo eni

*Persistent and unending questioning cautions one from referring to an elder sibling's child as one's child*

**Ex 9.** Ti eko ba ku eyokan soso, omo eni laa gbe fun

*When there's only one last meal left in the home, one gives it to ones child*

**Ex 10.** Ko si bi omo se le dagba to, omo ni loju obi/iya e

*No matter how old a person is, they remain their parents' child*

**Ex 11.** Omo eni ko le se idi bebere, ka fi ileke si idi omo elomi

*One cannot have a child with enviable buttocks and put a waist chain on another person's child*

**Ex 12.** Owo omode ko to pepe, ti agbalagba ko wo keregbe

*Although a child's hand cannot reach the altar, the adult's cannot enter a gourd*

**Ex 13.** Omode gbon agba gbon la fi da ile Ife

*Ile Ife was created from the wise contributions of both children and adults*

**Ex 14.** Omode oni ni agba ola

*A child today is the adult tomorrow*

**Ex 15.** Bi omode ko ku, agba ni n da

*If a child does not die, they are bound to become an adult/elder*

**Ex 16.** Ogun omode kii sere pe ogun odun

*Twenty children cannot be friends for twenty years.*

**Ex 18.** Eni bimo oran ni pon

*A parent of a troublesome child must bear their troubles*

**Ex 19.** Ise ki se loko laya ko ma ron omo

*The poverty of a couple would certainly spread to their child*

**Ex 20.** Bi oko ba je ewure, iyawo a je aguntan/ bi iyawo ba je ewure, oko a je aguntan

*If the husband is a goat, the wife should be a sheep(vice versa)*

**Ex 21.** Bi a ba fi owo otun ba omo wi, a fi tosi famora

*If one chastises a child with the right hand, one should pacify such child with the left*

**Ex 22.** Eyin ti aja fi n ba omo re sere lo fi n ge je

*A dog bites its puppy with the same teeth it plays with it*

**Ex 23.** Iya ni wura baba ni digi  
*The mother is a child's gold while the father is its mirror*

**Ex 24.**  
Iya ni wura iyebiye, ti a ko le fi owo ra  
O loyun mi fosu mesan  
O pon mi fun odun meta  
Iya ni wura iyebiye ti a ko le fowo ra  
*A mother is a priceless/ an inestimable gold that cannot be bought*  
*She was pregnant with me for nine months*  
*She carried me on her back for three years*  
*A mother is a priceless/ an inestimable gold that cannot be bought*

**Ex 28.** Orisha bi iya ko si  
*There is no other deity similar/ representational of a mother*

**Ex 29.** Olorun lo ni omo lodo  
*God is the bearer of children/ It is with God children reside*

**Ex 30.** Olorun lo n se omo  
*God makes/gives children*

**Ex 31.** Omo ko se fi owo ra  
*A child cannot be bought with money*

**Ex 32.** Afunniso ni omo  
*Parents are representative guardians*

**Ex 33.** Ninu ofii ninu olaa, ni omo pandoro ngbo  
*Despite all odds or hardship the pandoros seeds mature/ stress or lack cannot restrained a child destined for greatness from its attainment*

**Ex 34.**  
*Oro omo, osu mesan-an*  
Nine months of pregnancy , discomfort all for a baby,  
*Ojo ikunle*  
The day of delivery/labour  
*Eje ti iya da le omo lori*  
The blood shed by the mother while birthing the child  
*Ikunle abiamo*  
The pain of the labour of a mother  
*Itara obi*  
A parent's concern/anxiety, etc .

