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1.0 ABSTRACT

Adoption is a procedure by which an adult legally assumes the role of a parent over an under-aged person who is not his or her biological child. This could be under customary law or the statute. However, this study focuses on adoption under the statute. The United Nations Convention on the Rights of the Child, 1989 (hereafter the “Convention”) recognizes adoption as a form of alternative care for children who are temporarily or permanently deprived of parents or family and are unable to remain in their family environment. In addition, it promotes a child-centred adoption law. In the first place, it stipulates that the child adoption process ought to be founded on the principles of liberality, cost effectiveness and timeliness. Furthermore, it provides for the “four P’s”: *participation* of children in decisions affecting their own destiny; *protection* of children against discrimination and all forms of neglect and exploitation; *prevention* of harm to children; and *provision* of assistance for basic needs. It also stipulates that State parties shall ensure that the institution, services and facilities responsible for the care and protection of the children conform with the standard established by competent authorities, particularly in the area of safety, health, the number and suitability of their staff as well as competent supervision. The Constitution of the Federal Republic of Nigeria, 1999 (hereafter the “Constitution”) recognizes adoption as well as the rights and welfare of children in general as matters within the legislative competence of states. The legal framework for regulating adoption in Edo State (which is the primary focus of this study) is the Adoption Law 1979 of the defunct Bendel State (as applicable to Edo State) and the Child Rights Law 2007. While the first addresses the process, procedure and participants in the adoption process, the second in addition entrenches, “best interest principles as the paramount consideration in all child adoption matters”. The Child Rights Law also reflects the fundamental human rights provision in Chapter IV of the Constitution. Nonetheless, studies show that in Nigeria, there are a number of exploitative practices and

problems associated with child adoption that impede the attainment of child-centred adoption process in Edo State, such as profiteering, trafficking in and outright sale of children; inadequately trained manpower, ineffective monitoring and poor supervision, negatively impact the adoption process. The study seeks to evaluate the extent to which the Edo State legal framework captures and implement the international, normative and substantive principles of a child-centred adoption process.

The study expects to find that adoption impacts the rights of the child to life, family, identity and development. It shows that the international law and policy as well as the “four Ps” requirements of liberality, cost-effectiveness and timeliness are fundamental to a child -centred adoption process. It identifies the concomitant implications of the apparent non-implementation of the international standards in the legal framework for adoption in Edo State underscored by reported cases of profiteering, inadequately trained manpower, ineffective monitoring, inadequate inspection and poor supervision prevalent in orphanages across Edo State, which are the primary environment from where children are adopted in the State.

This study expects to contribute to knowledge in the area of Adoption Law by evaluating the procedure for adopting a child in Edo State and appraising whether it meets with international best practices or standards. Using doctrinal and empirical methodologies involving literature review or primary and secondary sources, focus-group interviews and evaluation of the facts on-file of the number of applicant seeking to adopt a child and the number that finally adopted, this study expects to contribute to the data and literature on the adoption law and the adoption process of the Edo State.

1.1 Statement of Research Problem

The United Nations Convention on the Rights of the Child 1989, recognizes adoption as a form of alternative care for children who are temporarily or permanently deprived of their parents or family and unable to remain in their family environment. Furthermore, International Laws and Convention stipulates that a child centered adoption law should promote the right of the child to life, family, identify confidentiality health survival development recreation and to what the Convention on the Child's Right terms 'as the four Ps'; that is to say *participation* of children in decisions affecting their own destiny; *protection* of children against discrimination and all forms of neglect and exploitation; *prevention* of harm to children; and *provision* of assistance for basic needs,. Finally, that all actions and decisions partnering to children 'the best interest of the child must be paramount. Furthermore, international laws and policies advocate that a child centered adoption laws should be cost effective, liberal and timely. The African Charter on the Rights and Welfare of the Child, 1990 provides for a range of rights for children including right to survival, and development, name and nationality. Under the Constitution adoption in particular, and the rights and welfare of children in general, are matters within the legislative competence of the State. The legal framework regulating adoption in Edo State are of the Adoption Law 1979 of Bendel State (as applicable to Edo State) and the Child's Right Law, 2007. The Adoption Law address the process, procedure and participants in the adoption process). The Child Rights Law also entrenches. "Best interest principles as the paramount consideration in all child adoption matters". The legal frame work regulating child adoption in Edo State does not imbibe the principles that inform or guide a child centered adoption law as it fails to target exploitative practices and vices associated with child adoption such as profiteering, trafficking, adoption commercialization and outright sale of children. This study focuses these challenges by evaluating their impact on the right of the child in the context of adoption laws of Edo State with a view to proffering concrete reform proposals.

1.2 Scope of Study

This research principally focuses on a critical examination of the extant legal framework and policies regulating child adoption in Edo State, with a view to securing condition under which adoption can be done with the necessary safeguards in place to protect the rights of children in line with the best interest of the child principle. The pivotal focus of the study is to appraise the legal frame on child adoption in Edo State, which is the Child Rights Law, 2007 and to what extent it imbibes international laws and convention and whether it promotes a Child-centered Adoption Law. This research will also appraise the process and procedure and its impact on the triad members that is the birth mother, the adoptee and the prospective adoptive parents. This study will appraise the types of adoption, especially the ones practice in the field of adoption in Edo State and identify the diverse challenges facing all triad members in the adoption process.

1.3 Methodology

The methodology of this research will be doctrinal and empirical. The doctrinal approach will be focused on analyzing of the legal framework and policies regulating child adoption, in Edo State, regional legislation, international Law, conventions, general comments and protocols, as well as text books, journal publications, newspaper publications and web materials relevant to the study. The study will also adopt the empirical methodology by utilizing focus group interview and facts-on-file of real life adoption applications.

1.4 Aim and Objectives

The aim of this study is to evaluate the legal and policy framework of adoption process in Edo State and the extent to which they implement international best practices on adoption. The study has the following objectives:

1. Articulate the principle of a child-right centered adoption law.
2. Identify the rights implicated in the adoption process

3. Evaluate the implementation profile of the Edo State adoption law and policy, and how they impact on the adoption process as a whole.

1.5 Findings

This study shall find that:

1. The right of the child to life, family, identify and development are fully recognized under the extant international law and convention relating to child adoption.
2. The municipal legal and policy framework on child adoption in Edo State inadequately reflects this international standard.
3. The current adoption process and procedure have failed to prevent serious and widespread violations of child rights.
4. The non-implementation of this international standard is being exploited by some unscrupulous persons in the adoption system of Edo State manifesting in profiteering and outright sale of children, among other malpractices.

1.6 Contribution to Knowledge

This study shall contribute to knowledge by highlighting the international legal regime and standard on adoption establishing the best practices on adoption; and the first time, relate these to the adoption law and policy applicable in Edo State with a view to determining the extent of compliance with the global best practices, and to guarantee an adoption system in the state which serves the overall best interests of all those involved and impacted by the adoption process.

2.0 Introduction

Adoption is a procedure by which an adult legally assumes the role of a parent over an under-aged person who is not his or her biological child. The United Nations Convention on the Rights of the Child, 1989 (hereafter the “Convention”) recognizes adoption as a form of alternative care for children who are temporarily or permanently deprived of their parents or family and are unable to remain in their family environment. In addition, the Constitution of the Federal Republic of Nigeria, 1999 (hereafter the “Constitution”) recognizes adoption as well as the rights and welfare of children in general as matters within the legislative competence of states. The legal framework for regulating adoption in Edo State is the Adoption Law, 1979 of the defunct Bendel State (as applicable of Edo State) and the Child’s Right Law, 2007. While the first addresses the process, procedure and participants in the adoption process, the second entrenches, “best interest principles as the paramount consideration in all child adoption matters”. The Child Rights Law also reflects the fundamental human rights provision in chapter IV of the Constitution. By the way of global procedures and practices, child adoption processes are founded on liberality, cost effective and timeliness.

The legal framework regulating child adoption in Edo State omit to target principles that informs or guide a child centered adoption law as it fails to target exploitative practices and vices associated with child adoption such as profiteering, trafficking, adoption commercialization and outright sale of children. This study seeks to evaluate their impact on the right of the child in the context of adoption law.

This research principally focuses on a critical examination of the extant legal framework and policies regulating child adoption in Edo State, with a view to securing condition under which adoption can be done with the necessary safeguards in place to protect the rights of children in line with the best interest of the child principle.

The approach to this research will be the doctrinal and empirical approach. The doctrine approach will be focused on the analysis of the extant legal framework and policies regulating child adoption, in Edo State, Regional legislation, International laws, Conventions, various general comments and protocols. This study aim to evaluate the legal frame of adoption in Edo State and the extent to which it implements international best practice on adoption.

The study expects to find that adoption impacts the rights of the child to life, family, identity and development. This study contributes to knowledge by establishing that the implementation of international standard and promoting the best interest principle in all matters relating to children can ensure a liberal, cost effective and timorous adoption process in Edo State.

2.1 History of Adoption in Developed Countries from the Antiquity Era till Date

According to Hastings, adoption is an old institution in fact and in myth.¹ There is evidence of some form of adoption in the early practice of adoption in the bible. Perhaps the most popular of these is the adoption of a child found in the bull rushes by Pharaoh's daughter.² There is another biblical record of a man called Abraham.³ For instance, Adoption was used in India to provide a male heir in order to meet the demands of religious ceremonies. Adoption was also used as a peacekeeping device in most early societies. The oldest set of

¹ James Hastings, *Encyclopedia of Religion and Ethnics*, (New York Scribner, 1908), 273. <<http://openlibrary.org/books>> accessed 12 April, 2020.

² Elizabeth S. Cole and Kathryn S. Donley, 'History, Values, and Placement Policy Issues in Adoption' in David M Brodzinsky and Marshall D. Schechter (eds), *The Psychology of Adoption* (Oxford University Press 1990), 73.

³ In 2265-1990 BC there is the record of a man called Abraham, a Syrian who lived in the then Babylon, who was married to a woman called Sarah. At their respective ages of 70 and 80 years, they had no biological child of their own. So Abraham adopted one of his servants Eliazer who was from Damascus as a son.

written adoption law is found in the code of Hammurabi.⁴ Bauni and Wright explicate that the code established that adoption was a legal contract that could only be executed with the consent of the birth parents. In addition, the code of Hammurabi granted adopted children equal rights to those of birth children.⁵ The code dating from eighteen century B.C. contains main features that are still relevant to modern adoption law.⁶ Adopted persons were severely punished for attempting to return to the birth families and the adoption contract could be annulled if the adopted child's filial duties were not properly fulfilled. These provisions had particularly severe consequences for individuals who had been slaves because the termination of the adoption contract returned them into bondage.⁷ The adoption contract could also be dissolved by a court at the adopted person's request if the adoptive parents failed to teach the adopted person a trade or if the adopt person was not properly reared by the adoptive family.⁸ Birth parents did not have the right to demand the return of their child after the adoption. On the other hand, transgressions against the adoptive parents by the adopted person were grounds to return the child to its birth family.⁹

The emphasis on the power of the father over the family by the Roman Empire added the concept of complete termination of birth parents legal rights in the process of adoption. Benet asserts that the adoption was absolute and could not be undone. These two concepts were to form modern American adoption law.¹⁰ From the early history of child adoption, two conclusions can be deduced. First that legal adoption was not a common but rather an

⁴ Henry Mason Bauni, D.C.L. and Frederick Bennett Wright, (eds) *Records of the Past: The Code of Hammurabi* (Record of the Past Exploration Society 1908), 2. <<https://openlibrary.org/books>> accessed 12 April, 2020.

