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Guaranteeing Child Fostering and Parental Rights in Nigeria: Law and PolicyPerspectives

Wilson Diriwari

¹ PhD (Brunel UniversityLondon), L.L.M. (Lagos State University), L.L.B. (Obafemi Awolowo University),

ABSTRACT

Purpose - This article examines the practice of customary child fostering in Nigeria and the state of parental rights in such a situation. Customary child fostering is a long-lasting practice in Nigeria, and it has an impact on parental rights. The significance of the practice and its impactsin mostly Nigerian traditional communities raise the question of its regulation so as to safeguard children's rights as well as parental rights. Hence the adoption of the Child Rights Act 2003 by Nigeria is regarded as a comprehensive approach to quelling a socio-cultural conflict.

Design/Methodology/Approach -The approach taken is a textual analysis based on evaluating the widespread practice of customary child fostering and the existing literature on both the sociological and legal approaches to the issues. It is worth enquiring whether the issues of child rights and parental rights arising in the practice of customary child fosteringhave been adequately apprehended from a law and policy perspective in Nigeria.

Findings— This research found that despite the emergence of a comprehensive legal framework for child fostering in modern Nigeria, most individuals, including parents, foster carers and otherstakeholders, remain attached to the practice of traditional fostering.

Originality/ Values -The value of this article resides in the deconstruction of customary child fostering in its current form and the challenges to the effective enforcement of the current provisions of the ChildRights Act 2003 on child fostering.

KEYWORDS: Customary child fostering, informal fostering. child rights, parental rights, law and policy.

I. INTRODUCTION

The right to family life has been consecrated by various human rights instruments (United Nations Convention on the Rights of the Child 1989 (Article 9), European Convention on Human Rights (Article 8). The general idea is that every childmust enjoy their family life as this guarantees to a great extent the protection and support needed for their emotional and physical development. However, there are situations wherein a child does not have the opportunity to live in their biological family environment. In such a situation, the child will reside provisionally or permanently with non-relativesas long as they have a domicile. A child residing with individuals other than their biological parents could be informal or formal. In whichever case, the child will be in a situation of fostering. Child fostering is an age-old mobile and creative kinship practice and also a modern phenomenon whose importance stretches much further than the boundaries of so-called 'traditional' African societies (Alberet al., 2013). This paper seeks to examine the state of child fostering in the context of both traditional and modern Nigeria. The paper aims to demonstrate that customary child fosteringis embedded in Nigerian societies. The paper finds thatthe amalgam between the practice of customaryfosteringand fosteringin the Nigerianlegal context is a noticeable and enduring problem.

II. CUSTOMARY FOSTERING IN NIGERIAN SOCIETIES

2.1 – An overview of the traditional Aspect

A foster child is a child looked after temporarily or brought up by people other than its biological or adoptive parents. From this definition, there are key points to be underlined. It transpires that the fostering can be limited in time or permanent(Ezebunwa and Turnwait, 2021). Most traditional communities in sub-SaharanAfricafunctionin an integrated manner and with solitaryas anunderpinning value(Onah. et al., 2016). Based on the perception of solidarity and mutual assistance, a concept such as nuclear family exists in theory. However, one's biological family is recognised within the structure of the community, they can be treated as a member of other families when it is needed. Therefore, it is a common practice that a child is separated from

his/her biological parents to be brought up by a member of the extended family or even other members of the community who do not have any biological link with the child.

It is understood that traditional practices or customary practices, as they appear, do not comply with the formal way of conducting administrative affairs. Yet they are well accepted by the communities and often by the administrative authorities. The place of customary fostering in Nigerian societies is paramount. Children are fostered by extended family members and individuals that often provide themwith accommodation and assistance for various reasons. The pertinence of the practice in Sub-SaharanAfrica is recognised by when they asserted that Childrearing in sub-Saharan Africa is often viewed as collaborative, where children benefit from support from kin (). The common say, therefore, is that 'One hand does not bring up a child.' Nigerian traditional society, like all African traditional societies, was well structured. They relied on traditional values that keep family cells and communities together. The Community members were attached tovalues such as solidarity, dignity, honesty, and the welfare of each member of the community. Based on these values, human dignity was paramount in social relations. Emeghara (1993) asserted that African society has very high regard for the human person and gives the preservation of human dignity a priority, contrary to the old belief held by some scholars. It is evident that human exploitation, driven by financial gain, did not exist. As a result, children who find themselves in fosterhad the guarantee ofbeing well looked after or well brought up.