**Ex 35.** *“Akuko fogbe lebelebe seyi  
 Adia fun Opiiliki, ti o fi tie sile  
 Ti o ma n gbo ti eni eleni kaye kiri  
 Orunmila ni oo ba tun tie naa se  
 Won ni ki Opiliki o rubo  
 Ki ole ba niyi laye  
 Osi ruu; Igba ti o rubo tan  
 Won ni ki o ma tun ti omo elomiran se  
 Ju bi o ti n tun ti araa re se lo  
 Igba ti o se gbogbo e tan  
 Ti o ni opolopo omisin tan  
 Orin awo ni n ko  
 Oni kin ni o baa mi tun waa temi se?  
 Orunmila, ibaa mi, erigi alo ni yo ba mi tun iwa temi se.....”*

A cock flies around lightly to achieve its tasks  
 Ifa divination was performed for Opiliki which leaves its own nest  
 And attends to others' issues worldwide  
 Orunmila offered to help it with its own issues  
 Opiliki was requested to offer a sacrifice  
 So as to be dignified on earth  
 It obliged; after it offered the sacrifice  
 It was instructed not to attend to/help others  
 More than it attends to its own needs.  
 After it was done with all that were required  
 And had all its issues resolved  
 It began to sing a song of initiates  
 It asked what would help it better its lot  
 Orunmila its father would help it better its lot.

**Ex 36.** *Obara tutu pepe  
 A difa fun Ose omo orisa  
 Ose n je aja, Ose n mu emu  
 Ose wa nwu toju tenu borokoto*

Obara is always very cold  
 Ifa divination was performed for Ose, child of a deity  
 Ose ate stew and drank palmwine  
 Ose then began to have its eyes and mouth swell massively

**Ex 37.** *Eni kan ni bimo gbogbo aiye ni wo  
 A person gives birth to a child but the whole world nurtures it*

**Ex 38.** *Isin wo o, ikoro woo; ohun a ba dijo wo gigun ni gun-  
 Little fishes all have their turns in viewing a thing; what is viewed in unison is usually perfectly  
 achieved*

**Ex 39.** Ti okete ba dagba tan, omu omo re ni mu  
*When the bush rats becomes elderly, it suckles its child*

**Ex 40.**Eni ti ko se ko je  
*He who does not work deserves not to eat*

**Ex 41.** Aja ki je oku agan, eni bimo omo ni o sin; eni ti ko bi, omo na ni yo sin  
*The corpse of the barren will not be eaten by dogs, whoever begets children will be buried by children, and anyone who does not have will equally be buried by same.*

**Ex 42.** Ogede dudu o yabupon,omo buruku o yalupa  
*One does not cut a banana in order to ripen it, one should not beat a recalcitrant child to death*

**Ex 43.** A ki i le omo buruku fun ekun paje  
*One does not pursue a recalcitrant child for a tiger to eat*

**Ex 44.** Omo o ni ayole, eni omo sin lo bimo  
*Children are not reliable, only a person buried by their children is a parent*

**Ex 45.** Ko le buru fun baba omo ko lo dowo omo ohun lorun  
*It cannot be so bad for a father, that he refers/prays to his deceased child for solace/solution*

**Ex 46.** Bi ebi ba ti kuro ninu ise abuse buse  
*When one is able to feed even in poverty, then the remaining concerns become insignificant.*

**Ex 47.** “Oni Bara, Ola Bara, Adia fun Bara  
*Ti n lo soko alero odun  
Ti n fi gbogbo oju serahun omo,  
Oju omo ni n pon bara  
Oyagan,oyapata  
O romo leyin adie,o bu puru sekun  
Lo ba meji keeta  
O lo oko alawo  
Se oun le bimo bayi?  
Ni o difa si won ni pupo ni ire omo e  
Sugbon ki orubo opolopo omo,  
Ki o si rubo ki ki awon omo araye o ma pa awon omo na  
Ebo opolopo omo ni bara ru,ko rubo ota.  
Nigba ti o rubo tan,won ni ki ogbe ebon a lo seyin odi....  
Osi se bee,o si bi opolopo omo  
Sugbon nitori ebo ota ti baara o ru  
Lodoodun ni awon om araye n pa lomo je  
Ayin sodi lo waa n yi awon awoo re.....  
Riru ebo ni gbeni  
Airu re ki gbeyan....”*

