

**THE FAMILY COURT: A NEW DAWN IN CHILD
JUSTICE SYSTEM IN EDO STATE**

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BACKGROUND

The precursor of family court was actually child or juvenile court. The concept arose in the late nineteenth century and the British doctrine of *parens patriae* (the State as parent) was the rationale for the right of the State to intervene in the lives of children in a manner different from the way it intervenes in the lives of adults. The doctrine was interpreted to mean that, because children were not of full legal capacity, the State had the inherent power and responsibility to provide protection for children whose natural parents were not providing appropriate care or supervision.

Numerous studies document that children who are victims of abuse or even witness family violence are at high risk of increased aggression and behavioral problems. Family court proponents maintain that proper coordination of the courts handling of family matters recognizes the importance of the family as the primary socializer of its children, acknowledges the developmental nature of children and the impact of court proceedings on the family. Common to many advocates of family court is the belief that family law and the courts should work to resolve as many of the family's legal problems in as few procedures as possible. That is, every family court should have jurisdiction over all necessary methods of enforcement and all laws involving children or families.

In the 1993 Resolution, the National Council of Juvenile and Family Court Judges' Board of Trustee recommended that the family court should handle all family cases relating to juvenile delinquency, dependency, status offences, paternity, custody, support, mental health, adoption, family violence and marital dissolution.

Rubin and Flango (1992) contend that family court jurisdiction should include at least juvenile delinquency, abuse, neglect and marriage dissolution. They as well as other authorities use this criteria to define and establish what is in fact a Family Court. Rubin and Flango are of the view that the inclusion of criminal cases within the jurisdiction of a family court would extend the family court beyond its role as civil court. The duo further noted that consideration would also need to be given to the propriety of having the same family court hear both the criminal charge of parental abuse and the corresponding civil protection proceeding that alleged parental abuse against the same child.

The notion of a "Family Court" has received considerable attention in Nigeria and particularly in Edo State due to the growing trend and numerous cases of abuse and violations of the right 'of the child which manifest as sexual abuse, female genital mutilation (FGM), domestic violence, child clubbed witch, neglect, physical and emotional abuse, child labour, street children, bullying denial of basic education, abandonment, discrimination, underage marriage, ' underage pregnancy, economic exploitation, violence against children and other related vices. In Edo State statistics have shown that before the age of 18 years, approximately six out of every ten children experience some form of Violence:

- One in two children experience physical violence.
- One in four girls and one in ten boys experience sexual violence.
- One in six girls and one in five boys experience emotional violence.
- The majority (approximately 80%) of children who experience physical, sexual or emotional violence in childhood do so on multiple occasions.
- Over half of children first experienced physical violence between, the ages of six and eleven years.

These violation of the rights of children gave impetus to the establishment of the family court in Edo State for protection of children and Justice for children. This paper is therefore discussed under the following sections

1. Implementation of the United Nations Convention on the Rights of the Child.
2. Implementation of the Edo State Child Rights law, 2007 through the establishment of the family court.
3. Establishment of the Edo State family court.
4. Procedural setting of the family court.
5. Restrictions on punishment-by the court and the paper in section-6 concluded and made recommendations.

SECTION 1: IMPLEMENTATION OF THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD UNCRC

The United Nations Convention On The Right Of The Child (UNCRC) is a human rights treaty which sets out the civil, political, economic, social, health and cultural rights of children. The UNCRC defines a child as any human being under _ the age of eighteen. The Convention deals with the child-specific needs and rights. It also requires that the nations that ratify this Convention are bound to it by international law. Ratifying States must act in the best interests of the child. It is also envisaged that these countries will implement the Convention. Nigeria is among 196 countries that are parties and signatories to the treaty. In fulfilling its obligations in Nigeria, the National Assembly passed the Child Rights Bill into law. Section 1 of the Child Rights Act (2003) provides that " 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 " The Child Rights Act 2003 provides the primary legislation for the protection and enforcement of children's rights in Nigeria. These rights and responsibilities of children focus on the duties of children, parents, government organizations, authorities and bodies. Presently, in Nigeria, 24 states have domesticated the Child Rights Act.

In fulfilment of Edo State's obligation in domesticating the Child Rights Act, the then Governor of Edo State , His Excellency Prof. Osariemen Osunbor signed the Edo State version of the Child Rights Bill into law, in 2007. The Edo State Child Rights Law of 2007 extensively caters for the interest, rights and responsibilities of the child.

SECTION 2: IMPLEMENTATION OF THE EDO STATE CHILD RIGHTS LAW 2007 ' THROUGH THE ESTABLISHMENT OF THE FAMILY COURT.

Section 146 of the Child Rights law 2007 (CRL) provides for the establishment of the family court "there shall be established for each local Government of the State, a court to be known as the Family Court (in this law referred to as "the court") for the purposes of hearing and determining matters relating to children"

The court shall be at two levels namely, the High Court level and the Magistrate Court level. The court shall have unlimited jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim in respect of a child is in issue; and any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by a. child, against a child or against the interest of a child. For the court to be properly constituted both at the-High

Court and Magistrate Court levels, two assessors shall be appointed for each of the courts by the Honourable Chief Judge of Edo State. In other words the court is properly constituted by a sitting Judge or Magistrate and two assessors. These assessors will be persons knowledgeable in general matters relating to children. The Family Court must be child friendly and what makes a family court Child friendly is the provision of certain amenities that will make any child feel at home and participate in the proceedings without feeling intimidated or scared. Some of these amenities include but are not limited to the following.