Like in other African communities, the turning point in human relations is determined by the establishment of the colonial administration in Nigeria. The colonial administration was chiefly characterised by the coloniser's setting of the English legal system in Nigeria. Despite the acceptance of legal pluralism in Nigeria by the colonial administration, African traditional values, also regarded as societal rules, were notably impacted. The new paradigm leads to enquire about the new perceptions about human relations and traditional social values in modern Nigeria.

2.2 – The practice in Modern Nigeria

Customary fostering is an enduring practice in Nigeria. The practice has been praised for its humanist nature, and this has determined its perpetuation in modern Nigeria. It is evident that goodtraditions are often perpetuated because they sustain communities and society as a whole. However, temporal and contextual challengescanconstitute an impediment that deprives the good practice of itsintrinsic value. Modern Nigeria is characterized by social mutations and the advent of new values. As indicated before, the colonial and postcolonial eras of Nigeria can be regarded as the modern era. These erasindicate the establishment of western values and their confrontation with traditional values. From this evidence, Madukwe and Madukwe (2010) observed that 'Africans from the pre-colonial era have their peculiar culture which is evidenced in their ways of life. Their value systems as elements of their culture are depicted in marriage relationships, communal living, religious practices, legal systems and so on. However, with the eventual contact with the western culture through colonialism and with the subsequent upsurge of globalization, these values are not only being challenged but also eroded.'Where values are challenged or eroded, it is evident that solidarity, selflessness, high regard for the human person and the preservation of human dignitywill be abandoned. In modern Nigeria, customarychild fostering is still practised, but it is often degraded because driven by economic or financialmotives. The practices of child trafficking and child labour in their various forms are made possible because children are moved from their biological family cocoon to the supposed 'safe heaven 'with extended family members or benefactors. In that sense, customary fostering departs from its traditional intrinsic value, which is underpinned by true communal solidarity and humanity. In the context of modernity, with the establishment of the English legal system and the adoption of western values, customary fostering has become, toa great extent, an informal practice (Nnama-Okechukwu et al., 2020)

After independence, Nigeria inherited the legal system of the British coloniser. The new legal system per se appears, in various aspects, contrary to traditional rules. In the new legal context, the legal adoption route is preferred over custom fostering, which is, in general, unknown to the authorities and constitutes the pathway to child rights abuses. The Siliadin case was a popular example of custom fostering peculiar to West African societies. From the facts of the case, "The applicant was born in 1978 and lives in Paris. She arrived in France on 26 January 1994, aged 15 years and 7 months, with Mrs D., a French national of Togolese origin. She had a passport and a tourist visa. It had been agreed that she would work at Mrs D.'s home until the cost of her air ticket had been reimbursed and that Mrs D. would attend to her immigration status and find her a place at school. In reality, the applicant became an unpaid housemaid for Mr. and Mrs D., and her passport was taken from her" The victim was allegedly given to the "foster parents" with the blessing of her biological parents (Foua Bi, 2014). It is obvious that in this landmark case, customary fostering has been in conflict with modern requirements. Giving the child to the foster parents with the blessing of the parents does not suffice to meet the legal requirements in terms of guardianship. It appears that in the context of legal pluralism in Nigeria, child fostering as a traditional practice base on communal values and humanity has not been prohibited. However, the abuses of child rights that result from the practice are condemned and punishable by law.In modern Nigeria, therefore, economic considerations, the pursuit of financial gain and a lack of regard for

human dignity have undermined the practice of customary fostering. Mbagoku (2021) is of the view that the confusionbetween child traffickingand childfostering, child placement orfostering appears tohavedeviatedfromitsinitialsupportive traditionalconceptualisationin WestAfricancountriestobecomea templateforthenewtraffickinginthe 21stCentury.