Persistent concerns about Bara; Ifa divination was made for Bara

That embarked on a journey to distant alero odun  
In dire need of a child  
Bara was suffering from barrenness  
Totally and completely barren  
She bursts into tears anytime it sees chicks behind a hen  
She resolved in proffering a solution to the issue  
She went to the gathering of initiates  
And inquired if at all she could still give birth  
The divination for her revealed she had a lot of prospective children  
But she must offer a sacrifice for plenteous children  
Bara offered a sacrifice for plenteous children, and not to overcome enemies  
When she prepared the sacrifice, she was told to take it beyond the town walls  
She did same and gave birth to a lot of children  
But because of the sacrifice to overcome enemies which Bara did not offer  
She lost a child each year to earthly enemies  
She thus ironically praises her initiates  
Offering a sacrifice profits a person  
Refusal to offer same never profits a human

**Ex 48.** Danidani ki bani lagba kekere ni ti bani lo  
*Stupidity does not begin at adulthood, it starts gradually from childhood.*

**Ex 49.** A bimo ko gbon a ni ko ma ku, ki ni o n pa eniyan bii aigbon  
*Why restrain a foolish child from injury/death, nothing kills other than foolishness?*

**Ex 50.** Esin Iwaju ni teyin n wo sare  
*A horse at the back conditions its race on the one in front*

**Ex 51.** Omo ki ba ipele iya re ko si aso da  
*A child cannot be accustomed to their mother's cloth and make a wrong style*

**Ex 53.** Omo ti won ba ko ni ile ti ko gba eko, ita ni won o tii ko wa ile  
*A child who refuses training at home is bound to be taught by outsiders*

**Ex 54.** Eni to ni oun o le roju kan omo oun niko, yo laju sile ti wo yo fi ma kan ni omo odo  
*One who refuses to give their child a knock on the head would watch them being knocked with a pestle*

**Ex 55.** Omo ti a ko ko ni yo gbe ile ti a ko ta  
*The child one refuses to train will eventually sell the house one has built*

**Ex 56.** Ko omo re ko le fun o ni isinmi  
*Train your child, for them to give you rest.*

**Ex 57.** Omo osan ni ko ponpo ba iya e  
*An orange fruit causes its tree to be clubbed*

**Ex 58.** Ati kekere lati pe eekan iroko, to ba dagba tan apa o ni ka  
*An iroko tree must be pruned in its early years because it becomes untamable at maturity*

**Ex 58b.** Bi a ba ko omo eni, omo eni a gbon saka saka  
*If one's child is trained, such child has to be very intelligent.*

*A difa fun Sogbon-were tii se omo olokun  
Bi a ko ba ko omo eni, omo eni a go ju isu lo  
A difa fun Obawin tii se omo Ora, nife.*

Ifa divination was made for Sogbon-were, Olokun's child  
*An untrained child becomes less intelligent than yam*

**Ex 59.** Abiiko Akoogba, Ode ni won ti n ko ogbon wale  
*A recalcitrant child often learn his lessons from outside the home*

**Ex 60.** Ti a bi omo, omo a tun ara e bi  
*A child after being born by the parents ought to rebirth themselves*

**Ex 61.** Atelewo eni ki tan eni je  
*A person's dexterity with their hand/handiwork does not let them down*

**Ex 62.** Ise re omo alaseje, owo re omo ala se la  
*A job feeds a worker and their trade makes them successful*

**Ex 63.** Toju iwa re ore mi  
Preserve your character my friend  
*Ola a maa n la nile eni*  
Wealth can diminish from the house of a person  
*Ewa a si maa tan lara eniyan*  
Beauty does desert the body of a person  
*Sugbon iwa ni i ba ni de saare*  
However character abides by a person even to the grave  
*Eefin ni iwa, riru ni i ru*  
Character is like smoke, it filters out eventually  
*Eniyan gbe okeere niyi*  
Living a distance away gives honour  
*Sugbon sisunmo ni la fi n mo eni*  
But with closeness, we know a person's real attributes  
*Iwa ko ni fi oniwa sile*  
Character does not leave where it is embodied  
*Iwa omo l'o nsomo l'oruko*  
It is a child's character that gives the child a name  
*Omo dara o ku iwa*  
Even if a child seems fine, there is still a need for character  
*Ara dara o ku aso*  
Even if the body looks fine, there is still a need for clothing  
*Ese dara oku bata*

