

Re: Fw: Submission of Article for publication

oluyemisi Bamgbose

Wed 9/6/2017 11:41 AM

Sent Items

To: Justice Journal <fmojjusticejournal@yahoo.com>;

Dear Editor

I refer to my mail below. Kindly confirm receipt of the corrected paper

Thank you

Professor Bamgbose

From: oluyemisi Bamgbose <oluyemisibamgbose@hotmail.com>

Sent: Friday, September 1, 2017 1:14 AM

To: Justice Journal

Subject: Re: Fw: Submission of Article for publication

Dear Editor,

I refer to your mail of Monday August 28 below. please find the corrections as suggested.

Thank you

Professor Bamgbose

From: Justice Journal <fmojjusticejournal@yahoo.com>

Sent: Monday, August 28, 2017 1:15 PM

To: oluyemisi Bamgbose

Subject: Re: Fw: Submission of Article for publication

Please reset the layout of your paper to full A4 portrait. It is printing currently on landscape. Merge your paper. One of your papers had been published. Use it and our current guidelines to properly format your work. Regards, Editor.

From: oluyemisi Bamgbose <oluyemisibamgbose@hotmail.com>

To: fmojjusticejournal@yahoo.com <fmojjusticejournal@yahoo.com>

Sent: Friday, August 11, 2017, 9:56:36 AM GMT+1

Subject: Fw: Submission of Article for publication

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I refer to your mail of August 2017 in response to my mail asking for the status of my paper, wherein you stated that you had some problem.

I am resending the paper to you as requested

<https://outlook.live.com/owa/?path=/mail/search>

1/8/2018

Kindly acknowledge the receipt of the mail and attachment

Thank you.

Professor Oluyemisi Bamgbose

From: oluyemisi Bamgbose

<oluyemisibamgbose@hotmail.com<mailto:oluyemisibamgbose@hotmail.com>>

Sent: Wednesday, May 31, 2017 7:04 AM

To: Justice Journal

Subject: RE: Submission of Article for publication

Dear Editor

I refer to your mail below dated 10 May 2017 requesting that I follow the guidelines. I have complied with the instructions in the guidelines

Please find attached my article titled

"THE ROLE OF GOVERNMENT IN THE FAMILY JUSTICE SYSTEM: THE FUTURE AND CHALLENGES CONFRONTING THE SYSTEM IN NIGERIA"

I hereby submit the article for publication in your journal

This is an original work carried out by me. The article has not been sent out to any journal for publication. I also hereby state that the article will not be sent elsewhere until a decision is made by the editors not to publish.

I will appreciate an acknowledgment of this mail and the attachment.

Thank you

Professor Oluyemisi Bamgbose

Professor of Criminal Law and Criminology &

Director, Women's Law Clinic

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From: Justice Journal [fmoj.justicejournal@yahoo.com<mailto:fmoj.justicejournal@yahoo.com>]

Sent: Wednesday, May 10, 2017 10:56 AM

To: oluyemisi Bamgbose

Subject: Re: Submission of Article for publication

Attached is our guidelines. Read them carefully and strictly comply, particularly the 2.5cm margin, 1.5 line

spacing, Times New Roman font size 12. Single line spacing at the footnote etc. Regards Editor.

From: oluyemisi Bamgbose
<oluyemisibamgbose@hotmail.com<mailto:oluyemisibamgbose@hotmail.com>>
To: "fmoj.justicejournal@yahoo.com<mailto:fmoj.justicejournal@yahoo.com>"
<fmoj.justicejournal@yahoo.com<mailto:fmoj.justicejournal@yahoo.com>>
Sent: Monday, May 8, 2017 6:31 PM
Subject: Submission of Article for publication

Dear Editor,

Please find attached my article titled

"THE ROLE OF GOVERNMENT IN THE FAMILY JUSTICE SYSTEM: THE FUTURE AND CHALLENGES
CONFRONTING THE SYSTEM IN NIGERIA"

I hereby submit the article for publication in your journal

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**THE ROLE OF GOVERNMENT IN THE FAMILY JUSTICE SYSTEM: THE FUTURE AND
CHALLENGES CONFRONTING THE SYSTEM IN NIGERIA**

By

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**Paper presented at the National Conference
of Family and Juvenile Court Judges and Magistrates**

April 5- 7 2017

THE ROLE OF GOVERNMENT IN THE FAMILY JUSTICE SYSTEM; THE FUTURE AND CHALLENGES CONFRONTING THE SYSTEM IN NIGERIA

INTRODUCTION

The Family Justice System, also known as the Juvenile Justice System developed out of a concern for the position of children and young persons in the society.

Children form an integral part of any society. They are special gifts from God and they are “to be protected, guided and guarded”¹. Traditionally, under the Nigerian culture, children hold a place of pride. Bamgbose posits that under the traditional system, the treatment of children and young person’s was “not problematic.”² It was guided by traditional standard and values which were well informed, understood and obeyed.³ The extended family system which was well entrenched and rooted was looked upon to find solutions to the social problem arising out of anti-social activities and the family regarded it as a shame and stigma for any offspring to violate social norms.⁴ To resolve a case involving a child or a young person under the traditional system, the compositions of persons never extend outside the family members.