III. THE RIGHTS-BASED APPROACHES TO FOSTERING

3.1 -Child rights in the lens

Undoubtedly the practice of customary child fostering in modern Nigeriaexists, and obviously, it is condoned by the authorities. Based on this practice, there has been the development of similar practice known as foster care in response to the legal requirements foster or bring up children who are not bytheir biological parents. Yet many people in Nigeria do not comply with the legal requirement. Consequently, children are put in informal foster care to their detriment. The informal nature of the fosterage raises various issues in terms of child rights and welfare. In light of the exigencies of modern Nigeria, child fostering can hardly be compared to fostering as practised in traditional African societies. Informal fostering in general encompasses several risks to the welfare of the child, and it leads to violation of child rights. This is possible because informal fostering is out of control and does not fall within the legal framework for childcare or child adoption in Nigeria. The fact that children are often not registered at birth or unaccounted for by social services renders the legal environment very complex. In the traditional era, such issueswere inexistent. This does not mean that traditional fostering does not work in the modern era. It is a question of willingness to comply with existing laws whilst adhering totraditional values in modern Nigeria.

Customary child fostering hasbecome one of the major routes for child rights violations in modern Nigeria. Indeed, children engaged in customary fostering hencefind themselves in informal fostering. Consequently, their rights are often violated byfoster carers or other individuals. A child engaged in customary fostering could be subjected to child trafficking or child labour. Undoubtedly a child engaged in child labour will not only be unidentified by the authorities and social services but also will miss the opportunity to attend school, Ifeakandu (2019) rightly asserted that the traditional system of child fostering, which allows children to live with family members other than their parents, has led to a significant number of children in Nigeria being subjected to child labour. A child out of school because of child labour had his/her rights to education thereby violated. Uyanga et al. (2019) observed that the impact of child labour on the overall education of the child could not be over-emphasized because all forms of child labour pose barriers to the education of the child. Child labour, seen as an impediment to the child's right to formal education, had been possible through informal fostering. The various rights the child is deprived of or that are violated are theright to family life, the right to education, and the rightto dignity. In some cases, the deprived or violated rights are the right to survival, right to a name, right to private life, right to health services, and right to cultural activities. It appears, therefore, that the choice for informalfosteringis deliberate. Informal fostering is an abuse of customary or traditional fostering, which embodies the moral values then promoted in traditional African societies. Such abuse is evident that Kah (2015),in a pertinent analysis, indicated that foster care, an age-old tradition of social security in Africa, has unfortunately been abused, bastardised and turned into an evil practice of enslavement with consequences for families, communities and countries.

It is obvious that customary fostering or traditional fostering has beendeprived of its original and intrinsicnature in modern Nigeria, but there are still communities that remain significantly attached to itsoriginalaims. From that standpoint, despite its informal nature, the practice does not undermine the rights of the child. In a study investigating the relationship between traditional fostering and school-related behaviours of primarychildren in Nigeria, Dare and Adejuomo (1983) found that there was no significant difference between children living with their parents and those living with extended family members when scores were compared on tests of school behaviour, attitude toward school, and school achievement. While this finding can be reassuring from the perspective of guaranteeing children's rights to education, it remains a matter of concern thatin various situations, child rights have been jeopardised through informal fostering in modern Nigeria.

3.2 – The question of Parental Rights and Responsibilities

A child who is born to a parent or parents who are healthy and fit to bring him/her up willbein the best place if that child remains with the parent or parents. The cocoon of biological parents is undoubtedly the safest environment for a child. This is a natural right for the parents and the child(Moschella, 2014). The parent's right is therefore excised fully and safely until the child becomes an adult and independent.

The law is precise on the question of parental care of parent care and responsibilities which are part of the rights of the parents in the upbringing of their child.