Even if the feet look fine, there is still a need for shoes  
*B'eniyan dara ti ko ni'wa*  
If a person seems fine but doesn't have good character  
*O padanu ohun ribiribi*  
They miss something very valuable indeed  
*Iwa rere lesu eniyan*  
Good character is a person's jewel  
*Suru baba iwa, iwa baba awure*  
Patience is the progenitor of character, Character is the progenitor of blessings  
*O ya tete toju iwa re oremi*  
You had better preserve your character my dear friend

**Ex 64.** alagbara ma mero, baba ole  
*A powerful person with no thoughts is the epitome of laziness.*

**Ex 65.** Omo ti a ba mbawi to n warunki yo parun lojiji  
*A child that refuses to take corrections will perish all of a sudden without remission.*

**Ex 66.** Ipo lagba, ibanuje lojo ori  
*Positions express success, age is merely a cause for sadness.*

**Ex 67.** Aifele kebosi ni a reni ba ni jo  
*People's response to a call depend on its presentation*

**Ex 68.** Eni to na ika kan si elomii, merin to ku koju si i  
*The one who points a finger to another has four pointing to them.*

**Ex 69.** Suuru ni baba iwa  
*Patience is the father of all virtues*

**Ex 70.** Suuru le se okuta jina  
*Patience can resolve the toughest issues*

**Ex 71.** Oni suuru ni i fun wara kiniun  
*A patient person can tame any situation*

**Ex 72.** Eni eegun le ko ma roju bi ti n re ara aye ni re ara orun  
*Teaches the virtues of patience and endurance*

**Ex 73.** Oun ti a o je dale ko ye ka ji je  
*It advocates for patience in the course of a due processes*

**Ex 74.** Okele gbigbe pelu ifokanbale o san ju iyan ninu ihahilo  
*Preference for poverty in peace to riches in distress*



**Ex 75.** Bi omode ba mo owo we, yo ba agba jeun  
*A respectful child will interact freely with the wise and experienced*

**Ex 76.** Bi omode ba dupe ore ana, a ri omiran gba  
*A grateful child will be readily blessed/rewarded again*

**Ex 77.** Oruko rere san ju wura ati fadaka lo.  
*The worth of a good reputation over riches*

**Ex 78.** Ti isu eni ba ta, a a dowo bo  
*The essence of being discreet about ones success*

**Ex 79.** Boju ba ri, enu a dake  
*Teaches the essence of being cautious with the use of the mouth*

**Ex 80.** Gbogbo oun ti oju ba ri ko ni enu n so  
*Essence of being discretionary with the use of the mouth*

**Ex 81.** Eni a n ba noja la n wo, a ki i wo ariwo oja  
*Teaches the benefit of being focused*

**Ex 82.** Tita riro la a kola, ti o ba de oju eni tan ni i di oge  
*Endurance even in times of painful training*

**Ex 83.** Atoke ni oloju jinjin ti i mekun sun  
*A person with a disability should plan better and ahead of the abled*

**Ex 84.** Eefin ni iwa, ko se fi pamo  
*Character as an intricate attribute of every persons, it cannot be hidden for long*

**Ex 85.** Yara lati gbo sugbon lora lati fesi  
*Be swift to listen but slow to respond*

**Ex 86.** Tori ijo ti omo o ba daran lo se n ni oruko  
*The child name enables appropriate reference when they gets into trouble.*

**Ex 87.** Ile la wo ki a to so omo ni oruko  
*The child is named according to their background*

**Ex 88.** Aya omode ni were di si, ore ni yo le jade  
*Children are naturally wild and can only be tamed with canes*

**Ex 90.** Ta ba fi omo we omo a o lu ikan pa- If one compares children, one will frustratingly ill treat the weak one

**Ex 91.** *Keke logun, awo ile owu,  
Abaja logbon, awo won ode Eyo  
Ture Laadota, a di a fun Olunloye  
Ti n tikole orun bo wa si taye  
Nje, Olunloye mo mo se redun oran  
Bi aaya ti n ponmo  
Lamere o si ma pon  
Olunloye mo mo se redun oran  
Agba ti ko binu lomoo ree po  
Aipe, aijina  
E waa ba ni ni wowo omo.*