⁵ Bauni and Wright: note 4, 185

⁶ Cole and Donley, note 2, 274

⁷ Bauni and Wright: note 4, 190

⁸ *Ibid*, 189

⁹ Florence Clotheir, 'Some Aspects of the Problems of Adoption.' *American Journal of Orthopsychiatry*, (1939), 598-615

¹⁰ Mary Kathleen Benet, *The Politics of Adoption*. (New York, Free Press, 1976), 235

exceptional experience. Second, the primary purpose of adoption was to serve adult interest rather than child interest, any benefit accruing to a child was secondary. The concept of the best interest of a child was not paramount.¹¹ With the exception of England most European countries built their laws on the Roman and Napoleonic codes. Brodzinsky and Schechter explicated that the Napoleonic code added an eligibility requirement for adoption. In order to adopt a person had to be over 50 years of age, sterile and must be at least 15 years old than the person to be adopted and must have reared the person for at least six years.¹² However, the United States based its law on English Common Law, which did not provide for adoption. The major barrier to the introduction of adoption in common law was its conflict with the principle of inheritance. Land could only be transmitted from one person to another based on blood lineage; land could not be given away in life or after death by will. It had to go through sons and relatives in stipulated order.¹³ The American civil war and rapid immigration in the mid nineteenth century resulted in unprecedented overcrowding of orphanages and founding homes Charles Loring Brace, protestant Minister and the founder of the New York's Children Aid Society became appalled by legions of homeless children roaming the streets of New York City. Brace however, believed that family life was a far better solution for these children than institutional rearing and he went further to state that the best of all asylums for the homeless child is the farmers home," that farmers were "our most solid and intelligent class."¹⁴ He believed farmers would make the best foster and adoptive parents because it was in their interest to train children to aid them in their work. Consequently, Brace started the Orphan Train Movement.

The Orphan Trains eventually shipped an estimated 200,000 children from the urban area

¹¹ Cole and Donley, note 2, 274

¹² Ibid.

¹³ SB Presser, 'The Historical Background of the American Law of Adoption.' *Journal of Family Law* 11(1972):443-516.

¹⁴ Charles Lorine Brace, *The Dangerous Classes in New York and Twenty Years Among Them*, (New York Wynkoop and Hallenback, 1872), 225

from the east where they were an economic drain on the public coffers to Western Cities like Nebraska, Michigan, where they would be an economic asset.¹⁵ The children were generally indentured rather than adopted to families who took them in, some children were raised as members of the family while others were used as farm laborers and household servants.¹⁶ The Orphan Train resulted in the largest displacement and migration of children in history. The degree of exploitation that occurred gave rise to new agencies and a series of laws that promoted adoption arrangements rather than indenture. The progressive movement swept the United States with a critical goal of ending the prevailing orphanage system. This agitation culminated in the first White House Conference organized by the then president of the United States. Theodore Resosevett in 1909,¹⁷ where it was declared that the nuclear family represented “the highest and finest product of civilization” and was able to serve as primary caretaker for the abandoned and orphaned.¹⁸ However the popularity of the Engenic ideas in America put up strong obstacle to the growth of adoption.¹⁹ This is best exemplified by the influential writings of Henry H. Goddard who vehemently opposed the adoption of children of unknown origin. He stated:

Now it happens that some people are interested in the welfare and high development of the human race, but leaving aside those exceptional people all fathers and mothers are interested in the welfare of their families. The dearest thing to the parental heart is to have the children marry well and rear a noble family. How short sighted it is then for such a family to take into its midst a child whose pedigree is absolutely unknown or where if it were partially known, the probabilities are strong that it would show poor and diseased stock, and that if a marriage

¹⁵ Cole and Donley, note 2, 275

¹⁶ Stephen Oconnor, *Orphan Train: The Story of Charles Loring Brace and the Children he saved and failed* (Chicago: University of Chicago Press, 2004), 95

¹⁷ E Wayne Carp (ed), *Adoption in America: Historical Perspectives*, (University of Michigan Press, 2002),108

¹⁸ Ellen Herman, *Adoption History Project*, (University of Oregon Topic Placing Out, 2012), 1 <<https://pages.uorogon.edu/adoption>> accessed 15 June 2020.

¹⁹ Lawrence and Pat Starkey, ‘Child Welfare and Social Action in the Nineteenth and Twentieth Centuries’ (2001): 223

should take place between the individual and any member of the family the offspring would be degenerates.²⁰

The Baby Scoop Era (Between 1945 and 1974), saw rapid growth and acceptance of adoption as a means to build a family in Western countries.²¹ After the World War II, illegitimate births skyrocketed. The community began to stress the dominance of nurture over genetics chipping away eugenic stigma.²² As a result adoption became the obvious solution for both unmarried people and infertile couples.²³

This development resulted in a new American model for adoption. Americans severed the rights of the biological parents while adopters were made the new parents in the eyes of the law. Two innovations were made, adoption was meant to ensure the “best interests of the child.” Adoption became infused with secrecy which resulted in the sealing of adoption and original birth records in 1945.

Finally, the American model of adoption eventually proliferated globally, England and Wales established their first formal adoption law in 1926. The Netherlands passed its law in 1956 Sweden made adoptees full members of the family in 1959. West Germany enacted its first laws in 1977²⁴ in this same vein the Asian powers opened their orphanage systems to adoption, influenced as they were by western ideas following colonial rule and military occupation,²⁵ while in France local public institution accredited candidates for adoption, who can contact orphanages aboard or asked for the support of non-governmental organization.

²⁰ E. Wayne Carp (ed) *Adoption in America: Historical Perspectives*, 181

²¹ William D. Masher and Christian A. Bachrach, ‘Understanding U.S. Fertility: Continuity and Change in the National Survey of Family Growth, 1988 – 1995,’ *Family Planning Perspectives*, (1996)(28)5

²² Barbara Melosh, *Stranger and Kin, The America Way of Adoption*, (Harvard University Press, 2002),105-107

²³ E. Wayne Carp, *Family Matters: Secrecy and Disclosure in the History of Adoption*, (Harvard University Press, 2000), 103-104

²⁴ Ellen Herman, ‘Adoption History Project University of Oregon’ *Top: International Adoption*, (2012)

²⁵ Bruno Perreau: *The Politics of Adoption Gender and the making of French Citizenship*, (MIIT Press, 2014), 16. < <https://mitigs/mtt.edu.people>>

2.1.2 Nigeria

In Nigeria the first known historical attempt at providing a statute on adoption was a private member's bill presented to the then Eastern House of Assembly in April 1958.²⁶ Unfortunately the bill was not well received in the House and had to be withdrawn. The first adoption legislation in Nigeria was enacted in the then Eastern Nigeria in 1965 and was known as the Eastern Nigeria Adoption Law, 1965 which came into force on 29th May 1965.²⁷

This law still applies in Eastern States. Subsequently some other States of the Federation followed suit in enacting similar legislation on adoption. The defunct Bendel State of Nigeria enacted its adoption legislation in 1979 which is known as the adoption law of 1979.²⁸ Surprisingly none of the Northern parts of Nigeria had any legislation on adoption during this period in the history of adoption. On 20th of November 1989, the United Nations General Assembly adopted the Convention on the Rights of the Child (CRC) and in July 1990 Organization of Africa Unity (OAU) Assembly of Heads of States and Government adopted the African Charter on the Rights and welfare of the Child (ACRWC).²⁹ Both international instruments contain universal set of standards and principles for survival, development, protection and participation of children. Following this development Nigeria signed both international instruments, the (CRC) and the (ACRWC) and ratified them. In 1991 and 2000 respectively³⁰ following these commitments the Federal government of Nigeria passed a comprehensive Child Rights Act 2003 into law. The Act incorporates all the rights and

²⁶ E I Nwogugu, Family Law in Nigeria (Ibadan HEBN Publishers 9907), 312

²⁷ Nwagugu: note 26, 313

²⁸ Ibid

²⁹ Titilola Akinlawon, 'Adoption of Children: National and International Perspectives' (Paper delivered at a 2-day interactive seminar organized by NBA Ikeja branch) 2015.

³⁰ Akinlawon, note 29, 5.

responsibilities of children and consolidates all laws relating to children into a single law.³¹ The Act addresses children rights and welfare generally but made specific provisions relating to adoption. Part XII of the Act provide for child adoption practices. It consists of 23 sections Child Rights Act 2003, s124-148.³²

In 2007, the Edo State Government domesticated the Child's Right Act and passed the Child's Rights Law 2007. Section 267(1) of the Child Rights Law, 2007 provides that

The provisions of this Law supersede the provisions of all enactments relating to;

- (a) Children;
- (b) Adoption, fostering, guardianship and wardship;
- (c) Approved institutions, remand centers and hostel institutions; and
- (d) Any other matter pertaining to children already provided for in this Law.

From the above provisions, one can arguably say that the Child Rights Law, 2007 supersedes all other adoption laws in Edo State. however, "supersedes" does not mean repeal. Therefore, the legal framework regulating adoption in Edo State consist of the adoption law, 1979 of the defunct Bendel State (as applicable to Edo State) and the Child Rights Law, 2007. While the first addresses the process, procedure and participants in the adoption process, the second entrenches, "best interest principles as the paramount consideration in all child matters."³³ It also reflect the fundamental human right provision in Chapter IV of the 1999 Constitution. Furthermore, the law addresses children's right and welfare generally but made specific provisions relating to adoption. Part XII of the law provide for child adoption practices. It consists of 23 sections (122-145) of the law.³⁴

³¹ Ibid

³² CRA 2003 s124-148

³³ CRL 2007 s1

³⁴ CRL 2007 s122-145

Conclusively, it is my humble submission that the history of adoption commenced by God almighty himself when he adopted the Nation of Israel as his first born.³⁵

2.2 Defining Adoption

Adoption has a long and rich history. Adoption practices have historically been highly varied and sometimes controversial. Contemporary practices have however captured the attention of scholars and practitioners in various fields including social works, psychiatry, anthropology and law.³⁶ There are a plethora of definitions of the word adoption. A dictionary definition of adoption is contained in the Black's Law Dictionary definition of adoption.