The question of parental care is also an important element provided by the Child Rights Act (CRA) 2003. Section 14 of the CRA 2003 places emphasis on parental care. Indeed under this provision, every child has a right to parental care and protection, and accordingly, no child shall be separated from his parents against the wish of the child except- (a) for the purpose of his education and welfare; or (b) in the exercise of a

judicial determination in accordance with the provisions of this Act, in the best interest of the child. (2) Every child has the right to maintenance by his parents or guardians in accordance with the extent of their means, and the child has the right, in appropriate circumstances, to enforce this right in the Family Court.

Section 277 CRA 2003 interprets parental responsibility" as (a) all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property; and (b) the rights, powers and duties which a guardian of the estate of the child appointed, before the commencement of this Act to act generally would have had in relation to the child and his property, and includes, in particular, the right of the guardian to recover or receive in his own name or the benefit of the child, property of whatever description and wherever situated which the child is entitled to receive or recover. In the situation of informal fostering, this responsibility cannot be exercised. However, from birth or during childhood, thereare situations or circumstances that do not allow the child to enjoy the privileges of the biological family environment during his/her upbringing (Bledsoe & Isiugo-Abanihe, 1989).

Arguably, customary or traditional fostering deprives the biological parents of their natural parentalrights and responsibilities in that once the child has left the family home tobe in the kinship careof other relatives or non-relatives, the biological parent or parents lose partly or fully the control of the child's life. In that sense, the parents may no more be part of the child's upbringing and may not participate in decisions making about the child's rights and welfare. In traditional African societies, the loss of parental rights or responsibilitiesthrough customary fostering was not seen as a major issue. The idea of community interests, solidarity, and the protection of the dignity of the human person, wasdeemed a societal safety net and a guarantee for both the child and the biological parents (Kah, 2015). Based on the cultural concept that 'one hand cannot bring up a childorit takes a village to raise a child, what would have been regarded as a loss of parental rights or responsibilitiesis, in fact, a core element of a value system. Indeed, the phrase "it takes a village to raise a child" originates from an African proverb and conveys the message that it takes many people ("the village") to provide a safe, healthy environment for children, where children are given the security they need to develop and flourish, and to be able to realize their hopes and dreams (Rupert et al., 2022).

IV. LAW, POLICY AND NEW PARADIGM

4-1 Law and policy approaches

Legal pluralism in Nigeria appears to be the legacy of British colonial rule. It is deemed the adequate response to maintain a stable and balanced societyduring and after the Britishcolonisation. From a functionalist perspective, the adoption of legal pluralism in Nigeria has participated significantly in the formation of a nation. Indeed, theacceptance of the coexistence of traditional systems, religious systems and the established British legal systemby the coloniserwas the common ground forthe harmonisation of views and perspectives in terms of building and modern, just, and fair society. Therefore, legal pluralism is not purposed to promote bad traditional practices or allow the denaturation of goodtraditional practices in modern Nigeria. As long as the traditional practice does not contradict or undermine the purpose of the law, it can stand as part of the value system of the nation. Customary fostering has had its flamboyant heydaysin traditional African societies in general and in traditional Nigerian societies in particular. The practice then did not contravene any moral or religious value. It was genuine and well-appreciated as aconsolidating element of the community.

The inexistence of an adequate national legal instrument for the protection and promotion of the rights of the child in Nigeria and also for the requirement to adhere to international legal frameworks for c child rights, Nigeriaadoptedthe Child Rights Act 2003 to domesticate the United Nations Convention of the Rights of the Child 1989. It must be understood that the child rights Act 2003 expands the human rights bestowed oncitizensby the Nigerian Constitution of 1999. Moreover, it must be emphasised that in the previous Nigerian constitutions, from independence in 1960 until the constitution of 1999, thehuman rights of citizenswere recognised. Despite the place given to human rights in those constitutions, the question of child rights was not clear enough. The increasing child abuse and child cruelties often justified on cultural and religious grounds were in sharp contradiction with the letter and the spirit of the Nigerianconstitution regard to human rights as well as the requisites of modern society. Although the Child Rights Act 2003 appears to be a response to compliance with the internationallegal order in terms of child rights protection and promotion, it is deemed an adequate response to the enduring plight of children in Nigeria.