A chariot at war, initiate of Owu household  
Abaja symbolizes wisdom, initiate of Eyo  
Ture is number fifty, a divination was made for Olunloye  
Who was making a trip from heaven to earth  
Believe problem shall not befall Olunloye  
Like a monkey backing its baby  
Lamere would back as well  
Believe problem shall not befall Olunloye  
An elderly person of calm temperament is bound to have multitude of children around them.  
Not a long time after  
You will have with me plenteous children

**Ex 92.** *Omo ti a ko ko ni le ita ni yo ti kogbon wa  
A child not trained at home is bound to be taught by outsiders*

**Ex 93.** *Eni ti a ba n bawi to warunki yo parun lojiji ni  
A child that despises counsels is set to perish*

**Ex 94.** *Omo to dara ti baba, eyi ti ko dara ti iya e  
A good child belongs to the father, the bad to the mother*

**Ex 94b.** *Omobirin n gun mu inu e n dun, ko mo pe nkan ti yo le oun kuro nile baba ohun niyen.  
A young girl may be excited when her breasts sprouts, but she would not know that, the same  
development is bound to trigger her exit from her father's house.*

**Ex 95.** *Obirin so iwa nu won ni ko ni ori oko  
A woman who lacks character is unmarriageable*

**Ex 96.** *Suru la fi n se oko obirin  
It takes patience to be a woman's husband*

**Ex 96.** *A ti gbe iyawo ko to jo, owo obe lo soro  
The major issue is not marriage, but the ability to maintain the woman and children*

**Ex 97.** Koto oku loku re, baba omo lo lomo

*The father's right to the child is as definite as a corpse's access to its graveside*

**Ex 98.** Aya ole la a gba ko seni to le gbomo ole

*Although a lazy mans wife can be taken, no one can assume his kids*

**Ex 100a.** Gbogbo ni omo

*Children are in various genders*

**Ex 100b.** Omi lo danu, akeregbe ko fo

*Although the water has been all spilled, the pot remains intact*

**Ex 101.** Kaka ko san lara iya aje, nise lo fi gbogbo omo bi obirin, eye wa n yi lu eye

*Rather than for a witch to be impotent, she bears all female children ensuring there are even more witches*

**Ex 102**

Ogberete Verse of ifa provides;

*Bi a bi won logun logun*

*Bi a bi won logbon logbon,*

*Bi ko ba si ako nibe*

*Bi asan lo ri, Ako ni role*

*Abo a yalo, Eyi ni mo bi,*

*Ako ni temi*

If they are birthed in a group of twenties

Or in a group of thirties

If there is no male amidst

It is all futility, a male is the heir

A female would eventually leave, this is who I birthed

A male is my portion

**Ex 103.** Adie ki ku ki a da eyin e nu

*We don't discard a fowl's eggs upon its own death*

**Ex 103b.** Omo gbogbo aye

*Everyone's child*

**Ex 104.** Ile to n toro, omo ale ibe ni ko ti dagba

*If a house is peaceful, then surely the bastard child is not yet grown*

**Ex 105b.** Omo ma pami omo ma pami, to ba ya adi omo ma pa are re

*A persistent plea to prevent a child from killing their parent would eventually become a caution for the child not to commit suicide.*

**Ex 106.** Ona lo jin, eru ni baba

*The history might be long, but even a servant is someone's child*

**Ex 107.** Ibi to wu efufu lele ni dari igbe si, ibi to wu olowo eni ni ran eni lo  
The wind directs a bush as it wills, so one's owner direct a person as they please