The creation of a parent child relationship by judicial order between two parties who usually are unrelated. The relation of parent and child created by law between persons who are not in fact parent and child. This relationship is brought about only after a determination that the child is an orphan or has been abandoned or the parent's parental right have been terminated by court order.³⁷

Ojo-Ibrahim posits that adoption is a procedure by which people legally assume the role of parent in respect of a child who is not their biological child.³⁸

Chukwu gave a descriptive definition of adoption when he defined adoption as the legal process whereby a person obtains judicial or administrative authorization to take the child of another person as his own and parental rights and obligations are permanently transferred from the child's natural parents to the adopter.³⁹

³⁵ The Book of Exodus, Chapter 4 vs 22

³⁶ DM Brodzinsky D. W. Smith and A.B. Brodzinsky, 'Children Adjustment to Adoption Developmental and Clinical Issues,' *Thousand Oaks*, (1998): 3 - 4

³⁷ Bryan A. Garner, *Black's Law Dictionary*, 9th ed. (New York: Simon & Schuster Macmillan, 1996)

³⁸ Tajudeen, Ojo. Ibrahim, 'Adoption Practice in Nigeria: An Overview,' *Journal of Law, Policy and Globalization*, (2013)(19), <<http://www.liste.org/Journals/index.php/JLPG/article/viewFile/8922/9081>> accessed on June 3, 2018.

³⁹ Larry OC Chukwu, "Adoption of Child in Nigeria under the Child's Right Act 2003 <<http://www.law2.byu.edu/isfl/saltalkeconference/papers/isflpdfs/Chukwu.pdf>> Accessed on July 17, 2018.

Masson, Bailey-Harris and Probert elucidated that adoption is a legal process whereby a court irrevocably extinguishes the legalities between a child and the natural parents or guardians or creates analogous tie between a child and the adopters.⁴⁰

Akolokwu opines that adoption is the social and legal process by which a child is received as a permanent member of the adopting family with legal rights including that of inheritance.⁴¹

Sara Bhasar, asserts that adoption is a process by which a child of one set of parents becomes the child of another set of parents or parent.⁴²

Ijalaye posits that adoption is the process by which the legal relationship between a child and his parents is severed and such relationship established between the child and a third party, who is the adopter.⁴³

Another learned writer Diwan described adoption pungently and more succinctly as follows: “The adoption of a child means that the child is totally uprooted from the natural family and transplanted to the new family.”⁴⁴

Ogwezzy on his part defined adoption as the process which creates a parent-child relationship between the adopted child and the adoptive parents with all the rights, privileges and responsibilities that attach to that relationship.⁴⁵

⁴⁰ Judith Masson, Rebecca Bailey-Harris and Rebecca Probert, *Principles of Family Law*, (Thomson: Sweet and Maxwell 2008), 817.

⁴¹ GO Akolokwu, ‘Examining Adoption Procedures and the Challenge of Child Purchase in Nigeria: Matters Arising,’ *Journal of Property Law and Contemporary Issues*, (2017): 5

⁴² Saras Bhaskar, “Rens Hoksbergen, Anneloes Van Baar, and in India the past, present and future trends,” *Journal of Psychosocial Researches*, 7 (2012):2.

⁴³ D.A. Ijalaye ‘The Legal Implication of Child Adoption in Nigeria. *Nigeria Current Law Review*,’ (1997).

⁴⁴ Paras Diwan *Modern Hindu Law*, Allahabad Law Agency 1979, 197.

⁴⁵ Oluwatosin O. Ogwezzy, ‘Legal Perspective of Child Adoption under the Nigerian Law,’ *Agora International Journal of Juridical Sciences*, No. 2 (2018), 57-63.

Agbo posit that child adoption is the legal act of permanently placing a child with a person or parents other than biological ones.⁴⁶

Ogungbe defines child adoption as the process by which the legal relationship between a child and his natural parents is severed and re-established between the child and a third party or parties.⁴⁷

Kwagyang and Saulawa define child adoption as a process whereby a person assumes the parenting of another, usually a child, from that person's biological or legal parent or parents, and, in so doing, permanently transfers all rights and responsibilities, along with affiliations, from the biological parent or parents.⁴⁸

Nwogugu define adoption as a process by which the legal relationship between a child and his parents is severed and reestablished between the child and a third part or parties.⁴⁹

It is instructive to note here that the above definitions of adoption by the scholars as brilliant as they are with all due respect can be faulted because they fail to take into account the significant requirement that a child must have been orphaned, abandoned (or the parental rights of the child parents or parent have been terminated by a competent court of law).

2.2.1 Defining a Child in the Adoption Process

The CRC article 1 defines a child as “every human being below the age of eighteen, unless under the law applicable to the child majority is attained earlier.”⁵⁰ Again, the ACRWC

⁴⁶ Maria C. Agbo, “Socio-Cultural Challenges of Child Adoption in Eastern Nigeria in West Africa, *Humanities & Social Sciences Review*, Vol. 2 (1), (2014), 86-93.

⁴⁷ Mojisola Ogungbe, *Family Law through the cases*, (College of Law, Igbinedion University, Okada, 2004), 186.

⁴⁸ Garb Umaru Kwagyang and Mu'azu Abdullahi Saulawa, “Child Adoption as a tool for child trafficking in Nigeria: Examining the position of the Law, *International Journal of International Law*, vol. 2 Issue 2 (2016), 46.

⁴⁹ Nwagugu, note 26, 312.

⁵⁰ CRC, Article 1

appears to have adopted the CRC definition of a child. Its Article 2 provides that “a child means every human being below the age of eighteen years.”⁵¹ Article 1⁵² provides that

For the purposes of present Covenant, a child means every human being who, according to the law applicable to him/her, has not attained maturity.

The Bendel State Adoption Edict, 1979 No. 5 of 1979 used the word juvenile. It defines a juvenile as a person who is under the age of 18 years.⁵³ Section 277 of the Child Right Act states that a child means any person under the age of 18 years. Again, the Child Rights Law, 2007 defines a child as “any person under the age of 18 years.”⁵⁴ In any case, the definition of a child under the various statutes relate to the numerology of the age of the person not in terms of physiology. Thus, while the CRA defines a child as one below 18 years, *section 2*⁵⁵ of the Public Health Law of Edo State,⁵⁶ for example defines a child as one who is or appears not to be more 14 years of age, perhaps the rationale for adopting that age is to enable children between 0 to 14 year of age have easy access to some medical attention particularly immunization. From the above definition of a child by both international and local instruments we can be right to say that a child in the adoption process is any child below eighteen years of age.

The Orphan Child

In a literary sense a child is orphaned, when his or her biological parents are dead. UNICEF and Global Partners define an orphan as a child under 18 years of age who has lost one or both parents to any cause of death. This definition contrast with the concepts of an orphan in

⁵¹ ACRWC Article 2

⁵² Covenant on the Rights of the Child in Islam.

⁵³ Section 3(1)

⁵⁴ CRL 2007 s276

⁵⁵ Section 2 of the Public Health Law, Cap 134 Laws of defunct Bendel State, 1979 now applicable to Edo State

⁵⁶ An enactment which principally relates to the health care of children

many countries, where a child must have lost both parents to qualify as an orphan.⁵⁷ Using UNICEF definition as a metric, there were an estimated 140-160 million orphans globally, with 61 million in Asia, 52 million in Africa, 10 million in Latin America and the Caribbean and 7.3 million in Eastern Europe and Central Asia by 2015. Thus broader definition of orphan was adopted by UNICEF in the mid-1990 when the AIDs pandemic began leading to the death of millions of parents worldwide. So the terminology of a “single orphan” or double orphan was born “single orphan means one who has lost one of his parents while double orphan” is the loss of both parents. This was done to convey the growing crisis of children in need of a new family, shelter or care.⁵⁸

The Federal Ministry of Women Affairs and Social Development endorsed UNICEF definition of an orphan when it defined an orphan in its National Guidelines and Standard of Practices on Orphans and Vulnerable Children (NGSP) as “a child who has lost one parent (maternal/paternal orphan) or both parents (double orphan).⁵⁹ The NGSP went further to define vulnerable child as

A child who because of circumstance of birth or immediate environment is prone to abuse or deprivation of basic needs, care protection and thus disadvantaged relative to his or her peers.

According to the Federal Ministry of Women Affairs, after due consultation with the six geopolitical zones in Nigeria the following are the categories of vulnerable children;

- (i) Children who have lost one or both parents
- (ii) Children living with terminally or chronically ill parents (s) or caregiver(s)
- (iii) Children on or of the street child hawkers

⁵⁷ <<https://www.unicef.org/media/orphans>> accessed 18 December, 2019

⁵⁸ Ibid

⁵⁹ National Guidelines and Standard of Practice on Orphan and Vulnerable Children Federal Ministry of Women Affairs and Social Development. Section 1 Interpretation section

- (iv) Children living with aged or fragile grandparent(s)
- (v) Children who got married before 18 years
- (vi) Neglected children
- (vii) Abandoned children.⁶⁰

The list is not exhaustive. Again the World Bank defines, OVC as children who are

- (i) Orphaned
- (ii) Separated from their parents
- (iii) Living with caregivers with serious problems like illness disabilities, trauma, substance adductions, abusive habits or
- (iv) Having normal families but with special needs that even need help to address (trauma disability, behavioral problems) the World Bank further defines OVC as “children who in a given local setting are more likely to fall through cracks of regular programme, policies and traditional safety nets and therefore needs to be given special attention, when programs and policies are designed and implemented.

US Agency for International Development (USAIDS) gave a narrow definition of OVC by focusing only on orphans and defining them as children under 18 years of age whose mother or father or both parents have died as a result of AIDs.”⁶¹

⁶⁰ National Guidelines and Standard of Practice on Orphan and Vulnerable Children Federal Ministry of Women Affairs and Social Development. Section 1 Interpretation section

⁶¹ Review of Programming for Orphans and Vulnerable Children in Nigeria: Exploring Opportunities for Future Investments in Nutrition Social and Behaviour Change Communication: <<http://www.spring-nutrition.org/sites/default/files/publication/reports/springovcinnigeria.>> Accessed 21 January 2020

The United States President's Emergency Plan for AIDS Relief (PEPFAR) defines OVC as Children Ages 0-17, who are either orphaned or made more vulnerable because of HIV and AIDS.

According to PEPFAR a child remain vulnerable because of any of or all of the following factors that result from HIV and AIDS

- (i) Is HIV positive
- (ii) Lives without adequate adult support
- (iii) Lives outside of family care and or
- (iv) Is marginalized stigmatized or discriminated against.⁶²

According to UNICEF, 2015 Nigeria Demographic and Health Survey (NDHS) revealed that 10 million Nigerians are orphaned due to various causes, 2.3 million children are orphaned due to AIDS. In the same year USIAD designed and funded a project called Umbrella Grant Mechanism (UGM) a project designed to ameliorate the impact of HIV and AIDs on orphans and vulnerable children in Nigeria. The overall goal of the project is to reach approximately one million OVC as well as 250,000 caregivers in the States of Bauchi, Kaduna, Kano FCT Benue, Kogi State.⁶³ Among the UNGTM project States/ Benue had the highest number of OVC (16.4) percent with Edo State having (10.4) percent of OVC.