According to Okonkwo, children constitute one of the most vulnerable and powerless members of the society and they require gentle handling and special attention by the protection and promotion of their interest, welfare and rights.⁵

The United Nations at the Seventh Congress approved the Standard Minimum Rules for The Administration of Juvenile Justice in 1985. The United Nations in the preamble of the document recognized, “that the young, owing to their early stage of human development, require particular care and assistance with regard to physical, mental and social development and require legal protection in conditions of peace, freedom, dignity and security.”⁶

Notwithstanding the delicate nature of the children and young persons and the need for special protection, they are still treated unkindly, abused and their rights violated.

The fact that children and young persons have not been treated fairly has been a matter of global concern. This has led to conferences being organized to address the issues, laws being enacted at the international, regional and national levels and the establishment of various agencies dealing with issues relating to children and young persons.

Reference to children and young person’s as distinct from adults has its roots as far back as the 2270 BC.⁷ The Code of Hammurabi in 2270 BC, the Roman Civil Law, the Early Jews Law – the Talmud,

¹Bamgbose Olujemisi (2014) Re-evaluating the Juvenile/ Child Justice System in Nigeria. In <http://nials-nigeria.org/PDE/Excerpts%20jadesola%20akande%20lecture%20November2014%20%2027.pdf>

² Ibid

³ Ibid

⁴Bamgbose, Olujemisi (1991) “Juvenile Justice in Nigeria: A Case for Urgent Reforms” in Akinyele I.O et al (ed.) Economic and Democratic Reforms in Nigeria’s Development; Ibadan: Tenton Book Makers for Society for International Development and Friedrich Ebert Foundation, pp 45-56

⁵Okonkwo C. O. 1997 Administration of Juvenile Justice in Nigeria. Constitutional Right Project.

⁶<http://nials-nigeria.org/PDE/Excerpts%20jadesola%20akande%20lecture%20November2014%20%2027.pdf>

⁷Bamgbose Olujemisi (2014) Re-evaluating the Juvenile/ Child Justice System in Nigeria

the Moslem Law, the Roman Law, the Anglo-Saxon Common Law, are examples of some laws which distinguished children and young persons and adults.

The juvenile justice system which paved way for the family justice system can be traced to the late 1800.⁸The system comprises all those involved in dealing with children and young persons, the relevant agencies and institutions.

THE EMERGENCE OF THE JUVENILE/FAMILY JUSTICE SYSTEM IN NIGERIA

The modern juvenile justice system in Nigeria developed from the English legal system with the advent of colonization. Suffice to state that the Treaty Of Cession in 1861, where the Colony Of Lagos was ceded to the British crown, Lagos becoming a British colony in 1862 and the introduction of English law into the Colony Of Lagos in 1863 led to the emergence of a modern juvenile justice system different from the traditional ways of dealing with children and young persons.

Prior to the introduction of English law in the Nigerian legal system, there had developed in England some laws relating to children. Foremost was the 1908 Children Act which established the juvenile court for the first time in England. The English 1932 Act and the 1933 Children and Young Persons Act (CYPA) form the basis of the juvenile justice legislation in Nigeria.

In Nigeria, the modern juvenile justice system is founded on the 1943 Children and Young Persons Act⁹ which was based on the 1933 Act of England. The 1943 Act basically was to make provision for the welfare of young offenders and to establish a juvenile court in Nigeria. According to the Constitution of the Federal Republic of Nigeria, issues relating to children and young persons are on the residual list, which implies that only the State can legislate on these matters.¹⁰ The different States of the Federation therefore have their laws relating to children and young persons. It is apt to state that different States in Nigeria operate different laws in relation to the child. While some States of the Federation have taken proactive steps in enacting the Child's Rights Law, some others have the Bill lingering in their State Houses of Assembly and some still operate the Children and Young Persons Law therefore having juvenile courts still existing in their jurisdictions.

I humbly make an appeal to States in the Federation of Nigeria who are yet to enact the Child's Rights Law or adopt the Child's Rights Act to speedily do so,

THE EMERGENCE OF A FAMILY JUSTICE SYSTEM

Issues relating to children and young persons continue to be a global concern. In 1989, world leaders came together and decided that children and young persons needed to have a special convention to enhance their care and protection and to spell out the rights accruing to them. Specifically, the Convention is applicable to children everywhere around the world.

The Convention on the Rights of the Child¹¹ entered into force on 2nd September, 1990. In 1991, Nigeria signed the Convention and domesticated it by enacting the Child Rights Act. Many states of the Federation have either adopted or enacted the Child Rights Act as laws. Abia, Akwa-Ibom, Anambra, Bayelsa, Benue, Cross-River, Delta, Ebonyi, Edo, Ekiti, Enugu, Imo, Jigawa, Kaduna, Kwara, Kogi,

⁸ Bamgbose Oluyemisi (2014) Re-evaluating the Juvenile/ Child Justice System in Nigeria

⁹ Ordinance No 41 of 1943

¹⁰ Section 7(a) and 7(b) of the 1999 constitution

¹¹ GA RES 45/25 of 20 November, 1989

Lagos, Nassarawa, Niger, Ogun, Ondo, Osun, Oyo, Plateau, Rivers and Taraba states are among the States that have enacted the Child's Rights Laws.