**Ex 108.** Idan ni yo pe ara e leru  
Even if adopted as a child, a servant will let itself out as the servant

**Ex 109.**

*"...Eye ile ni ki Eji-ogbe kole fun oun ni ita e, ki oun maa gbe*

*O ni, mo bimo meji, mo di eye ile (2ce)*

*Eji-ogbe ni eye yii ye ile looto*

*Ni won ba fi n pe e ni eye ile*

*O ni ki eye-ile fi okan ti ko ba fe ninu awon omo naa rubo*

*Eye-ile ni, mi o le fi okan rubo*

*Ejeeji ni mo gbe mi o le pa okan*

*Ejeeji ni mo feran*

*Ni eji ba fi ase sii pe*

*Meji meji ni eye ile yo maa bi*

*Nigbakugba ti o ba fe bimo"*

Pigeon requested Eji-ogbe to build a nest for it outside his home for it to reside

It insists it birthed two chicks and thus become a 'house-bird'

Eji-ogbe affirms the bird is worthy of a house

This resulted in it being called a 'house-bird'

He requested the pigeon to sacrifice either one of its chicks

The pigeon refused to sacrifice either

Insisting it desires the two and cannot kill one

It loves the two the same way

So Eji-ogbe made it a norm

That a pigeon will have only two chicks

At any time it gives birth

**Ex 110.** Ile ni a ti i ko eso rode

*Charity begins at home*

**Ex 112.** Eni bimo oran nii pon on

*It's the person that births a troublesome child that is bound to back same*

**Ex 113.** Omo olomo o le pa iya oniya

*Another persons child cannot stress another's mum to death*

**Ex 114.** Oju mewa o le jo oju eni

*Ten other eyes (watchers/care-givers) cannot replace the owner's sight (care)*

**Ex 115.** Maa se bi baba o le dabi baba; maa se bi iya ko le da bi iya

*Others' promise to care cannot suffice for the loss of the real parent.*

**Ex 116.** Ba mi na omo mi ko de inu olomo

*A parent is never sincere about their request to another to help chastise their child*

**Ex 117.** Eni kan nii bimo, igba eeyan ni wo o

*Although it's a person that births a child, it takes a multitude to nurture them*

**Ex 119.** Ile-olorogun ile ogun ni

*A polygamous home is a place of wars*

**Ex 121.** Eni a fe lomo e wu eni

*The love one has for a parent (especially the mother) determines ones affection towards his/her children*

**Ex 122.** Agba o si nilu, ilu baje; bale ile ku, ile dahoro

*The town becomes spoilt when there is no elder and the home goes desolate where there is no male head*

**Ex 123.** Ti ara ile eni ba n je kokokoro buburu ti a ko ba so fun huruhere re ko ni je ka sun loru

*When ones relations/ neighbour consumes a bad insect and one does cautioned him, their consequent discomfort would give all a restful night.*

**Ex 124.** Fi ore re han mi kin mo iru eeyan ti o je

*Show me your friends and I will tell you who you are*

**Ex 125.** Aguntan to ba ba aja rin yo je igbe

*A Sheep that keeps a Dog's company will be influenced to also feed on faeces*

**Ex 126.** Agba kii wa loja kori omo tuntun wo

*The head of a new born cannot be wrongly shaped/placed when an elder is present*

**Ex 128.** Agba ti ko binu lomo re po

*An elderly person of calm temperament is bound to have multitude of children around them.*

**Ex 129b.** Bi omo o ba itan, a ba aroba; aroba, baba itan

*If a child doesn't witness history, the child will hear same since such oral information begat history.*

**Ex 130.** Omode ti o ni oju agba jin, enu e lo wa yen

*A child that makes fun of the hollow eyes of an elder will realize their folly in a matter of time*

**Ex 131.** A male child must not be beaten with a broom stick (this will affect the child's male potency)

**Ex 132.** A female child must not fall off its mother's back (the child will become sexually incontinent and must marry up to seven husband before she settles down)

**Ex 133.** A child must not see some particular masquerades or rites(it will die)

**Ex 134.** A child conceived through a sexual intercourse in the forest of open space will become shameless

**Ex 135.** A pregnant woman must not commit adultery with another man other than the father of the child (the child will live a life of penury)