From the definitions explicated above, it is apparent that the word 'orphan', can mean single orphan, double orphan, paternal or maternal orphan. However in the adoption process, it is usually a child that is a double orphan and that is usually declared adoptable.

⁶² Ibid

⁶³ Review of Programming for Orphans and Vulnerable Children in Nigeria: Exploring Opportunities for Future Investments in Nutrition Social and Behaviour Change Communication: <<http://www.spring-nutrition.org/sites/default/files/publication/reports/springovcinnigeria.>> Accessed 21 January 2020

The Abandoned Child in the Adoption Process

A second category of children are abandoned children. Black's Law Dictionary defines abandonment as "the act of leaving a child willfully and without an intention to return."⁶⁴

Child abandonment occurs when a parent, guardian or person in charge of a child either deserts a child without any regards for the child physical health, safety or welfare and with the intention of wholly abandoning the child or in some instance fails to provide necessary care for a child living with the adult.⁶⁵ Wolf explains that child abandonment is a parental choice to willfully withhold physical, emotional, and financial support from a minor.⁶⁶ In other words, when a parent fails to fulfill his or her parental responsibilities and elect not to have contact with the child then abandonment can be said to have occurred.

Theo Chris gave a descriptive definition of child abandonment: He stated that "when a legally responsible adult leaves a child with an intention to sever custodial,⁶⁷ ties over the child and without regards to the child's health and safety."⁶⁸

Article 7 of UNCRC clearly states that "every child has the right to know and be cared for by his or her parent" child abandonment is a complete violation of Article 7. In some jurisdictions child abandonment is criminalized.⁶⁹ In a criminal context child abandonment is defined as abandoning a child or failure to provide necessities of living to a child.⁷⁰

For instance, in the state of California, a parent is guilty of abandonment if he fails to provide necessary clothing, food, shelter or medical attendance, or other remedial care for their child.

⁶⁴ Bryan A. Garner, Black's Law Dictionary, 11th ed "Child Abandonment"

⁶⁵ Child Abandonment <<https://Criminalfindlaw.com.child>> accessed 6 January 2020

⁶⁶ Jennifer Wolf "Understanding and coping with Child Abandonment, <<https://www.verywellfamily.com/help-help-a-child-cope-with-abandonment-2997768>>, accessed 6 January 2020.

⁶⁷ Mark TheoChris "Child Dissertation and Abandonment, <<https://www.verywellfamily.com/help-your-child-cope-with-abandonment-2997465>>, accessed 8 February 2020.

⁶⁸ Ibid.

⁶⁹ Section 271 of the California Penal Code criminalizes Child abandonment

⁷⁰ International Family Law. <<https://www.verywellfamily.com/help-your-child-cope-with-abandonment-2997465>> accessed 3 March 2020.

In the late 1990s the issue of child abandonment came to a head, due to several child abandonment in the state of California. The development presented most States in America to pass “the Safe Haven Law”. This law decriminalizes baby or child abandonment by allowing mothers to leave their babies at a “safe location such as hospital, fire station, or a licensed child placing agency.” However, this abandonment has to be within a time frame, ranging from seventy-two hours to one year of the child’s life.⁷¹

Boswell posits that child abandonment “refers to the voluntary relinquishing of control over children by their natal parents or guardian whether by leaving them somewhere, selling them or legally consigning authority to some other person or institution”.⁷²

According to Kevin Browia, for the purpose of European Union Daphne-Funded Project (a community action programme of European Union to combat violence against women and trafficking in children among member States). Child abandonment had two dimensions, namely open abandonment and secret abandonment. He opines that open abandonment of a child is “a child being knowingly left behind by his or her parents, who can be identified and whose intention is not to return but to willingly relinquish parental responsibility.” On the other hand, secret abandonment of a child is defined as “a child being secretly left behind by his or her parents who cannot be identified and whose intention is not to return but to willingly relinquish parental responsibility anonymously.”⁷³

Furthermore, in most EU countries child abandonment is not criminalised, there are baby hatches in operations, so that mothers are allowed to leave their babies anonymously in a safe place called “baby hatches” where the child can be picked up when abandoned by their mothers. Eleven countries out of the twenty-seven EU member countries have baby hatches

⁷¹ Ibid.

⁷² John Boswell, *Kindness of Strangers: The Abandonment of Children in Western Europe from late Antiquity to the Renaissance* (New York: Pantheon Books, 1988), 24

⁷³ Kevin Brown, *Child Abandonment its Prevention*, the University of Nottingham U.K <<http://kevinbrownnottingham.oc.uk>> accessed 11 January 2020.

in operation.⁷⁴ In France, women have the right to remain anonymous to their babies after giving birth in the hospital, it is called accouchement Sous X which exterminate the legal ties between the mother and the baby. In the places where baby hatches and Safe Haven laws” are not in operation, baby or child abandonment is criminalized.⁷⁵

Wirgher posits that “child abandonment” has a defined legal meaning; it requires actual desertion by a parent together with an intention express or implied to completely sever the parent-child relationship.⁷⁶

In Nigeria, by virtue of section 16 of the Violence against persons (prohibition) Act, 2015, child abandonment is criminalized. Upon conviction, the defendant is liable to imprisonment not exceeding 3 years or a fine not exceeding 500 hundred thousand naira.

Onyido and Akpan posited a descriptive definition of child abandonment. To them child abandonment occurs “when a parent or parents fail to take responsibility for the child, it is the practice of relinquishing interest and claims over one’s offspring with or without the intent of never again resuming guardianship over the child.”⁷⁷ They enumerated the major causes of child abandonment in Nigeria, to include;

- (i) Family conflict
- (ii) Negative cultural practices
- (iii) Poverty and homelessness
- (iv) Intra/inter ethnic crises

⁷¹ Austria, Belgium, Czech, Republic, Germany, Hungary, Italy Latvia, Lithuania, Poland Portugal and Slovenia.

⁷⁵ In United Kingdom, it is a crime to secretly abandon a child, baby hatches or anonymous birthing laws do not exist. However, there is no legislation that specifically outlines what constitutes child abandonment (abandonment often falls under the general category of neglect).

⁷⁶ K.M. Wirgher, ‘Abandonment as a Ground for Termination of Parental Rights’ *The Journal of Contemporary Legal Issues* (2007), 333.

⁷⁷ Josephine Azuka Onyido and Bokine Gabriel Akpan, ‘Child abandonment and its implication for Educational Development in Nigeria,’ (2018)6(a).

Moses reported that between 2015-2016, 273 babies were abandoned at birth by their mothers.⁷⁸ Other States also report cases of abandoned children.⁷⁹ Usman reported that a mother thrown her new born baby inside septic tank in Lagos.⁸⁰ She also reported that in Enugu State, a three weeks old baby was sold for seventy (70) thousand naira by her biological mother who was a Higher National Diploma Student of Offa Polytechnic, Kwara State. She further reported that a 15 year old mother, Chinwe, was remanded in prison custody for selling her new born baby for seventy (70) thousand naira. In her case, she was driving away from home after her parent discovered she was pregnant.

In a similar development, Usman also reported that in Abia State, Mrs. Ezi Chukwu allegedly sold her grandchild for one hundred and Fifty (150) thousand, her 19 year old daughter got pregnant while in school and delivered the child. In Anambra State in July, 2017, a 24 year old woman, Oluchi Emeobi, was arrested by the police for selling her new born baby for two hundred and fifty thousand. Similarly, in March, 2017 the police in Katsina State botched plans by a 30 years old woman Salima Lawa to sell her twin baby for three hundred and fifty thousand naira (350,000), they were just a month and 2 days old.⁸¹

In the same vein, Olatunji reported that men of the Ogun State Police Command arrested 21 year old woman Amudalat Taiwo for allegedly throwing her 12-day old baby into pit latrine.⁸² Alozie also reported that operatives of Imo State Police Command have arrested a

⁷⁸ Joshua Chizurumoke Moses, 'The Abandonment of New Born Babies in Nigeria is an alarming phenomenon and it needs to stop' *Ventures* May 19, 2017. He further reported that new born baby was found in a refuse dump in Warri Delta State, Nigeria. Witnesses say it umbilical cord and placenta were found with the baby, the baby died before help could arrive.

⁷⁹ "Edo Government: Takes custody of two abandoned children" *Vanguard* (Lagos August 14, 2018),

⁸⁰ Evelyn Usman, 'Woman throws new born baby inside septic tank,' *Vanguard Newspaper*, (Lagos July 31, 2018)6.

⁸¹ Evelyn Usman, 'Hunger, Hardship pushed us into selling our Children' – Frustrated Parent, *Vanguard Newspaper*, (Lagos January 20, 2018)10 & 11.

⁸² David Olatunji, "21- year old woman dumps new born baby inside toilet", *Vanguard*, (Lagos June 26, 2018)7.

man Mr. Oguchukwu Nwachukwu 28, and his 30 year old wife Glory for selling 3 babies including their 4 months old son for Six Hundred Thousand Naira only (N600,000).⁸³

In a similar development Shobiye report that police recovered abandoned baby in Ekiti State, the baby was abandoned in an uncompleted building with the placenta still attached to the umbilical cord.⁸⁴ It was the cry of the baby that attracted passers -bye who then reported to the police.

Usman also reported that corpse of a day old baby abandoned beside Lagos hospital was evacuated, the baby was suspected to have been abandoned by his mother and must been exposed to risk that caused his death.⁸⁵

Termination of Parental Rights

By virtue of section 7822 of the California Family Code, the State can move for a proceedings of termination of parental right under the following grounds

- (i) If the parent is a lunatic living in an institution
- (ii) If the parents have caused serious physical or psychological harm to the child.
- (iii) If the parent is a drug addict
- (iv) If the parent have been declared an irresponsible or unfit parent by the State
- (v) If the parents willing relinquish or give up the child impliedly or expressly.

In *Recordy*⁸⁶ the court defined the term “abandonment” to mean

“To relinquish or give up with the intent of never again resuming or claiming ones rights or interests in, to give up absolutely to forsake entirely: to renounce utterly, to relinquish

⁸³ Chinonso Alozie, “Couple sells 4-month-old Son, 2 others for N600,000 in Imo State,” *Vanguard*, (Lagos August 9, 2018) 6.

⁸⁴ Hamed Shobiye, “Police recovered Abandoned Baby in Ekiti” *Vanguard*, (Lagos: April 28, 2020).

⁸⁵ Evelyn Usman, Corpse of a Day-Old Baby Abandoned besides Lagos Hospital, *Vanguard* (Lagos March 21 2021).

⁸⁶ 169 Cal 150 (1915) 153

all connection with or concern in, to desert, as a person to whom one is bound by a special relations of a allegiances fidelity, to quit to forsake”.