The Child's Rights Act/Law is a more comprehensive law and an improvement on previous laws relating to children and young persons in Nigeria. Amongst the improvement of the Child's Right Act/Law is the creation of the family courts to replace the juvenile courts that had existed to deal with issues relating to children and young persons. The idea of the family court to replace the juvenile court came out of the guiding philosophy behind a separate justice system for children. This is the desire to treat children and young offenders with a certain degree of care and affection so that they are not alienated from the society but rather reformed and rehabilitated.¹² The African Charter on the Rights and Welfare of the Child 1990 reiterated this in Article 17(3) that the essential aim of the treatment of every child during the trial and if found liable of infringing the penal laws shall be his or her family and social rehabilitation

Under the Child's Rights Act, Section 149¹³ provides for the establishment of the family court (the court) with a general jurisdiction to hear and determine civil and criminal proceedings.¹⁴ Section 162 gives exclusive jurisdiction to the family court over any matter relating to children.¹⁵

WHAT MAKES A FAMILY COURT A FAMILY COURT – FEATURES OF A FAMILY COURT

There are features of the family court that are similar to the erstwhile juvenile court and there are other distinguishing features. Some of the features are discussed below;

1. The establishment of the family court, like the juvenile court, is under the jurisdiction of each State of the Federation and the Federal Capital Territory.¹⁶
2. The family court, like the juvenile court, is established for the purpose of hearing matters relating to children and young persons.
3. The court is established under the Child's Rights Act/ Law while the Juvenile Court was established under the repealed Children and Young Persons Act/ Law
4. The court is not only at the magisterial division level as the juvenile court operated under the repealed Act. The court operates at two levels. There is the family court as a division of the High Court and the family court as a division of the magistrate court at the magisterial level.¹⁷

The jurisdiction of the court at the High Court level covers cases dealing with the enforcements of the Rights of the child where such Rights has been, or is being or is likely to be contravened. Appeals from the family court at the magistrate level are heard at the High Court Division level.¹⁸ The jurisdiction of the family court at the magisterial level covers all other cases not tried by the family court at the High court level.¹⁹

¹² Principle 2 of the Declaration of the Rights of the Child proclaimed by the General Assembly Resolution 1386 (XIV) of 20 November 1959.

¹³ See Section 138 Child's Rights Law of Lagos State

¹⁴ Section 151 CRA. See also section 140 of Child's Rights Law of Lagos State

¹⁵ Section 151 Child's Rights Law of Lagos State

¹⁶ Section 149 Child Rights Act; see section 138 (1) Child Rights Law of Lagos State

¹⁷ Section 152 and 153 CRA. See also Section 139 CRL Lagos State

¹⁸ Section 153 CRA. See also 142(5) CRL Lagos State

¹⁹ Section 153 (4) CRA. See also Section 142(4) CRL Lagos State

5. The court has unlimited jurisdiction to hear and determine any civil proceeding relating to legal right, power, duty, liability, privilege, interest, obligation or claim in respect of a child and unlimited jurisdiction to hear or determine criminal proceeding involving or relating to any penalty, forfeiture, punishment or any other liability in respect of an offence committed by a child or against a child or against the interest of a child.²⁰
6. In its characteristics as a family court, there is the distinctive feature that in matters coming before it relating to or affecting a child or the family and at all stages of the proceeding, the court is expected to be guided by the principles of conciliating by the child, parents, guardian and any person having a parental or other responsibility. The court is also expected to encourage and facilitate the settlement of the matter before it in an amicable manner.
7. As it operated under the juvenile court,²¹ it is also the Chief Judge of the State that has power to constitute the family court.²² Another distinctive feature of the family court is in the members constituting the court. In the case of the juvenile court, apart from being only a court under the magistrate court, it has as the composition, a magistrate and other assessors, one of which must be a woman.²³ The other assessors, the number and the qualifications are not specified. All the members are appointed by the Chief Judge of the State. The family court under the Child's Rights Act also provide for assessors to sit with the Judge or Magistrate as the case may be. However, unlike the position in the juvenile court, the qualifications of the assessors for the family court are stated.²⁴ The courts whether at the High Court or at the Magistrate Court level are deemed to be properly constituted, if at least two (2) assessors, one of whom is experienced in the matters relating to children preferably in the area of child psychology are available to sit with the judge or magistrate. Of importance is that one of the two assessors at both the High Court and magistrate level must be an expert in a field relating to children. The status, sex or educational qualification of the second assessor is not specified in the composition of the family court at the High court level.²⁵ However, at the magistrate court level, it is said that the second assessor must be a woman.²⁶
8. The absence of specialized judges, police and other personnel handling cases involving juvenile offenders is not in the best interest of the child. This was one of the problems of the juvenile court in the repealed law. A unique feature of the Family court is that all judges, magistrates and judicial officers in the court are expected to have training in sociology or in the behavioural sciences for the effective administration of justice.²⁷
9. In the appointment of persons within the family justice system, fair representation of women and minority groups is taken into consideration. Persons employed in the family justice system cut across social, political, sexual, religious, racial and cultural spheres to achieve impartiality in the administration of justice.²⁸