- a. Toys, books, puzzles, developmentally appropriate materials and games placed in the court for children.
- b. Children's waiting room in each court house.
- c. Colorful friendly environment.
- d. Toilet and bathroom facilities.

The objective of the family court is to ensure justice for children and promote peace in the family. Therefore when children are in conflict with the law, the proper place to take them to is the family court and not the regular court.

SECTION 3: ESTABLISHMENT OF THE EDO STATE FAMILY COURT

The Edo State family Court was officially inaugurated on the 9th day of January 2017. The applicable laws and rules governing the family Court in Edo State include:

- a. The Child Rights Law of Edo State 2007.
- b. The Criminal Code, Cap 48, Vol II, laws of the defunct Bendel State of, Nigeria 1976, now applicable in Edo State.
- c. The Criminal Procedure Law of the defunct Bendel State of Nigeria 1976, now applicable in Edo State.
- d. The Edo State Family Court (Civil Procedure) Rules 2017
- e. The Nigerian Constitution 1999 (As Amended)./ For the initial take off, the Court will sit at the High Court of justice in the Benin Judicial Division and . later in other Judicial divisions and Magisterial Districts. The family Court of Edo State when fully functional, shall ensure speedy trial in matters relating to children's rights, welfare and protection. The court shall provide efficient justice delivery in accordance with the law and best global practices.

Kofi Atta Annan, 7th Secretary General of the United nations Jan. 1997 -December 2006 said "there is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and want and they can grow up in peace"

There are four main areas covered by the Family Court under the Child Rights law.

- a. Children in conflict with the Law
- b. Child victims
- c. Child protection and child care
- d. Civil proceedings: custody and maintenance.

The Child Rights Law provides for Child Justice Administration to replace the Juvenile Justice Administration which has been in existence for several decades.

SECTION 4: PROCEDURAL SETTING OF THE FAMILY COURT

The procedure to make the setting of the family court more child friendly are:-

- a. The child sits next to his/her parents and defence advocate for support and comfort.
- b. The entire arrangement is around a table, rather than in a formal dock/courtroom setting.
- c. The prosecution and defence sit opposite each other, preventing the child from sitting directly opposite the prosecutor.
- d. The social welfare officer and clerk sit opposite the judge or magistrate, positioned in a neutral position, i.e. not on either side.
- e. The prosecution witness sits next to the prosecutor, not directly opposite, the child.
- f. No uniforms or formal court attire.
- g. Inquisitorial (not adversarial) process.
- h. Avoid formal and/or confusing language .
- i. Magistrate to help the child "present his/her case and to understand proceedings,
- j. Interpreter provided for children.
- k. Legal representation/guardian ad litem to be provided to assist children.
- l. Proceedings held in camera, which includes in closed courtrooms and other rooms.
- m. Proceedings held in confidence and participants/ the press prevented from publishing identifying information.
- n. If the prosecution witness is a child, the court personnel may agree that it is best to have the child testify from behind a screen, or from a witness box.

S. 210 of the Edo State Child Rights Law provides that the terms " conviction" and sentences shall not be used in relation to a child dealt with in the court..." also a social welfare officer must properly investigate the child's background, living situation and the circumstances in which the offence was committed and provide a social inquiring report before the case is finally disposed of by the court.

SECTION 5: RESTRICTIONS ON -PUNISHMENT BY THE COURT.

There are some restrictions placed on the court in respect of punishment.

S. 218 (1) provides that no child shall be ordered to be

- (a) Imprisoned or (b) Subjected to corporal punishment or
- (c). Subjected to the death penalty or have the death penalty recorded against him.

Where a child is tried by a court and the court is satisfied that the child actually committed the offence, the court shall take into consideration the manner in which, under the provisions of the law, the case should be dealt with, namely by dismissing the charge, or discharging the child offender on

his entering into a recognizance or placing the child under care order, guidance order and supervision order etc, ordering the child offender to participate in group, counselling and similar activities, pay fine, damages, compensation or cost or undertake community service under supervision or ordering the parent or guardian of the child offender to pay a fine, damages, or cost or give security of his good behaviour or enter into a recognizance to take proper care of him and exercise proper control over him/her or committing the child offender to custody, in place of detention provided under the Child Rights Law. The placement of, a child in an approved accommodation or government institution shall be a disposition of last resort and not be ordered unless there is no other way of dealing with the child, and the court shall state in writing the reason or reasons for making the order.

SECTION 6: CONCLUSION AND RECOMMENDATIONS:

The importance of having a functional family court in Edo State cannot be overemphasized and the following recommendations will ensure a seamless take off and effectiveness of the family Court:

- a. Appointment of assessors
- b. Adequate remuneration for the assessors that will help ensure commitment and dedication to their work.
- c. A practice direction for courts and jurisdiction guidelines for child Offenders I in Criminal matters should be formulated.
- d. Provision of child friendly family court.
- e. Availability of printed copies of the Edo State family Court (Civil Procedure)' Rules, 2017 to ensure awareness.
- f. Designation of more courts as family Court in Edo State for effective justice delivery.
- g. Training of Hon. Judges, Magistrates and supporting staff of the family Courts in Edo State.

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