The question of child fostering has been extensively elaborated on by the CRA 2003 within specific provisions. As indicated before, the coexistence of traditional rules, religious rules and the inherited British colonial legal system created legal pluralism wherein some traditional rules, or religious rules are accepted as long as they do not contravene the letter and the spirit of the Nigerian constitutions and human rights principles. In that respect, customary or traditional fostering continues to be practised in modern Nigeria as long as it does not violate the provisions of the CRA 2003 related to fostering. Indeed, the CRA 2003 has provided for child fostering. Section 100 (1) of the CRA2003 provides that a person may foster a child by making an application to the court within the jurisdiction in which the person and the child reside at the date of the application. Furthermore, section 100 (2) stipulates that an application for fostering shall be made in accordance with the

procedure and in the manner prescribed by the rules made under the provisions of the CRA 2003. Based onthese provisions, any other way of fostering is deemed informal. Customary fostering has not been expresslyprohibited by the CRA 2003, but it can be regarded as informal in accordance with the statute. Because informal fostering generallyleads to various child cases of abuse and child rights violations, the choice of statutory fostering becomes necessary. Statutory fostering best protect and promotes the rights of the child in that section 101 provides that a child who may be fostered under this CRA 2003 includes a child who- (a) is abandoned by this parents; or (b) is an orphan and is-(i) deserted by his relatives, or presented by his relatives for fostering, or (Iii) voluntarily presents himself for fostering, where no relatives of his can be found; or (c) has been abused, neglected or ill-treated by the person having care and custody of him; or (d) has a parent or guardian who does not or cannot exercise proper guidance over him; or (e) is found destitute; or (f) is found wandering, has no home or settled place of abode, is on the streets or other public place, or has no visible means of subsistence; or (g) is voluntarily presented by his parents for fostering. A child who is in a vulnerable situation and does not have the opportunity to be adopted can be fostered and benefit from the safety net provided by the law. The provisions of the CRA 2003 evidence the enshrinement of fostering in a statute by Nigeria, and it is a testimonial of the significance of the practice in modern Nigerian society. Regarding the effect of fostering on maintenance order, the CRA 2003 provides that where at the time a fostering order is made in respect of a child, an order requiring a person to contribute towards the maintenance of that child under this Act is in force, the fostering order shall prevail. The legislation also provides safeguards in terms of stability and location in the country. Section 114 provides for the revocation of a foster order on grounds of the interest of the child, Where it is proved to the satisfaction of a court that a foster parent has abandoned, neglected or persistently, ill-treated or assaulted a fostered child. In the same vein, Section116 provides for the prohibition of taking or sending a fostered child out of state or Nigeria. Furthermore, it stipulates, in subsection (1), that where a foster parent intends to take a fostered child outside the State or Nigeria, he shall give notice to the Court of his intention to do so and shall, on return to the State or Nigeria, notify the Court of their return. This provisionstands as an adequate response to child trafficking through customary, informal fosteringand even fostering made in accordance with CRA 2003. Because some individuals can follow the fostering procedures as per the CRA 2003, yet they fail to guarantee the best interest of the child. Under section 118, poster parents are prohibited from marrying the foster child. Also, in the case of private fostering, which is permitted by the CRA 2003, it is provided under section 120 that private arrangement for fostering children (1) For the purposes of this Part of this Act and subject to subsection (2) of this section - (a) a child shall be deemed to be fostered privately if he is cared for, and provided with accommodation by a person other than- (i) a parent of the child; or (ii) any other person who has parental responsibility for the child, or (iii) a relative of the child; and - (b) a person shall be deemed to foster a child privately if he cares for the child in circumstances in which the child is fostered privately as defined under paragraph (a) of this subsection. (2) A child is not fostered privately if the person caring for and accommodating the child has done so for a period of less than twenty-eight days and does not intend to do so for any longer period. In terms of safeguards, the CRA 2003 provides tighter rules by giving power to State Governments. In that respect, Section 123 (2) provides that where the State Government in whose State the child is proposed to be, or is being fostered, is of the opinion that- (a) a person is not a suitable person to foster a child; or (b) the premises in which the child will be, or is being accommodated, are not suitable; or (c) it would be prejudicial to the welfare of the child for him to, or continue to be, accommodated by that person in those premises, the State Government may impose on him a prohibition specified under subsection (3) of this section. Consequently, a prohibition imposed on a person under subsection (2) of this section may prohibit him from fostering privately.