INSTITUTIONS AND AGENCIES IN THE FAMILY JUSTICE SYSTEM IN NIGERIA

In the effective administration of the family justice system, there are different agencies, institutions and bodies that work, with each having their duties under the law. The family justice system under the

²⁰ Section 151 (1) a & b; see section 140 (1) a & b CRL Lagos State

²¹ Section 6 (1) Children and Young Persons Act

²² Section 152 (2) and 153(2) CRA. See also Section 141 (2) and 142(2) CRL Lagos State

²³ See section 6(1) Children and Young Persons Act. See also the

²⁴ Section 152 (1) b & section 153 (1) b CRA. See also Section 141 (1b) & 142 (1) B CRL Lagos State

²⁵ Sections 152 (3) b and 153 (3) b CRA. See also Section 141 (3)(b) CRL Lagos State

²⁶ Section 153 (3) b CRA. See also Section 142(3)(b) CRL Lagos State

²⁷ Section 206 (2) CRA. See also Section 194(2) CRL Lagos State

²⁸ Section 206 (3) CRA. See also Section 194 (3) CRA

administration of justice is undertaken by three major institutions. These are the police, the courts and the prisons.²⁹

Other institutions and agencies involved in the administration of justice at the family court are government owned parastatals at both the federal and state levels including the Ministries of Justice, Education, Women Affairs and Social Welfare. In addition to the agencies and institutions, there are several professional groups involved in the family justice system. They include social workers, child development officers, probation officers and supervision officers. All these agencies, institutions and professionals collectively contribute to the effective administration of the family justice system. Some of the institutions and their activities are highlighted below.

The Police

Matters on the Nigeria police is found on the exclusive list in the 1999 Constitution of the Federal Republic of Nigeria. Therefore it is only the Federal Government that has control over the police. The police is the first point of contact a child offender or a child that has been abused, has in the family justice system. The Child's Rights Act provides in Section 207³⁰ for the establishment of a specialized unit in the Nigerian Police known as the Specialized Children Police Unit. The unit shall consist of police officers who frequently or exclusively deal with children. They are primarily employed for the prevention of child offences. Section 207³¹ further provides that the unit shall be charged with the following functions - the prevention and control of child offences, the apprehension of child offenders, the investigation of child offences and an omnibus provision that such other functions as may be referred to the unit by the Child Rights Act/Law or any other regulation under the Childs Rights Act/Law or any other regulation.³² When the police from the Specialized Children Unit exercise their power, the child is said to be taken into police protection.³³

It is provided in the law, that there shall be continuous training for the officers of this unit.³⁴ Such police officers have discretionary powers during investigation, prosecution and adjudication. The police officers also have the power to dispose of a case of non-serious nature without allowing it to get to the family court by encouraging settlement, reconciliation or allowing the family and the school to intervene.

The Courts

The family court is a type of court recognised by law and established under the Child's Rights Act/Law.³⁵ Section 162(1) Child's Rights Act³⁶ states that the family court has the exclusive jurisdiction over matters relating to a child. This is reinforced in section 204 Childs Rights Act³⁷ which provides that a child must not be subjected to the criminal justice system but the family justice system. However,

²⁹Bamgbose Oluyemisi (2014)

³⁰Section 195(i) CRL Lagos State

³¹Section 192(2) CRL Lagos State

³²Section 192(2) CRL Lagos State

³³Section 195(2) CRL Lagos State

³⁴Section 39(1) CRL Lagos State

³⁵Section 207 (3) CRA. Section 195(3) CRL Lagos State

³⁶Section 149 CRA. 138 CRL Lagos State

³⁷Section 151(1) CRL Lagos State

³⁸Section 192 CRL Lagos State

where a child has committed murder, treason, attempted murder, robbery, manslaughter, wounding with intent to cause grievous harm, as stipulated in section 222 Childs Rights Act³⁸, the child shall be tried in a regular court.³⁹ Notwithstanding that in certain cases, a child can be tried in a regular court, the child's best interest and welfare is still of importance in the proceeding before the regular court. The language of the family court which is different from that used in the regular courts must be used. Section 155 of the Child's Rights Act⁴⁰ provides that a child appearing in a family court has the right to be represented by a legal practitioner and to free legal aid in the determination of the matter.