In *Winans v. Luppie*⁸⁷ abandonment was defined as conduct of natural parents which renounces parental relationships.” The court went further to explicate that when this occur, persons who wish to adopt or a child placement agency, may initiate an action against the natural parents to terminate parental rights. In the same vein, the parental right of a father was terminated in the case of *State in Interest of Summers Children v. Wulffenstein*⁸⁸ due to his abandoning his children. The court found that he failed to provide financial support and had little or no contact with them since their birth.⁸⁹

The United States Supreme Court in *Caban v. Mohammed*⁹⁰ made an important distinction between the mere fact of biological parenthood and actual parent-child relationships. Parental rights do not spring full blown from the biological connection between parents and child. They require more enduring relationship.

In *Re Baby Boy D*⁹¹ the court stated that the (US) Constitution “protects only parent child relationships of biological parents who have actually committed themselves to their children and have exercised responsibility for rearing their children.”

However the U.S. Supreme Court in the case of *Santosky v. Kramer*⁹² struck down the New York child neglect statute that permitted termination of parental rights on proof by fair preponderance of evidence that a child is permanently neglected, which was found to violate the due process clause that requires “clear and convincing evidence.” The Court gave the rational for the protection of parental right in *Santosky v. Kramer* as follows:

⁸⁷ 47 N.J. Eq, 302, 305, 20 AtL 969 (1890)

⁸⁸ 560 P2d 131 (1977)

⁸⁹ Ibid, 332

⁹⁰ 441 U.S. 380 (1979) p 397

⁹¹ In *re Baby Boy D* (1985) p. 1081

⁹² 455 U.S. 745 (198)

The fundamental liberty interest of natural parents in the care, custody and management of their child does not evaporate simply because they have been model parents or have lost temporary custody of their child to the state. Even when blood relationship is strained, parents retain a vital interest preventing the irretrievable destruction of their family life. If anything persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family matters. When the state moves to destroy weakened family bonds, it must provide the parents with fundamentally fair procedure. The parents and the child share an interest in avoiding erroneous termination, for the likely consequences of an erroneous termination is the preservation of an uneasy status quo. For the natural parents, however, the consequence of an erroneous termination is the unnecessary destruction of their natural family.⁹³

Hill and Emmanuel posit that the termination of parental right could be voluntary or involuntary.⁹⁴ In voluntary termination the biological parents may consent to the termination of their parental rights, generally the voluntary termination is carried out in conjunction with the biological parents consent to adoption of the child. In *Exparte Brooks*,⁹⁵ H and W divorced while W was three months pregnant with a son, David. During the first four years of David's life he had lived with W, and H had never seen him, or supported him. W had a reasonable income of her own and was not interested in obtaining child support from H. W feared that H would meddle in how she raised David if W remained his father. There fore H and W agreed that in return for W's absolving H of any duty to pay child support H will consent to the termination of his parental rights. There is no evidence that H had harmed David or interfered with W custody of him.

The court held that H's parental rights were not terminated; the court gave the rationale behind the refusal as follows:

The termination here "appears to be overwhelmingly for the convenience of the parents, and would not benefit David at all.

⁹³ *Santosky v. Kramer*, 753-756

⁹⁴ Myron G. Hill Jr and Steven Emanuel, Family Law, The Professor Series, 182.

⁹⁵ *Exparte Brooks* 513 So 2d 614 (Ala 1987)

The statutory provision allowing for termination of parental rights “was not intended as a means to allowing a parent to abandon his child whereby to avoid his obligation to support the child.

In the absence of clear and convincing evidence that termination was not in David’s best interest the court denied the petition.

Involuntary termination, occurs when the birth parents of a child are judged unable or unfit to care for the child. If such a ruling is rendered the consent of the birth parent to the termination of parental rights for adoption or foster placement of the child is not necessary.

In *Matter of Adoption of J.S.R.*⁹⁶ W had a child C who was not the child of H husband, Paternity was never established. W was diagnosed as having multiply sclerosis when C was born. Because W was unable to care for C, he was placed in a foster home. The foster parents, petition for adoption but W refused to consent even though she was paraplegic.

The court granted the petition for adoption. It ruled that a parent has no property right in a child and that the right of custody is not absolute where it is shown by “clear and convincing evidence” that parental consent to adoption of a child is being withheld contrary to the “best interest of the child” Parental rights may be terminated. Since W depended on others for most of her physical needs, she could not care for C and develop a parent-child relationship with him.

Hill and Emmanuel posit that where a child is born in wedlock, the birth father has a due process right not to have his parental rights terminated without a showing of unfitness.⁹⁷

Brodzinsky asserts that historically the ‘birth father’ has played little role in the decision making surrendering the child’s birth and subsequent placement in an adoptive home.⁹⁸

However, since the 1972 Supreme Court decision in *Stanley v. Illinois* where birth father’s

⁹⁶ 374 A.2d 860 (D. C. App. 1977)

⁹⁷ Hill and Emmanuel, Family Law, The Professor Series, 180

⁹⁸ Anne B. Brodzinsky; Surrendering and Infant for Adoption, 315

claim to his child was recognized as protected by the constitution, considerable interest has been generated in the feelings and legal rights of these individuals.

With regards to putative fathers, Derdeyn asserts ‘putative fathers’ putative father” is a biological father of a child whose mother he is not legally married to, as at the time of the child birth or the man found by a court to be the father of an illegitimate child⁹⁹. The Supreme Court’s decisions have evolved to a position that is uniquely psychologically sound for the children involved.

In 1972 the rights of a putative father were considered by the U.S. Supreme Court for the first time in *Stanley v. Illinois*.¹⁰⁰ Stanley children were made wards of the state on the death of their mother, in spite of the fact that Stanley had lived with and supported his family intermittently for eighteen years. Under Illinois law children of unmarried fathers could be declared wards of the State without a hearing on the birth father’s fitness. The U.S. Supreme Court declared that illegitimate children could not be denied the rights of other children because familial bonds in such cases are often warm, enduring and important as those arising within a more formally organized family unit” and held that Stanley was entitled to a hearing on his fitness as a parent.

2.3 Parental Rights under the Nigerian Law

Parental rights under the Nigerian marriage laws¹⁰¹ are in the form of ancillary relief to the principal claim for dissolution of marriage on the single ground that the marriage have broken

⁹⁹ Andre P. Derdeyn, Forster Parent Adoption: The Legal Framework, 335

¹⁰⁰ 405 US 645 (1972)

¹⁰¹ Marriage Act 1914, Matrimonial Cause Act 1971

down irretrievably.¹⁰² Before the Child's Right Act 2003, it could only be brought as a claim in conjunction with a petition for dissolution of marriage.¹⁰³

Every child is entitled to parental care and protection as provided in the Act and in the best interest of the child and therefore no child shall be separated from his parents against his wish except for his education and welfare or for the purpose of judicial determination in the best interest.¹⁰⁴ The same section also recognizes the right of the child to the maintenance of the parents to the extent of their means. The effect of the provision of section 14(1) and (2) of the Child Right Acts which stated that;

- (1) 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.

The claim for maintenance “can be made independence of whether matrimonial proceedings had commenced or not or whether the child is legitimate or not.” Again, also having regard to the provision of section 42 of the Constitution of the FRN as amended. That no child should be discriminated against by circumstance of birth or sex. Section 14 also provides for the protection and care of the child. This provision grants the child the right to enforce his entitlement to the care and protection of his parents as was erstwhile provided under section 32 Children and Young Persons Act. It also covers protection from willful assault, ill-

¹⁰² Matrimonial Cause Act 1971, Section 15.

¹⁰³ Where a child is illegitimate child, a claim for custody can be brought against a third party by a Writ of habeas corpus

¹⁰⁴ CRA 2003 s14(1)(a) (b)

treatment, neglect and abandonment. Also covered by this provision is parent's duty to provide the child with necessities of life. Where a parent fails in its duty and the child comes to any harm, the parent can be prosecuted under any other law. By virtue of the Child Rights Act, the child is also entitled to enforce the claim against the parent.¹⁰⁵ Section 14 of the Child Rights Act, 2003 is on all fours with the provision of section 14 Child Rights Law 2007. In the adoption process the parental right of a child in need of parental care and attention can be interfered with by the State by virtue of the provision of the Child Rights Law.¹⁰⁶

Conclusively, section 128(a - b) of the CRA provides:

The court shall not make an adoption order in respect of a child unless

- (a) the parents of the child or, where there is no surviving parent, the guardian of the child consents to the adoption;
or
- (b) the child is abandoned, neglected or persistently abused or ill-treated, and there are compelling reasons in the interest of the child why he should be adopted.

Section 125(a – b) of the Child Right Law, equally outlined a child that is adoptable. However, a combined effect of section 128(a – b) and section 125(a – b) of the Child Right Law is that, only abandoned, neglected or persistently abused or ill-treated child that is adoptable, the orphan child is omitted. This study contents that the various definition of our learned writers in the literature above is general and not conceptualize and it should come within a narrow confines of the adoptable child in the adoption process.

¹⁰⁵ CRA 2003 s14(2)

¹⁰⁶ CRL 2007 s47

2.4 Participants in the Adoption Process

Cole and Donely opined that the term adoption can be referred to as a personal act, a legal process, or a social service¹⁰⁷ Zamostny, O'Brien, Maryland and Wiley asserted that adoption as a personal act involves three sets of participants collectively known as the 'adoption triad' which is the birth parents or the family, the adoptee or the child that is adoptable and the adoptive family or the prospective adoptive parents.¹⁰⁸ Obuka equally asserted that there are basically three participants in the adoption process, the birth parents, the adoptee, the adoptive parents and went further to state that there could be other participants in the adoption process¹⁰⁹. These include the adoption agency, the guardian where the child was abandoned or relinquished by his birth parents. However, this study is of the view that there are other participants who play important roles in the adoption process. In Nigeria, for instance, the orphanage home/care institutions, officers of appropriate government departments as well as the courts have important contributions in the adoption process and could therefore be regarded as participants.

Cole opined that adoption as a social service addresses the needs of adoption triad members by identifying and legally freeing children to be adopted, selecting and preparing families for adoption, preparing and placing children in adoptive families and providing post placement and post adoptive services.¹¹⁰

¹⁰⁷ Cole and Donley, note 2, 275.

¹⁰⁸ Zamostny et al 'The practice of Adoption History Trends and Social context' *the Counselling Psychologists* (2003) DoI:10117700110000025806.

¹⁰⁹ U.U. Obuka 'The Irrevocable Nature of Consent in Child Adoption in Nigeria' *Unizik Law Journal* (2013)101

¹¹⁰ E.S. Cole 'Adoption History Policy and Program,' in J. Laird and A. Hartman ed., *A Handbook of Child Welfare* (New York Free Press, 1987), 638-666.