The extent of the provisions on fostering under the CRA 2003indicates that there are adequate guidance and safeguards for child fostering to work in terms of the child's best interest and rights protection in Nigeria. This comprehensive legal framework should have been enough to make those who are candidates for child fostering opt for the legal route and abandon customary fostering or informal fostering. Hence the question to be asked is whether this comprehensive legal framework has brought the legal response to the phenomenon of informal fostering leading to abuses and violations of child rights.

4-2 New paradigm

Despite the clarity of the law on child fostering in Nigeria, the practice remains informal. It appears that clarity of the law has not made it a workable framework for the eradication of informal fostering. The preference for informal child fostering in modern Nigeria demands that a paradigmshift in approach is adopted. The preference for informal fostering could be interpreted as the unwillingness of most candidates to foster care to comply with the relevant law. Informal fostering could be considered a hidden phenomenon. Such a state of affairs makes it more complex in terms of law enforcement. Parents Also, the fact that customary fostering is not expressly prohibited, individuals involved in the practice will be tempted to avoid the law. Or individuals who believe that customary fostering is a long-standing practice and a core value of traditional Nigerian societies will

not find an issue with choosing it. They stronglybelieve in the role of traditional fostering in the consolidation of traditional African families and communities. Therefore, they do not see the need to opt for the formal fostering offered by the CRA 2003. In light of the potential risks posed by informal fostering with regard to the rights and welfare of the child, informal fostering ought to be an expressly prohibited practice in modern Nigeria. Law enforcement, in this respect, must be effective with the endowment of law enforcementagencies involved in trackingillegal activities concerning children. In Nigeria. To guarantee customary fosteringas a legacy of traditional Nigerian societies, lawmakers have provided a framework for it, and their endeavour issignificant. As is the case inmost countries in the world, child fostering remains credible alternative to adoption. As the practice of child fostering per se cannot be prohibited. It is imperative to create a law and policy environment for guaranteeing the practice. It is also necessary to build capacities amongrural and traditional communities in order tocascade the views of both the federal and localgovernmentsin Nigeria regarding issues such as child labour, child trafficking, and child abuse that generally happen through customary fostering, which is now considered informal since the adoption of the CRA 2003.Rural and traditional communities must be aware of the legal approach to customary fostering. They must be aware that, although customary fosteringas the expression of solidarity has made the glorious days of traditional African societies, it can still be practised, but this must be strictly in accordance with the law of the land in modern Nigeria.

V. CONCLUSION

The protection and promotion of child rights are paramount, and this has been a priority for law and policymakers at international and national levels. The historical development the Sub-Saharan African countries in general and in Nigeria has created a tense cross-cultural environment that needed to be quelled. With the establishment of Britishcolonial rule and later the transposition of the British legal system in independent Nigeria in 1960, the much-valued practice of customary fostering in traditional Nigerian societies was to be encapsulated into a legal framework tomaintain socio-cultural harmony under legal pluralism. The adoption of the Child Rights Act 2003 by Nigeria constitutes the historical turning point for the consecration of child rights. However, in light of the challenges to asserting the rights of the child, there is a need to adopt a paradigm shift to approaching questions that were once considered integral to the traditional value system. The confusion created by the non-prohibition of customary or traditional fostering and the emergence of a legal framework for child fostering in modern Nigeria ought to be addressed in order to further improve the existing legal environment.

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