The Prisons

The Prison Service is on the exclusive legislative list in the Constitution of the Federal Republic of Nigeria. The Prison Service is governed by the Prison Act. Section 221(1)a Child's Rights Act⁴¹ provide against the imprisonment of a child. The Child Rights Act and Child Rights Law also provide that detention is a disposition of the last resort.⁴² However in certain circumstances stipulated by law, a child may be detained. These are in cases of murder, treason, attempted murder, robbery, manslaughter, wounding with intent to cause grievous harm.⁴³

THE ROLE OF THE GOVERNMENT IN THE FAMILY JUSTICE SYSTEM

There are three arms of government. These are the executive, the judiciary and the legislature. The discourse on the family justice system falls under the judicial arm of government. The government of the Federal Republic of Nigeria is made up of three tiers. These are the federal, state and the local government levels. The different arms of government and the three tiers or levels of government have roles they play for the smooth running of the country and the smooth administration of justice. The roles of the different arm of government in ensuring an effective family justice system cannot be overemphasized especially as it relates to budgeting, fund allocation, operations and law making to mention a few.

For the purpose of this paper, focus will be on how the three (3) tiers of government impact on the family court as opposed to the arms of government. The role of each tier of government as different entities and the need to collaborate for effective administration of justice is discussed.

Role of the government at the Federal Level

As discussed earlier in the paper, the Nigerian police is on the exclusive legislative list and therefore under the federal government and their function has been discussed. With regard to the police, the prison service and the family court, the federal government has the following roles to play.

The Police

1. Setting up of the Specialized Children Police Unit in Police stations in the States
2. Equipping the unit as a child friendly centre.

³⁸ Section 210 CRL Lagos State

³⁹ Section 213 CRA.-See also section 201 CRL Lagos State

⁴⁰ Section 144 CRL Lagos State

⁴¹ section 209(1) CRL Lagos State

⁴² Section 144 CRL Lagos State

⁴³ Section 210(2)

⁴³ Section 210 Child Rights Law; section 222(1)-(2)

3. Recruiting, training and continual training of staff exclusive to the unit.
4. Ensuring that general duty posting or transfers of police officers in the unit are not allowed.
5. Equipping the unit in a child friendly manner.

The Prison Service

Detention of children or young offenders is a last option in the disposition methods. Under the Child's Rights Act/ law no child shall be imprisoned. However, before the commencement of the Child's Rights Act and Laws, young offenders were sent to remand homes or borstals. These two (2) facilities were run by the Federal government.⁴⁴ These facilities were badly managed. The fact is that there were not enough Borstal facilities in the country. There were only three for the whole country.⁴⁵ Under the Borstal Institution and Remand Centres Act, now repealed by the Child's Right Act and Laws⁴⁶, a young offender who was detained in the Centre, but was exercising a bad influence on other inmates may be directed to be detained in a prison.⁴⁷ Where a young offender is transferred to a prison, the law provides that such person is not allowed to mix with adult offenders. This was very difficult to implement because of the congestion in the prisons.⁴⁸ With the enactment of the Child's Rights Act, the Act now supersedes the provision of all enactments relating to Children and young persons, adoption, fostering, approved institutions, remand centres and Borstal Institutions. Under the Child's Right Act⁴⁹ the Minister is obliged to establish approved children institutions in different parts of the country. These include children attendance centre, children centre, children residential centre, children correctional centre, special children correctional centre and such other institutions as the minister shall from time to time establish. It is therefore advised that the Federal government establish these centres and manage them well so that all children in prisons all over the country can be properly placed and treated.

Role of the three (3) tiers of Government in the Family Justice System

As earlier stated in this paper, the Child's Rights Act operates in the Federal Capital Territory, while the Child's Rights Laws operate in the States that have either adopted the Act or enacted their own laws. The Local governments are under the States; therefore the State laws are applicable. There are similarities between the Act and the Law. The discussion below recognises this fact and areas of differences if any are highlighted.

Protective Role.

The government has a role in protecting the right of a child under the CRA or CRL. In particular under section 155 of the Child's Rights Act, a child has a right to be represented by a legal practitioner and to free legal aid in any matter or hearing before the family court.⁵⁰ The representation by a counsel is mandatory. It is therefore the duty of the government through the legal aid council to ensure that this legal provision is complied with if the child does not have one. The government must therefore

⁴⁴ Borstal Institution and Remand Centres Act Cap B11

⁴⁵ Akinseye George Y (2009) Juvenile Justice System in Nigeria. Centre for Socio- Legal studies. Abuja : Nigeria p66

⁴⁶ Section 274 CRA. Section 258 CRL Lagos

⁴⁷ Section 12 Borstal Institution and Remand Centres Act

⁴⁸ Bamgbose Olujemisi 2009 Inaugural Lecture The Sentence , the sentencer and the sentenced: Towards Prison reform in Nigeria. 10 July 2009

⁴⁹ Section 248 CRA. See Section 236 CRL Lagos State

⁵⁰ Section 155 CRA. Section 144 CRL Lagos State

ensure that counsel provided for a child under this provision is knowledgeable in the law and issues relating to children.

Section 42 of the CRA⁵¹ provides that in certain instances under the law the State government may apply for an emergency protection order with respect to a child. The child will then be in the protective custody of the State government and may be put in an emergency protection centre or any other suitable approved accommodation. This also applies to a situation when the order is given to the specialized police unit in the state.⁵²

Parental/Care Role

Under section 55(3) a and b of the Child's Rights Act,⁵³ the government has parental role towards orphans, deserted, neglected and ill-treated children subject to some conditions stated by law.. They should also make provisions for persons with special needs with a range of services appropriate for each child. The government in this role must provide accommodation and maintenance for certain category of children.

