

**A CRITIQUE OF THE CHILD RIGHTS LAW Cap C155 Volume 1, LAWS OF OGUN  
STATE 2006**

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## A CRITIQUE OF THE CHILD RIGHTS LAW Cap C155 Volume 1, LAWS OF OGUN STATE 2006

The Child Rights Law of Ogun State 2006 is the present law governing issues relating to children and young persons below the age of eighteen (18) years in Ogun State and protecting of the rights of children and other related matters

The Law replaced the Child Rights Law of Ogun State 2003 which was signed into law by the former Governor of the State, Otunba Gbenga Daniel on 3rd March 2004

The Child Rights Law of Ogun State 2006 is divided into nine (9) parts and has ninety three (93) Sections

Part 1 of the Child Rights Law of Ogun State 2006 hereinafter referred to as CRL Ogun State has two (2) Sections and the sections deal with the preliminary aspect of the law. The sections provide for the "Best interest of the Child" as being paramount in consideration in all actions and matters. In addition, it provides that all children below the age of eighteen years are protected by this law. It is also in this part of the law that it is stated that the child is to be given protection and care necessary for "his" well-being and that it is mandatory that all person, institution, service, agency, organization and body responsible for the care or protection of children "shall" conform with the standards established by the appropriate authorities, particularly in the areas of safety, health, welfare, number and suitability of their staff and competent supervision.

Part 11 of the CRL Ogun State has eighteen (18) sections in sections 3 – 20 enumerating the rights and responsibilities of the child. The rights in sections 3- 18 include all rights in Chapter IV of the Constitution of the Federal Republic of Nigeria 1999, namely right to survival, to name, freedom of peaceful association, conscience and religion, right to privacy and family, freedom of movement, discrimination, right to dignity of the child, to leisure recreation and cultural activities, to health, parental care, protection and maintenance, to free and universal primary education.

Sections 19 -20 in Part 11 provides for the responsibilities of the child. As there are rights accruing to the child, the child has responsibilities to the family, society, Nigeria, Africa and the human race in general

Part 11 of the CRL Ogun State, has twenty two (22) sections made up of sections 21-42. The sections set out to protect the rights of the child. These include protecting the child against child marriage, child betrothal, tattoos and skin marks, genital mutilation, drug use, involvement in criminal activities, abduction and unlawful transfer, exploitative labour, against use for begging or prostitution, against sexual intercourse, sexual abuse and exploitation, prohibition of recruitment into armed forces, prohibition of use of the use of the child in harmful or immoral publications. Criminal law provisions which protect the child are applicable as if the law provides for such.

Part IV of the CRL Ogun State has nine (9) sections made up of sections 43 -51 on the protection of the child. The nine sections cover certain orders that can be made or other actions that can be taken to protect the child, persons who can apply or make such

orders, when the orders can be made, the personnel or agencies to effect the orders and the effect of the orders or directives.

The Orders in the sections include the following

#### **A. Child Assessment Orders (CAO)**

It is the State Government or an appropriate authority that can apply for the CAO.

The order be made where the child is suspected to be suffering or is in fact suffering or likely to suffer significant harm

The conditions governing the CAO are discussed below

- a. The CAO cannot be made if there are grounds for making an Emergency Protection Order (EPO)
- b. The date of commencement of the CAO must be stated
- c. The period of a CAO must not exceed nine (9) days
- d. The person to carry out the CAO order on behalf of the child must do so in accordance with the terms of the Order
- e. The CAO must contain directives as to who the child can have contact with if the child is kept away from home
- f. The person applying for the CAO must ensure that the child, the parents or guardian have knowledge and notice of the application.
- g. Certain persons may apply that a CAO to be varied or discharged.

#### **B. Emergency Protection Order (EPO) in Sections 44 & 45 CRL Ogun State**

Another Order that can be made under this part of the law is the

It is the State Government or the appropriate authority that can apply for the law

The EPO can be made, where the child is likely to suffer significant harm if the child is not taken away to an accommodation or does not remain where he or she is presently accommodated.

The Conditions for making an EPO include the following

- a. The applicant can return to status quo if conditions for which the Order was made changes when the EPO is still in force
- b. The period of an EPO must not exceed nine (9) days
- c. An EPO may be extended in the best interest of the child
- d. An EPO can only be extended once
- e. A child, the parents, guardian or such others stated may apply for a discharge of the Order until after 72 days after the Order is made
- f. No appeal can be made on issues relating to an EPO

There are certain duties of the State Government when the government is informed that a child in the State or found in the State is subject to an EPO or government has obtained an EPO. The government has the following duties.