2.4.1 The Birth Parents

A significant member of the adoption triad whose absence the adoption story will be incomplete is the birth or biological mother or the birth or biological parents. Often, it is the acts or omissions of a birth mother or parents that result in a situation where a child could be declared adoptable. Cole and Donely asserts that children who are legally freed for adoption must become available either through voluntary or involuntary means. “Voluntary means” is when the birth parent or parents’ consent to the adoption by relinquishing or surrendering the child thereby terminating her or their parental rights. “Involuntary means” is when a court order terminates birth mother or birth parent’s parental rights.¹¹¹ Harrison and Harrison posit that adoption family structure (AFS) is comprised of the intersection and integration of social justice, attachment theory, the adoption triad, and relational dialectics.¹¹² They argued forcefully that the traditional family structure is based on a biological fenced relational structure, whose members have biology as the lowest common denominator. In contrast, the AFS is based upon loss and has both biology and social dimension as the lowest common denominator Harrison and Harrison further argued that the AFS as opposed to traditional biological families consists of two mothers, two fathers, any number of known and unknown siblings, two sets of maternal and paternal grandparents, two sets of great grandparents and any number of known and unknown aunts, uncles and cousins. In the adoption process, the birth mother can be regarded as a villain or a victim of circumstances. It is the birth mother that can relinquish or surrender her child for adoption. It is the birth mother that can abandon a child in a refuge dump. In countries where “Safe Haven Laws” are in operations or where “Baby Hatches are in operation, it is the birth mother that would abandon a child in “safe Haven or Baby Hatches.” It is the birth mother that could be a victim of rape leading to an

¹¹¹ Cole and Donley, note 2, 286

¹¹² Thomas C. Harrison and Terianne F. Harrison, ‘Toward a Deeper Understanding of Adoption Family Structure.’ Concepts Borrowed from Social Justice, Attachment Theory and Relational dialectics

unwanted pregnancy. Brodzinsky posits that the birth mother is the silent member of the adoption triangle and that the decision to surrender an infant for adoption is frequently made by young unmarried women who are still in the adolescent years in a time in which many important cognitive changes are still occurring¹¹³. Brodzinsky further asserts that in the United States it is estimated that over one million women have relinquished or surrendered their children for adoption¹¹⁴. Child Welfare states that many mothers surrender their children for adoption so that the children could have an opportunity at a better life in an adoptive home and putting the child's best interest ahead of their own in taking the decision¹¹⁵. Donaldson opined other reasons birth parents placed their children for adoption includes societal and family attitude, personal goals and ambitions and socioeconomic situation¹¹⁶. Ayers-Lopez et al explicated the decision to surrender a child for adoption can be traumatic for the birth parents¹¹⁷. Parents who decide to place their children for adoption begin to plan for a great loss in their lives as they grieve the loss of their children. They hope that the decision will result in a better life for their child and for themselves. Romanchik note that the actual surrendering of the child may trigger various phases of grief in the birth parents including anger, shock, denial, sorrow, depression, guilt and acceptance¹¹⁸.

¹¹³ Anne B. Brodzinsky, 'Surrendering an Infant for Adoption: The Birth-Mother Experience' in David M. Brodzinsky and Marshall D. Schechter (eds) in the *Psychology of Adoption*, New York, (Oxford University Press, 1990) 301

¹¹⁴ Brodzinsky, note 114, 302.

¹¹⁵ Child Welfare Information: Are you pregnant and thinking about adoption? 2007 <<https://www.childwelfare.gov/pubs/fpregnant/f.pragn.pdf>> Accessed 18th February 2020

¹¹⁶ Evan B. Donaldson. Adoption institute: Safeguarding the rights and wellbeing of birth parents in the adoption process: (2007) <http://www.adoptioninstitute.org/publication/2006_11_Birth_Parents_study_all_pdf> accessed 15th January, 2020

¹¹⁷ S.J. Ayers-Lopez S.M. Henney, R. G. McRoy, M.D. Hanna and H.D. Grothe Evant, "Openness in adoption and Impaction Birth Mother Plan for Search and Reunion," *Families in Society*, 89 (2008): 551-561.

¹¹⁸ B. Romanchik, *Birth Parents*: Royal Oak, `3(MI: Royal Squared Press, 1999)

Child Welfare asserts that when birth parent first deal with their loss, the grief may be expressed as denial, the denial serves as a buffer to shield them from the pain of the loss¹¹⁹. In some cases this may be followed by sorrow or depression as the loss becomes more real, anger and guilt may follow, with anger sometime being directed at those who helped with the adoption placement. Most birth mothers continue to mourn the loss of their child throughout their life time but with varying intensity. Henney et al posits some of the factors that have been found to be associated with birth mother life time grief include¹²⁰.

- (i) A birth mother feeling that she was pressured into placing her child for adoption against her will
- (ii) Feelings of guilt and shame regarding the placement
- (iii) Lack of opportunity to express her feelings about the placement
- (iv) Dissatisfaction with open adoption and opting for a closed adoption due to shame and guilt.

Arthur et al present some of the feelings of birth mothers in their work.¹²¹ For instance, according to one of the birth mothers who relinquished her child adoption expressed her feelings as follows;

...giving up the child was the saddest day of my life and I pray that the child will not blame me or reject me...

Another birth mother told an emotive tale of her distasteful experience as a teenage mother in her words¹²²:

When I was sixteen I got pregnant and my parents sent me to a home for unwed mothers to have my baby.....it was the most

¹¹⁹ Child Welfare Information Gateway: Impact of Adoption on Birth Parents: Klastington D.C. U.S. Department of Health and Human Services, Children's Bureau.

¹²⁰ S. M. Henney S. Ayers-Lopez R.G. McRoy and H.D. Grotevant: Evolution and Resolution: Birth Mothers Experience of Grief and Loss at different levels of Openness: *Journal of social and personal Relationships*, (2007) 24, 875-889

¹²¹ M. D Arthur D. Sorosky, M.S.W. Annette Baron, M.S.W. Reuben Pannor. The Adoption triangle: Sealed or opened records: How they affected adoptees, Birth parents, and adaptive parents. Las Vegas Wavade Triad-adoption publications (2008) 52

¹²² Sorosky, Baron, Pannor, note 122, 56

painful decision i ever had to face, the feelings never really get resolved, it goes on and on, you remember everything and the longer it has been, the easier you remember.

In what may be described as an emotional outburst, another parent remarked thus¹²³:

The experience had been a lonely and a painful one with a tremendous feeling of emotional isolation. I know that the experience has greatly affected my life in many ways that I am aware of daily.

A teenage birth mother expressed in a most touching introspective way¹²⁴:

I had an illegitimate baby girl at the age of fourteen, surprisingly after my first sexual experience. Being alone, pregnant, and fourteen is something no girl should go through, I was shut out from everyone, too young to be grown up, too mature to be a child. Not knowing what else to do I gave the baby up for adoption¹²⁵.

Freundlich assert that in the adoption process research on birth father is almost no existent¹²⁶.

Deykin path and Ryan posits that majority of birth fathers are reportedly uninvolved in the adoption and further stated that factors were associated with birth father absence from the process¹²⁷: Pressure from the families, poor relationship with the birth mother, financial issues, altitude of adoption agencies. However, a teenage birth father expressed his feelings in the following words:

Her family was against our marrying. We were too youthful, too irresponsible and I was no good or/would not have put their daughter in that position. I really wanted to marry her and raise the child but they sent her away and there was nothing I could do about it. I heard after it was too late that it was a boy. It hurts more than I can express, may be some day, and I hope so,

¹²³ Sorosky, Baron, Pannor, note 122, 59

¹²⁴ Sorosky, Baron, Pannor, note 122, 59

¹²⁵ Sorosky, Baron, Pannor, note 122, 61

¹²⁶ M. Freundlich, 'Adoption research: An assessment of empirical contribution to advancement of adoption practice,' *Journal of Social Distress and the Homeless*, 11 (2007): 143-168.

¹²⁷ E.Y. Deykin, L. Campbell and P. Patti. 'The post adoption experience of surrendering parent,' *American Journal of Orthopsychiatry*, 54(1984):271-280

that the boy will give me an opportunity to explain why I did not raise him like I should have.¹²⁸

Conclusively, this study, align with the views of Anne Brodizinky that birth parents especially the birth mothers who relinquished their children for adoption due to pressure of circumstance are not devoid of maternal emotions. Most of them see the relinquishment as a loss of their children which they mourn for the rest of their lives although the silent member of the adoption triangle, they are crying and lonely too, that when the society saw them carrying a heavy load why did they not give them a helping hand? Instead of taking the load completely from and bid them to live happily thereafter.

We equally agreed with Zikook and Devaul that bereaved persons need temporary relief from their usual occupational academic, domestic and societal responsibilities so they can have time and a safe place to freely and openly mourn their loss¹²⁹, this is not the case with a birth mother, because the placement of child for adoption is laden with secrecy and shame once a relinquishment takes place the birth mother is expected to move on with her life and pretend as though nothing happened thereby denied the privilege of grief.

Finally, however this study disagreed with the views of Anne Brodizinky, Zikook and Devaul that it is not all birth mothers that mourn the loss of their children through relinquishment; some parents abandoned their children out of mere callousness or wickedness because they simply could not be bothered by parenthood. Some birth mothers, due to their immoral life style have multiple expert sex partners and cannot identify the real biological father of their children. Some are drug addict, while some of them are commercial sex hawkers. When they get pregnant and give birth to these children, they give up the children for adoption and walk away to continue in their immoral lifestyle. In the field of adoption in Edo State, study have showed that some birth mothers take their children to the ministry of social development and

¹²⁸ Sorosky, Baron, Pannor, note 122, 68

¹²⁹ S. Zisoo and R. Devaul: Unresolved grief' *American Journal of Psychoanalysis*, 45(1985): 370-379

Gender issues seeking for help particularly women with about five, six, seven or eight children, some are seeking for a foster parents for their children but not adoption. Family planning pills are freely given in the hospitals. Some of these birth mothers are so irresponsible with all due respect that they will deliberately refuse to plan their family. Everyone living in Nigeria know the economy is not friendly at all, so it is only an irresponsible parents that can continue in an protected sex given birth to babies they cannot care for. This study contents that the law should be amended to the effect that parents should only give birth to children that they can conveniently care for.

2.4.2 The Adoptee

A significant component of the adoption triad or triangle is the adoptee. The adoptee is the child that is declared adoptable. As earlier explicated, this could be as a result of being orphaned, abandoned or the parental right of the child has been terminated voluntarily or involuntarily.

Boswell asserts that parents abandoned or relinquished their children for adoption in “desperation when they are unable to support them due to poverty, shame, in self-interest or when inheritance or domestic resources would be compromised by another mouth, in hope, in believe that someone of greater means or higher standing might find them and bring them up in better circumstances”¹³⁰.

Brodzinsky posits that adoption has been viewed as a societal solution for stress confronting all three members of the adoption triangle; that is, stress associated with an unwanted pregnancy on the part of the birth parents, a state of homelessness and sense of insecurity on the part of prospective adopted children, the infertility and childlessness on the part of

¹³⁰ John Boswell, note 72 429

adoptive parents.¹³¹ Brodzinsky further defined stress as an environmental event that produce undesirable consequences for the individual for instance, natural disasters, manmade catastrophe, family disruption due to sudden death, divorce, loss of job and so on. Goldstein et al asserts that children are entitled to grow up within families.¹³² They need a safe, nurturing environment with at least one stable adult figure. An adoptee should be raised in a family setting as against institutional rearing.