Assessor Role

Under section 41 of the Child's Rights Act,⁵⁴ the government plays the role of an assessor, to assess the condition of a child in order to ensure the welfare of the child and take necessary step for the wellbeing of the child.

Investigatory role

Under Section 45 of the Child's Rights Act,⁵⁵ the government has an investigatory role to safe guard or promote the welfare of a child. Where there is reasonable cause to suspect that a child is in danger, the government has a role to make inquiries to enable it decide the action to take in the interest of the child. The investigatory role extends to the functions of adoption services, children's homes and detention centre to ensure that there is compliance with the law

Supervisory Role

The government has an oversight role in ensuring that children who are privately fostered are satisfactorily safeguarded and promoted.⁵⁶ The supervisory role applies also in cases of voluntary organisations providing accommodation,⁵⁷ child minders where the government must ensure that those registered as child minders comply with the regulations in the best interest of the child.⁵⁸ The State Government also have a supervisory role over the Local Government in the State. The State may direct the Local Government to furnish it with details of all its activities and performance regarding children

⁵¹Section 42 CRL Lagos State

⁵²Section 44 CRA. Section 39 CRL Lagos State

⁵³Section 51 (3) a CRL Lagos State

⁵⁴Section 36 (1) CRL Lagos State

⁵⁵Section 40 (1) CRL Lagos State

⁵⁶Section 121 CRA. Section 114 (1) CRL Lagos State

⁵⁷Section 182 (2) CRL Lagos State

⁵⁸Section 164 CRA. Section 153 CRL Lagos State

and particularly in connection with accommodation of children in the different children's homes managed by the local government⁵⁹

Custodial Role

To keep records of its facilities and particulars of persons involved in dealing with children and their welfare of children in the state, the government has a custodial role to keep records, registration documents of such persons for monitoring purposes.⁶⁰ This relates to cases such as adoption, child minding and foster care in the state.

Inspectorial Role

The Government in ensuring compliance of its Regulation, is empowered to inspect premises and facilities where children and young persons stay or are accommodated.⁶¹ This is to ensure the safety and welfare of the child

Decision Making Role

In considering the overall interest of a child, the government must take critical decisions relating to all aspects of child welfare. In this respect, the government has the discretion to refuse to register an applicant as a child minder for any reason, or cancel a person's registration under varying conditions. The government may decide to prohibit a person from private fostering, if the person is in the opinion of the government not fit and proper.⁶² The government may take a decision to collaborate with any other State government to provide accommodation for a child where it is in the best interest of the child.

Assisting/Supporting Role

There is no doubt that dealing with issues relating to children is enormous. The government in performing its duties may need to collaborate with other governmental, voluntary or non-governmental organisations. On this issue and of importance is the assistance that the State can give to the Local Government in the State. For example, under the Child's Rights Law of Lagos State, the Lagos State Government may make grants to a Local Government in the State in respect of the Local Government providing secured accommodation.⁶³ In fulfilling its responsibilities, the government is empowered to support such organisations working with it to achieve the desired goal.⁶⁴ The support extends to agencies making provisions for children with special needs and their families.⁶⁵ The government may contribute towards or defray costs subject to certain conditions.⁶⁶ The support may be in cash or in kind, with or without condition.

⁵⁹ Section 190 (3) CRL Lagos State

⁶⁰ Section 163 CRA. Section 152 CRL Lagos State

⁶¹ Section 168 CRA. Section 152 CRL Lagos State

⁶² Section 123 CRA. Section 116 (1) CRL Lagos State

⁶³ Section 189 (2) CRL Lagos State

⁶⁴ Section 171 (7) CRA. Section 160 (7) CRL Lagos State

⁶⁵ Section 201 CRA. Section 189 (4) CRL Lagos State

⁶⁶ Section 189 (1) CRA

On its own, the Local government may conduct or assist any other person conduct research into any matter connected with its function.⁶⁷ Through this, data may be collected, collated and used for developmental purposes in matters affecting the child.

Advisory Role

Apart from the care and parental role discussed above, the government and its staff have an advisory role to play. Where a child is being looked after by a state government or in an approved institution, the government or the appropriate person has a duty to advise, assist and befriend the child with a view to promoting his or her welfare even after the child ceases to be in their care.⁶⁸

Consultative Role

The government in discharging its duties may consult and collaborate with other authorities. This is important where the government is of the opinion that such bodies may by taking some specified action help in the exercise of any of the government's functions. Example of authorities the government may collaborate with include the education, housing and health authorities.⁶⁹

COLLABORATION OF THE THREE (3) TIERS OF GOVERNMENT

While the three (3) tiers of government in Nigeria are distinct and separate, there are areas of cooperation between them. This is for the progress of the country. In relation to the child, the Federal, State and Local Governments require information from one another for the development of the justice system. It is in line with this that section 198 (5) of the Child's Rights Act, the Federal Government, through the Minister charged with matters relating to children, may require the State Government to furnish him or her with information on certain matters relating to a child in the State. A State Government as discussed earlier in this paper may require the Local Government to furnish it with the same information. Under the Child's Rights Act and the Child's Rights Law there is provision for the establishment of a Local Government Child's Rights Implementations Committee with the function to ensure the observance and popularisation of the rights and welfare of a child.⁷⁰ Schedule Seven of the Child's Rights Act further supports this assertion that there is collaboration by the three (3) tiers of Government in issues relating to the child. This confirms that the three tiers of government are working towards a common goal which is the best interest of the child.