- a. Make enquiries to enable it make decision to promote the welfare of the child

- b. Have access to the child
- c. Consult with the relevant education authority where matters of education are involved
- d. Apply for an appropriate Order to safeguard the interest of the child where access to or information about a child is denied during an enquiry.
- e. Review cases relating to a child or fix a future date for review
- f. Take action within its powers where appropriate in the best interest of a child
- g. Consult with any other state government for information about a child on whom an enquiry is ongoing who is within that other state

In an order for an EPO, the court has the following powers under Sections 48 & 49 CRL Ogun State

- a. Power to include in an EPO, provision that a person who has better information about a child disclose it
- b. Power to authorise under an EPO, entrance into a specified premises to search for a child under the order
- c. Power to search for any other child found in the premises who may be in need of an EPO
- d. Power to convict any person who obstructs a person exercising power of entry and search to imprisonment or fine or both.
- e. Power to convict any person who abduct a child in care, subject to EPO or police Protection

### C. Police Protection Order (PPO) in Section 46 CRL Ogun State

Under the above law, a child can be taken into Police Protection by this Order.

The following issues are important to understand the sections of the law

It is a Specialised Children Police Officer that can take this action under the law. However, the law does not specify who is a Specialised Children Police Officer.

The questions then arises if the police have these officers in their units and if they exist, if they are properly trained. In Ogun State, there is the need to find out if the police or the State have facilities to implement this provision or if the police are aware of this provision in the law.

The Specialised Children Police Officer is empowered by the law to do the following

- a. Remove a child to a suitable accommodation and keep the child there, where he/she believes that the child may suffer significant harm
- b. Prevent the removal of the child from such place
- c. Inform the Local Government of the steps taken and the reason/s for the steps.
- d. Inform the child about the steps and future steps and reasons for the steps if the child can understand
- e. Ensure that the child is put in an accommodation provided by or on behalf of the State
- f. Inform the parent, guardian or any other person who the child is accountable to about the position.



- g. Conduct an enquiry into the issue relating to the child
- h. Release the child except there is/are reasonable cause
- i. Allow child to have reasonable contact with parents, guardian.

They are however not allowed to keep a child in Police Protection more than 72 hours, neither do they have any parental responsibility towards the child.

The following questions arises as to whether the State has suitable accommodation/facilities for such children referred to in this provisions and the meaning of a "suitable accommodation" that is stated in the provision.

#### **D. Voluntary Home/Registered Children's Home/ Foster Parent under Section 50 CRL Ogun State.**

An Order can be made for a child to be taken to any of the above places under the law

These homes are places of refuge for Children at Risk of Harm. The Law does not define a "Child at Risk of Harm". However, the Law in Part V, Section 52(a) - (n) CRL, provides for a list of children in need of care and protection

Children at Risk of Harm may be protected by being provided a refuge at a Voluntary Home or Registered Children's Home or with a Foster Parent.

The law provides that certificates must be issued to the Homes or Foster Parents by the "Commissioner" before they become operational to prevent abuse. The law however does not state which Ministry or which Commissioner is being referred to. Considering the fact that children's issues are under the portfolio of the Women Affairs and Social Development department, it is assumed that it is the Commissioner for Women Affairs and Social Development

#### **E. Corrective Order in Section 53 CRL Ogun State**

This type of Order is made for children beyond parental/guardian control. Before the Order is made, the court must be satisfied that it is in the best interest of the child. In addition, it must be clear that the parents of the child know the consequences of the Order

The Corrective Order may involve placing the child under supervision of a Supervisory Child Development Officer or some other persons for a period not exceeding three (3) years. Where the child is placed in the care of an individual or in certain cases, the court may order certain persons to contribute to the maintenance of the child under care.

Part VI of the Child Right Law Ogun State is made up of Eleven (11) Sections namely Sections 55 – 65.

The following Orders can be made under these sections

##### **A. Supervision/Care Order in Sections 55- 59 CRL Ogun State**

The State Government or an appropriate authority or authorised person can apply for the Order

In making the Order, the Court will place child in the care of a designated authorised person, appropriate authority or State Government and the Order is made where the child is resident. The court can give a Care Order in an application for Supervision Order and vice versa.