One of the requirements of declaring a child adoptable is to obtain the consent of his or her birth parent (s) or guardians, particularly when the adoption involved infant or minor who cannot participate in the decision making.

This provision of requirement of consent is consistent with Article 21(a) of UNCRC which states that:

Where appropriate, the persons concerned should give the informed consent to the adoption.

Under the Child's Right Act, 2003¹³³ the adoptee must be a child under the age of eighteen years. The Act provides for two categories of children who may be adopted. The first category are children whose parents or where there is no surviving parent, the guardian consents to the adoption.¹³⁴ The second category is a child who is abandoned, neglected or persistently abused or ill-treated and there are compelling reasons in the interest of the child why he or she should be adopted.¹³⁵ Section 125 (a-b) of the Child's Right Law, 2007 provides;

¹³¹ David M. Brodzinsky, A Stress and Coping model of Adoption Adjustment, in David M. Brodzinsky and Marshall D. Schechter (eds) in *The Psychology of Adoption*, (New York Oxford University Press 1990), 5.

¹³² J. Goldstein, A Freud and A Solnit, *Beyond the best interest of the Child*, (London Free Press, 1973), 2

¹³³ Section 277

¹³⁴ CRA s 128(a)

¹³⁵ CRA s 128(b)

The court shall not make an adoption order in respect of a child unless;

- (a) the parents of the child or where there are no surviving parent the guardian of the child consent to the adoption or
- (b) the child is abandoned, neglected or persistently abused or ill-treated, and there are compelling reasons in the interest of the child why he should be adopted.

By the provision of *section 270*¹³⁶ a child that is adoptable is a child under eighteen years of age.

*Section 125(b)*¹³⁷ of the Child's Right Law provides for the second category of a child who can be adopted, a child who is abandoned, neglected or persistently abused or ill-treated, the provision of the subsection is clear and unambiguous. While the law mentions abandoned, neglected and ill-treated children, no mention is made of orphaned children. It can be argued that in a country like Nigeria where we have so many orphans and vulnerable children, this is absurd. According to UNICEF and FMWASD Nigeria has an estimated 17.5 million orphans and vulnerable children. If according to Boswell adoption ought to be widely accepted solution to the care and rearing of children whose biological parents could or would not provide for them¹³⁸. Brodizinsky reiterated this assertion by stating that the practice of adoption is geared primarily towards meeting the physical, emotional, social and educational needs of children. It is therefore implausible that a piece of legislation which talked about adoption of a child yet failed to expressly include orphaned children. If there is a child that is in dare need of adoption, it is the orphaned child. This study contents that this section of CRA/CRL be amended to include the orphan child. Yet it is hoped that the court's astuteness will accommodate a broad/liberal interpretation of the expression "abandoned" "neglected" to cover orphaned children.

¹³⁶ CRL, 2007

¹³⁷ Ibid

¹³⁸ John Boswell, note 72, 432

2.4.3 The Adoptive Parents

The adoptive parents or parent is a significant member of the adoption triad or triangle. Boswell described the role of the adoptive parent in the adoption process as the kindness of strangers.¹³⁹

Schaffer and Lindstorm defined adoptive families “as one-or two parent families who have at least one adopted child who is not related by marriage or blood”¹⁴⁰.

Waston provides a definition of adoption that captures the continuing role of the child’s biological family in the context of a child’s adoptive family¹⁴¹.

Adoption is a means of meeting the developmental needs of a child by legally transferring ongoing parental responsibility from birth parents to adoptive family, recognizing that by this process we have created a new kinship network that forever links these two families together through the child who is shared by them both. This kinship network may also include significance other families, both formal and informal, that, have been part of the child’s experience.

Lockock and Hart posit that adoption gives a child a replacement family and provide specially skilled and resourceful parenting¹⁴². In buttressing this view Luckock and Hart explicated that adoption is a strategy for the placement of abused, neglected and rejected children with competent new parents. They further stated that adoption aim is the replicating of family and reparative parenting.

Sorosky Baran and Pannor assert that understanding an adoptive parent required deep understanding of the factors that motivates the adoption of a child¹⁴³. They further stated that

¹³⁹ John Boswell, note 72, 434

¹⁴⁰ Judith Schaffer and Christina Lindstrom, Brief Solution-focused-therapy with adoptive families in

¹⁴¹ Debbie Hindleamd Graham Shulman ed, *The Emotional Experience of Adoption: A Psychoanalytic Perception* (Routledge Taylor and Frames Group 2008) 3.

¹⁴² Barry Luckock and Angle Hart, *Adoptive family life and Adoption Support: Policy Ambivalence and the Development of Effective Services*, *Child and Family Social Work*, 10(2005): 127

¹⁴³ Sorosky, Baron, Pannor, note 122, 73

the more conscious motivating factors include, wanting a child of their own, infertility, repeated miscarriages or hysterectomy, replacing a child of their own who had died, desire for more children, or wanting another young baby when their own children have grown up, humanitarian concerns such as pity for a homeless child, and taking responsibility for relatives children who have become orphaned. David Kirk the renowned expert on adoption and himself an adoptive father outlined possible and probable difficulties encountered by adoptive parents—feelings of deprivation due to childlessness may be experienced by the adoptive mother prior to adoption.¹⁴⁴

- (i) Adoptive parents lack experience with other adoptive family situations to use as a model.
- (ii) No physical pregnancy to serve as a framework to prepare the adoptive parent emotionally and no feedback from friends and relation regarding the parental status
- (iii) Adoptive parents subjected to intensive screening and are put in a position where they are dependent on the agency for approval
- (iv) Adoptive parents are sometimes seven to eight years older than the birth parent and have been dealing with childlessness for a longer period
- (v) The probationary period following the adoption creates insecurity and uncertainty for fear that the child could be taken back
- (vi) There are no traditional or religious ceremonies to mark the new family member's approval
- (vii) The adoptive couple's parents and family may not be supportive and the community may be cruel in their handling of the situation.

¹⁴⁴ David Kirk, *Shared Fate*, (New York Free Press, 1964)

- (viii) The revelation of adoption to the adoptee by the adoptive parents is very difficult for most of them
- (ix) Discussing the birth parents with adoptee is extremely difficult and threatening to most adoptive parents.

According to United Nations Department of Economics, most countries in the world require prospective parents to meet specific criteria to be eligible to adopt. The suitability and eligibility tests are established to ensure the adoptive parents are able to meet the child's basic needs, physically, emotionally and financially.¹⁴⁵ According to the Department of Economics, the most commonly stipulated criteria relate to age, sex, marital status, citizenship and place of habitual residence of the prospective adoptive parents.

By virtue of the provisions of section 129 of the Child's Right Act 2003 the following category of person can adopt

- (a) a married couple where
 - i. each of them has attained the age of twenty-five years and
 - ii. there is an order authorizing them jointly to adopt a child; or
- (b) a married person, if he has attained consent of his spouse, as required under section 132 of this Act; or
- (c) a single person, if he has attained the age of thirty five, provided that the child to be adopted is of the same sex as the person adopting and;
- (d) In all cases, the prospective adoptive parent or parents must be found to be competent persons by the investigating social welfare department or child development officer¹⁴⁶.

¹⁴⁵ United Nations Department of Economic and Social Affairs Population Division: Child Adoption Trend and Policies, United Nation New York 2006

¹⁴⁶ CRA 2003 s129(d)

By the provisions of section 126 of the Child's Right Law, 2007 of Edo State the following category of persons can adopt

- (a) A married couple where:
 - i. each of them has attained the age of twenty five years; and
 - ii. there is an order authorizing them jointly to adopt a child
- (b) A married person, if he has obtained consent of his spouse as required under section 129 of this law, or
- (c) A single person, if he has attained the age of thirty-five years provided that the child to be adopted is of the same sex as the person adopting; or
- (d) In all cases specified in paragraphs (a), (b) and (c) of this section, the adopter or adopters shall be persons found to be suitable to adopt the child in question by the appropriate investigating officers.

Section 128 (a-f) of the Child's Right Law stipulates an additional requirement a prospective adoptive parent must meet to be eligible to adopt:

- “1 An adoption order shall not be made in respect of a child unless:
- (a) The applicant or, in the case of a joint application, one of them, is not less than twenty-five years old and is, at least, twenty-one years older than the child;
 - (b) The applicant, or in the case of a joint application, both or, at least, one of them and the child are resident in the same State;
 - (c) The applicant has been resident or, in the case of a joint application, both of them have been resident in the Local Government Area in which the application is made for a period of, at least, five years;
 - (d) The applicant is a citizen or, in the case of a joint application, both applicants are citizens of Nigeria;
 - (e) The child has been in the care of the applicant for a period of at least three consecutive months immediately preceding the date on which the order is made; and
 - (f) The applicant has, at least twelve months before the making of the order, informed the social welfare officer of his intention to adopt the child”.

Section 126(a)(ii)¹⁴⁷ of the CRL 2007 provides:

“The following persons may apply for an adoption order:

- (a) a married couple where:
 - i) each of them has attained the age of twenty-five years;
 - ii) there is an order authorizing them jointly to adopt a child”.

This study disagrees with the above sub-section of the law. The decision to adopt a child is basically taken by a prospective adoptive parents, based purely on the courage of their convictions. How can a prospective adoptive parent first obtain an order before applying for an adoption order? This study contents that, apart from being otiose and meaningless, it is capable of discouraging a prospective adoptive parents from adopting a child. The procedure to adopt a child is cumbersome as it is, so obtaining an order before applying for an adoption by prospective adoptive parent does not promote a child centered adoption law. It will in fact impedes the attainment of a child-centred adoption. It is the child in an orphanage home who is dire need of parental care and attention that suffers most in all of these, such provision will occasion a prolonged stay a child in the home. These studies submit that this section of the law be amended.

Section 131(1)(d) of the CRA 2003 provides:

- 1. An adoption order shall not be made in respect of a child unless –
 - (d) the applicant is a citizen or, in the case of a joint application, both applicants are citizens of Nigeria.

The provisions of the above section of the law are clear and unambiguous; a foreigner cannot apply for an adoption order or adopt a child in Nigeria. In effect this prohibits inter-country adoption. Section 145, however, section 146 of the Child Right Act provides:

Where a person has been adopted under any law in force
in any part of Nigeria, or under the law of any other

¹⁴⁷ CRL 2007

country other than Nigeria, the adoption shall have the likely validity and effect as if the adoption has been effected by an adoption order under this Act.

The above section permit inter-country adoption, this study contains that a piece of legislation cannot approbate and reprobate at the same time on the same subject matter. This study submit that the law should be consistent. However, section 146 of the Child Right Act endorsed Article 23 of the Hague Convention which calls upon contracting States to recognize any adoption made under the convention.

2.4.4 The Guardians

According to Obuka,¹⁴⁸ a guardian could come into play in adoption process where he has some right or obligation in respect of the adoptee or the child to be adopted which arises from an agreement, a court order or customary law. A guardian *ad-litem* in the form of a child development officer is usually appointed to safeguard the interest of the child in every adoption proceedings. The court is often guided by the report of these guardians in making an adoption order.