FUTURE AND CHALLENGES CONFRONTING THE FAMILY JUSTICE SYSTEM IN NIGERIA

The family justice system has a long chequered history from a period where children had no rights, were treated like adults and abused, up until this present period of nations recognising and adopting conventions and legislations pertaining to children. As a result of these developments, the plights of children have positively and significantly changed. Despite the changes, these children and young persons are yet to be properly positioned and this is still an issue of concern.⁷¹ Some of the issues are discussed below.

⁶⁷ Section 190 (2) CRL Lagos State

⁶⁸Section 179 CRA. Section 168 and 184 CRL Lagos State

⁶⁹Section 182 and 183 CRA.. Section 171 and 172 CRL Lagos State

⁷⁰ Section 268 CRA. Section 253 CRL Lagos State

⁷¹Bangbose pg. 4

Prioritizing the needs of Children and Young Persons.

The Child's Rights Act/Law in the opening section, provides that in all actions taken by any person, institution or government, the best interest of the child must be the primary consideration. It is therefore imperative that priority must be given to issues pertaining to children and they must be promptly addressed

Simplifying the Child's Rights Act/ Law to a Child Friendly Document

In order for the Nigerian child to be acquainted with the content of the Child's Rights Act/Law, the document has to be simplified and made child friendly. The language in the law must be simplified and cartoon like characters incorporated. It is suggested that the content should be taught in schools as part of the curriculum. The collaborative efforts of Non- governmental organisations would be relevant in this regard

Involvement in Decision Making Processes.

There is a need to give children and young persons a voice in decision making on issues relating to them. The Children's Parliament was a recommendation by UNICEF and adopted by the Nigerian government in 2005 to provide a platform for Nigerian children to exercise their democratic rights. In 2015, the wife of the Nigerian president, Aisha Buhari noted in her speech and charge to governors at the inauguration of the 4th Assembly of the Federal Capital Territory Parliament in 2015, that the children's parliament will inculcate the value of dialogue and collective participation in them as future leaders. She added that the Parliament will provide the platform for the children to participate in national development.⁷²

The electoral process through which the executives of the Parliament are chosen is seen as a way through which children's political consciousness is raised, the path of democracy is imbibed and a preparation for good governance in the future.

The Children's Parliament which has been established in many states in Nigeria is a good training ground for prospective political leaders.⁷³ The voices of children parliament leaders have been heard on diverse issues. For example, the children's parliament in Akwa Ibom spoke up on the issue of the Chibok girls,⁷⁴ and issues of funding, neglect and none support of children's programmes was brought up by the Anambra State Children's Parliament.⁷⁵ It is suggested that the Parliament should truly represent the broad categories of the Nigerian children including the vulnerable and disadvantaged.⁷⁶

Judicial continuity in the family justice system

⁷²Vanguard: Nov 2 2015 – "Establish Children's Parliament" Aisha Buhari tells Governors

<http://www.vanguardngr.com/2015/11/establish-childrens-parliament-aisha-buhari-tells-governors/>

⁷³Ministry of Lagos, Physical Planning and Urban Development: "Lagos inaugurates 6th Assembly of Children's Parliament - September 30, 2016 in <http://physicalplanning.lg.gov.ng/index.php/2016/09/03/lagos/lagos-inaugurates-6th-assemblyofchildrens-parliament/>

⁷⁴Premium Times "Chibok Girls: Children 'Parliament nulls boycott of children's day celebration, May 12, 2014. In <http://www.premiumtimesng.com/news/160609-chibok-girls-childrens-parliament-nulls-boycott-childrens-day-celebration.html>

⁷⁵Odogwu Emeka (2016) Authority of 24 April, 2016 –Children's Parliament writes Obiano, appeals for better attention and funding in <http://authorityngr.com/2016/04/children-parliament-writes-obiano-appeals-for-better-attention-funding>

⁷⁶<http://www.unicef.org/nigeria/children1938.html> UNICEF Nigeria - The Children – Child Rights and Participation

Due to the nature of the child, it is important that there is continuity in any proceeding involving a child. Cases where judicial officers are transferred is not in the best interest of the child.

Adoption of the multi-door system in the family justice system

The multi-door process in many states of the federation is rapidly gaining acceptance due to its non-complex nature. Some of the features of the multi-door system which makes it successful can be adopted by the family justice system.

Adoption of the traditional mode of mediation in the family

The traditional mode of mediation in the family has been successful even in its simplicity, just like the multi-door system. There is no doubt that the family unit continues to be a strong influence in the life of a child. As much as possible, the family unit should be allowed to mediate in issues relating to the child.