**Ex 136.** A child must not be beaten with foot wears (the child will live a poor life)

**Ex 137.** A pregnant woman should not go out at midnight or mid-noon (evil spirits will occupy the foetus/childs )

**Ex 138.** A dog must never eat up a newborn's placenta (the child will become sexually restless)

**Ex 139.** Acts which may constitutes generational retaliations from offspring i.e a child who beats or abuses his parents will bear his/her own child that will beat him up . Such impression is also behind the prohibition of other antisocial acts as incest, premarital pregnancy, parental disrespect, etc.

**Ex 140.** A mother must not curse a child in her nakedness or with her breast or genitals.(such curses will remain immutable)

**Ex 141.** Male and female children should be circumcised (when not circumcised, the female child tends to be sexually incontinent.

**Ex 142.** Some parts of the child such as the mouth, the head, buttocks, navel etc must be molded with hot water and some other materials in order to present a cautioned and perfectly shaped child.

**Ex 143.** A child must respect their parents

**Ex 144.** A parent must train their child

**Ex 145.** A child must be given a befitting name on the 8<sup>th</sup> day after birth

**Ex 146.** A male infant should be breastfed for a longer period that the female child.

**Ex 147.** A male infant is not placed in a sitting position earlier than 6 months while the female is four months.

**Ex 148.** Ako igi ko gbodo se oje  
A male child should not cry

**Ex 149.** Ibi lile laa ba omo okunrin  
The male child should be preferred in risky and physically demanding encounters

**Ex 150.** A female child must be chaste until marriage

**Ex 151.** A male child must not be dressed in female wears

**Ex 152.** A child must learn to feed, dress and perform all forms of hygienic and respectful activities with the right hand (being the better hand out of both hands).

**Ex 153.** *O ye pee, O bo poro*

*A dia fun Oyele akoko*

*Ti won n pe ladie*

*Ti n bimo re lai gbebi*

*Ewe oloyere ki je oruko miiran afi ayunre*

*Yiye nii se tabo*

*Ebo ni se tako*

*Yedi pee o waa bo*

*Omo tuntun lere ayebo*

*Ayebo a domo*

*Bokan oye*

*Okan o le ri bi*

*Ladun , ladun n la a bale oyin.*

Ease of Lay and Birth

Ifa divination was made for the first Oyele Akoko

Also called Fowl

It delivers without help

Oloyere leaf does not bear any other name besides ayunre

A female has to survive

Sacrifice makes the lot of males better

An easy delivery

A new born is a reward for ayebo

Ayebo which becomes children

If one does not survive

Another cannot deliver

Plenty sweetness abounds in a bee hive

**Ex 154.** *Osa wonu, Iwori wode*

*A difa fun Orunmila, o bi omo mefa*

*Ogbe mefeefa fun Alagbato*

*Ero Okun,ero osa,e o rifa ijohun bi tin se*

*Ope de, Onise abise wara*

Osa inwards, Iwori outwards

Ifa divination was made for Orunmila who had six children

And gave all of them to a surrogate

Everyone, see how the then Ifa does

Ope arrives, one who has a host of deeds

**Ex 155.** Omo o se fowo ra loja  
A child cannot be purchased in the market

**Ex 156.** *Orogbo lesò, bee ni ko ni awe*  
*Agbayun abeso werewere legan*  
*Eye alukunrin abiye laami laami;*  
*Adia fun sesengidi*  
*Ti n sunkun oun ko romo bi*  
*Won ni ki o kaare, Ojare*  
*Ebo ni ki o se*  
*Enikan ki fe omo ku leyiin sesengidi*  
*Omo werewere nile aladi*

Bitter kola has fruits without levels  
Agbayun with plenteous fruits  
Alukunrin bird has broad feathers  
Ifa divination was performed for sesengidi  
Who cried of barrenness  
She was saluted with pleasantries  
Instructed to prepare a sacrifice  
No one finds children scarce behind sesengidi  
Plenteous children in aladi's abode.