The Supervision/Care Order can only be made if care given to child or likely to be given if the Order is not made, is not what the parents would reasonably be expected to give to the child or where the child is beyond parental control and it can only be given in respect of a child below eighteen years

The duties of supervisors in a Supervision Order include giving advice, assist and befriending the child; Giving effect to Order and advising the court where the Order is not complied with or is no longer necessary

The Law does not specify who the Supervisors are the qualifications of the supervisors stated. It may be assumed considering their roles that social workers may serve as supervisors

There are other Orders that can be made under the Care/Supervision Order. These Orders are discussed below

Contact Order: This is an Order requiring the person with whom the child is to live to allow the child to have contact with specified persons

Prohibited Step Order is an Order that no other person is allowed to take any step which ordinarily the parent of the child is to take and the court has given that Order that the parent should take, without the consent of the court

Residence Order is an Order as to arrangement to be made concerning the person with whom the child is to live

Specific Issue Order: This is an Order giving direction as to a specific issue or question that has arisen or may arise as to parental responsibility of the child

The effect of a Care Order is that the State Government has a duty to receive a child under this Order and keep the child while Order remains. In addition, the State Government has parental control and can give allowance of reasonable contact with parents, guardian certain other people. The court is allowed to make or refuse Contact Order with child and parents, guardian or certain persons or determine extent to which the parent or guardian will meet parental responsibility where it is necessary to do so

It should be noted that once the child under this Order attains the age of eighteen, the Order ceases to take effect

## **B. Education Supervision Orders (ESO) in Section 60 CRL Ogun State**

The Appropriate Education Authority that can apply for the ESO

*The nature of the Order is the child with respect to whom the Order is made is put under the supervision of a designated appropriate Education Authority*

The ESO is made for the following category of children

- a. A child who is of compulsory school age
- b. A child who is not being properly educated
- c. A child who is not receiving full time education suitable for his/her age and ability
- d. A child who is under a School Attendance Order that is not complied with
- e. A child who is registered in a school but not attending regularly

### **C. Interim Order (IO) in Section 62 CRL Ogun State**

It is the Court that is empowered to make this Order. The Order is made when there is an adjournment in a Care Order or Supervision Order and where a residence Order is made in a Care /supervision Order

Part VII of the CRL Ogun State is made up of six (6) Sections in Sections 66 -71

The sections deals with provisions on scientific test in paternity/maternity cases

Part VIII of the Child Rights Law Ogun State has fourteen (14) Sections- Sections 72 -85

The sections are on possession and custody of children

Part IX of the Child Rights Law Ogun State has eight (8) sections in Sections 86-93

The sections are on appointment of guardianship for a child

### **A Critique of the Child Rights Law Ogun State 2006**

The Child Rights Law Ogun State 2006 is a good attempt at domesticating the Convention of the Rights of the Child and the Child Rights Act 2003

The Child Rights Law of Ogun State is not a dubbed version of the Convention of the Rights of the Child and the Child Rights Act 2003. This is because there are sections in the Ogun Law which are adapted to the peculiarities of the State. For example in Section 13 of the law, reference is made to the local government in Ogun State. Sections 46 (1) (2) (3) of the Law provides for a "a suitable accommodation" instead of the "Emergency Protection Center" which is used in the Act.

With reference to the language of the law, the language in the Law is not gender neutral. References are made in the law to the masculine gender. This is not in line with global practice

It is also noted that the editorial work of the law is poor. For example, Section 58 (1) of the law refers to reasonable "contract" instead of "contact" Another example of poor editorial; work is found in Section 86 (2) which refers to "*guardian and litem*" instead of "*guardian ad litem*".

The Child Rights Law of Ogun State 2004 is an incomplete law as it has only 93 sections and nine (9) parts. Various parts of the law as it is presently, makes reference to sections which are not in the law. For example, Section 52 (6) (b) of the law makes reference to part XIII which does not exist presently in the law. Another example is in Section 72 (1) (a) of the law which also makes reference to the family Court in section 156 of the Law, a section which presently is not existence.

### **Conclusion**

An appeal is made to the Governor of Ogun State, Senator Ibikunle Amosun, to sign the revised Child Rights Law that has been before him since 2013, when it was passed into law by the Ogun State House of assembly.

This will make Ogun State to be one of the thirteen States in Nigeria that has fully complied with the Childs Right Act.

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