Removal of Technicality in the Adoption Process.

The process of adoption is too cumbersome and in certain cases, may not be in the best interest of the child. It is important for the government to be diligent in matters of adoption in the best interest of the child. However, the government can find ways to reduce the bureaucracy involved and shorten the adoption process.

Use of more Modern Information Technology Methods

The use of more modern methods of information technology will enhance the family justice system. Use of conference calls, Skype, video technology and telephone calls at certain sittings may enhance speedy dispensation of justice. In this vein, it is advocated that in certain cases, in camera testimony should be adopted for children in abuse cases.

Capital Investment by the Government Dedicated for Family Court Buildings

Since the inception of the CRA/CRI, many states have endeavoured to have special building dedicated specifically to the family court building. Such buildings can be found in States like Ogun and Lagos amongst others. However, some States are yet to have such dedicated buildings which are considered necessary.

Flexibility of Judges and Magistrates in Conducting Cases

The family justice system should be more flexible and child friendly. Judges and magistrates involved in the system should be innovative in the arrangement of the court and in the conduct of cases as each case demands.

Cooperation of Stakeholders in the Family Justice System

The family justice system, unlike the juvenile justice system has more stakeholders who are experts in different disciplines relating to the child. Synergy and cooperation amongst all stakeholders in the family justice system is encouraged to achieve the desired goal in the best interest of the child.

Continuing Professional Development (CPD)

The different professionals working in the family justice system are encouraged to engage in development programmes that will further enhance their work in the system. This will keep them up to date with changes in the law, practice and research. The government should encourage continuing professional development by supporting and defraying costs of such development programmes.

Adopting a Feedback System

A feedback system will enable the government keep track of its activities revolving around children in the State. This would make for easier data collection which would be collated for future assessment on children's issues.

Adequate Funding

Funding for many capital State projects is a major issue. There is therefore the tendency to ignore projects in the family justice system. Funding issues relating to children and young persons should be a priority for any progressive government.

Development of a Strategic Policy

To achieve long-term objectives in the family justice system, a strategic policy for about five years should be developed by every state government

Developing More Victim Approach Programmes and Interventions

It is not in doubt that there are more interventions for children under the Child's Rights Act than it has been in past years. However, more victim approach programs should be developed for child victims. It is suggested that a child compensation programme for children who are victims of child abuse be developed. Restitution is another programme advocated for in this paper to restore the child victim to a pre-crime state. This is especially advocated for child victims of neglect or abuse.

Provision of mentoring programmes

Mentoring provides a supportive relationship which in many cases has long lasting positive effect. The malleable nature of children makes mentoring a very good program in the treatment of child offenders especially in non-violent cases. Mentoring programmes should not be left to only non-governmental organizations. Child and youth friendly centres should be established at the State and the local government levels, at schools and neighbourhoods where children and young persons can meet with responsible adults as role models and mentors.

Shift to a Restorative Justice Paradigm.

Section 12 of the Child's Rights Act provides for full participation of a child in cultural activities of Nigerian, African and world communities. This implies that the community to which a child belongs to is important for the development of the child. Any disposition method for the treatment of the child should take into consideration the fact that the child will return to his or her community. The Restorative Justice Paradigm speaks to the concerns of the victim, offender and the community.

According to Kurki, restorative justice is about relationships.⁷⁷ It is about how relationships are harmed by crime and how it can be rebuilt to promote recovery and healing for people affected by the harm. This justice system restores the victim or the offender whether he or she is a child or youth to the pre offense state. Zehr and Mika says that the restorative justice directs effort against repair of the harm against the victim; the community and the offender.⁷⁸

CONCLUDING REMARKS

In the effective administration of the family justice system, the roles of the different tiers of government are distinct, interwoven and collaborative. While the police may be the first point of entry for an offending child, a home, correction or detention centre may be the finishing point for an erring child. Both institutions, while in the power of the federal government have roles to play at the state levels.

The Nigerian Police, the Nigerian Immigration Services and the Nigerian Prison Services all fall on the exclusive legislative list and are therefore controlled by the federal government. They each have specific roles they play in the administration of justice. However, with particular reference to the family justice system, which falls in the residual list and is therefore under the control of the state government, these institutions also have distinctive roles interwoven with that of the state. There is therefore a need for collaboration.

The government at whichever level has multifaceted roles to play though some of the roles are interwoven. The role of the government is therefore distinct, complex and very important in the effective administration of the family justice system.

For the smooth running of the family justice system, the three tiers of government should continue to work together towards the best interest of the child.

⁷⁷ Kurki L 2000 Restorative and Community Justice in the Justice in the United State" in M Tonry *crime and justice: A Review of Research* (vol 27)pp235-303. Chicago: University of Chicago Press. 322

⁷⁸ Zehr H and Mika H 2003 "Fundamental Concept of Restorative Justice" In E McLaughlin R, Fergusson G, Hughes and I westmarland (ed) *Restorative Justice : Critical Issues*. Thousand Oaks. CA: Sage 319