Section 86(1 – 3)¹⁴⁹ of the Child Rights Law 2007 provides:

- “1. The Court may, for the purpose of any specified proceedings, appoint a guardian ad litem for the child concerned to safeguard the interests of the child unless it is satisfied that it is necessary to do so.
2. The guardian ad litem shall:
 - (a) be appointed in accordance with the Rules of Court;
 - (b) be under a duty to safeguard the interests of the child in the manner prescribed by those rules.
3. Where:
 - (a) the child concerned is not represented by a legal practitioner; and
 - (b) any of the conditions mentioned in subsection (4) of this section is satisfied, the Court may appoint a legal practitioner to represent the child.

¹⁴⁸ Obuka, note 101, 103

¹⁴⁹ CRL 2007

The court may for the purpose of any specified proceedings appoint a guardian ad litem for the child concerned to safe guard the interest of the child unless it is satisfied, it is not necessary to do.

By the provision of section 125(a)¹⁵⁰, the court shall not make an adoption order in respect of a child unless, the parent consent to the adoption or where there is no surviving parents, the guardian consents to the adoption.

In *Martins v. Martins*¹⁵¹ the plaintiff, who was an orphan lived with the uncle, the defendant during infancy. The sum of 145 pounds which was part of the Estate of the plaintiff's father was placed on deposits in the bank to the plaintiff's credit. While the plaintiff was residing with the defendant, the latter by means which amounted to an abuse of the process of courts, obtained authority from the court to withdraw the money in the bank for the purpose of purchasing real property as an investment for the infant plaintiff. No real property was purchased. When the plaintiff attained maturity, he brought an action for the return of the money. The defendant pleaded that the whole of the money was spent with the plaintiff's approval, for his benefit during infancy (expenses included payment of school fees, purchase of necessaries and maintenance).

Lloyd J. held that the list of payments and receipt produced by the defendant should be strictly scrutinized and credit given only for items which were affirmatively shown to have been incurred with the infants consent and for his benefit. The defendant was therefore held liable to repay the balance.

2.5 Types of Adoption

In the adoption field there are various types of adoption practices, the following are the various adoption practices; close adoption, open adoption, international adoption, transracial

¹⁵⁰ CRL 2007.

¹⁵¹ (1940) 15 NLR 126

adoption, step parents adoption, single parent adoption, related adoption, black market adoption, older children adoption, embryo adoption, lesbian, gay, bisexual and transgender adoption (LGBT) and Customary adoption.

2.5.1 Close Adoption

Close adoption is also known as confidential or secret adoption which is the old traditional practice of adoption. Baran and Pannor posit that closed adoption is buttressed by the sealed adoption records that serves as a barrier to contact between adoptees and their birth families.¹⁵² This includes sealing identifying information, maintaining it as a secret and preventing disclosure of the adoptive parents, biological kins and adoptees identities. However, according to Herman close adoption can allow the disclosure of non-identifying information such as medical history, religious and ethnic background¹⁵³.

Sorosky, Baran and Pannor explicated that the sealing of the original birth certificate and the anonymity in close adoption was to protect the adoptee and the adoptee's parents from disruption by the birth parent and in turn to allow the birth parents make a new life for themselves.¹⁵⁴ Free from any form responsibility for the child and safe from the disgrace resulting from errors of the past. Research has shown, however, that the original purpose was to protect the adoptive family from intrusion by some uninvolved persons. Prentice asserts that reporters noising around for news might come up with something juicy and publish it, thereby causing untold suffering and permanent damage¹⁵⁵. and that unscrupulous relatives could trace a child they wished and used their knowledge to upset a well-established relationship and they could even do worse by using it for actual blackmail. According to

¹⁵² Annette Baran and Reuben Pannor, in David M Brodzinsky and Marshall D. Schechter (eds), *The Psychology of Adoption* (Oxford University Press 1990), 319

¹⁵³ Ellen Herman; 'Adoption History Project, University of Oregon,' Topic: Confidentiality.

¹⁵⁴ Ellen Herman, note 154, 4.

¹⁵⁵ Sorosky, Baron, Pannor, note 122, 39

Sorosky, Baran and Pannor as the practice of child adoption developed in the United States, adult adoptees began to question the practice of sealing their records including formal activist groups that questioned the rationale behind sealing of records¹⁵⁶. One of the most influential of them is Florence Ladden Fisher, a New York housewife, who founded a group called the Adoptee's Liberty Movement Association (ALMA). Fisher sees the sealed records as "affront to human dignity" and views the adoptee's need to know his/her hereditary background as necessary part of identity formation¹⁵⁷. They further stated that as the publicity given to the sealing of the records grows, the pediatric profession has played an important role in determine adoption policy. One of the most vocal spokesmen for "opening the record" is Dr. Joseph H/Davis, Clinical professor of pediatrics at Stanford University School of Medicine and a member of the Adoption Committee of the American Academy of Pediatrics, states:

As physicians, we are in a unique position to serve all three groups involved in adoption, we can educate the adoptive parents as to the true role, that of helping a human being developed in to a mature person, we can prepare them for their adaptive children's desire to learn about their heritage and help them realize that this is a normal process and one which should not weaken the adoptive bond for the adoptee and birth parents, we can maintain records, make them available at appropriate times, and can counsel both groups as to their rights and explore with them their feelings. We can be of great service to the courts and by proper testimony, be of help to the judges hearing such cases. Finally, we can work with the social agencies and encourage their ongoing support of all the parties involved.¹⁵⁸

A psychiatrist, Robert Jay Lifton of Vale University, states:

Surely it is time to reconsider the strange legal policy of sealing of the records and the equally strange role of adoption agencies in perpetuating the constellation of deception and illusion, for all this to happen, psychiatry and psychoanalysis will require a reawakening of their own regarding adoption. The clichés about the motivation of the search as neurotic dissatisfaction or

¹⁵⁶ C.S. Prentice, *An adopted Child Look at Adoption*, (New York: Applanton-Century 1940), 62-63

¹⁵⁷ Sorosky, Baron, Pannor, note 122, 40

¹⁵⁸ J.H. Davis, *Adoption and Dependent Care: Current Trend and Problems* (1975) unpublished Manuscript

unresolved Oedipus complex are being replaced as direct observations tell a different story and reveal a texture of experience and involvements all too human in its complexity but illuminating for all that. Indeed, the movement towards what has been called open adoption will require more of the specifically human and investigating capacity of learning from experience along with a general social shift, by no means confined to adoption, away from parental views of children as possessions whose very history and biology are owned and therefore manipulated by their elders.¹⁵⁹

The child welfare, League of America Lend Its Voice on the seal record issues states:

The principle of confidentiality is affirmed as a value to the natural parents, the child and the adoptive parents. Social agencies, however should now tell the relinquishing and adoptive parents. That firm assurances of confidentiality can no longer be made because of possible changes in or interpretation of the law. Parents who relinquish their children for adoption should however have the right to waive the right to privacy during the relinquishment and thereafter once the child become adult, with the consent or through legislative or judicial action, the identity of the parents can be disclosed on request of the adult who was adopted.¹⁶⁰

As the controversy over the sealed records ranges an adoptive parent has this to say;

As a parent who has adopted, I take issue with both sides, it is true that our son came to us through adoption, but it is the relationship and loves that have developed that makes him our son and us his parents. The relationship will continue and grow until he becomes an adult. Then it will be time for us, as for all parents to recognize that our son is a unique individual adult in his own right, I cannot say whether or not he will have deeply disturbing question, about people whose genes gave him life, his physical appearance and possibly even his potentials. I can only be prepared to give him honest answers to his questions as he grows. If he does have question when he reaches adulthood I hope that somehow, he can find answers that will give him peace of mind. It will be a decision that he as a unique individual must make. I will not feel threatened or hurt if he should decide to seek out his birth parents, when he became our son, we wanted to guarantees that he would accept us forever, with never a thought of the people who gave him life. We only wanted to love him and have the privilege of sustaining and nurturing that life. He has another mother somewhere but I am

¹⁵⁹ R.J. Lifton, *On the Adoption Expensive: Foreword to M.K. Benet the Politics of Adoption*, (New York: Free Press, 1976) 1-7

¹⁶⁰ *Child Welfare League of America: Standards for adoption services revisions adopted on December 1st* New York: Child Welfare League of America (1976).

his mother, he will have no memories of her, she was not there to comfort him when he was sick. She was not there when his fingers were slammed in the door. She will not be there for his first day at school or for his graduation. Even if our son should someday meet his birth parents, why should we feel threatened? If he should become friends with them or grow to love them it would not diminish the relationship that we share with him. Love for one individual does not diminish because we also love another individual. If knowing and loving his birth parents would give our son more security and happiness, we would welcome the opportunity for him. We love him his happiness will make us happy.¹⁶¹

Hill and Emanuel¹⁶² explicated that the accepted rule is that the adoption records are sealed to the adoptee, the birth parents, the prospective adoptive parents. The adoption system of the particular State that the courts are more willing to order the release of adoption records when good cause is shown. “Good cause” is when the adoptee has a specific need for medical information about the adoptee’s background. However, in the case of *In re Roger B*,¹⁶³ an adult adoptee sought access to his adoption records which were sealed. The State law permitted the opening of such records only when it is based on medical needs. The Adult Adoptee’s (AA) search was not based on medical records but a desire to know his roots. He also contended that the right to know his roots and identity is a fundamental right protected by the Equal Protection Clause. The Court held that statute is constitutional and the AA has failed to show good cause. The Court further stated that the right to unseal records does not come within any recognized zone of privacy protected by the Constitution. Furthermore, there is no fundamental right to examine adoption records and that the law bears a rational relationship to a legitimate State interest. Confidentiality promotes the integrity of the adoption process and the rights of the natural and adopting parents.

In Nigeria, the practice of voluntary relinquishment of children by their birth mother is novel in the field of adoption as the practice of adoption itself is evolving and developing. In some

¹⁶¹ Sorosky Baran and Pannor, note , 122, 80

¹⁶² Myron G. Hill and Steven Emanuel, Family Law, *Formerly Smith’s Review*, 169

¹⁶³ 418 N E2d 751 (III 1981)

jurisdiction like the UK the children Act, 1975 according to Probert introduce measures whereby adopted children who become of age might be able to trace their birth parent. In the same vein the children's Act 1989 went further to established the framework for an Adoption Contact Register for relatives to indicate their desire to be trace. Similarly, section 77 of the Adoption of Children's Act 2002 provides that the Registrar-General to maintain both adopted Children Register while section 81 provides for the Adoption Contact Register.

However, in Nigeria, there is no provision in the CRA and the CRL on tracing. However, the policy in the Edo State Ministry of Women Affairs and Gender Issue, children are given out in a close adoption practice when the biological parents cannot be trace. Children whose parents can be traced are giving out for adoption in a related adoption practice. Conclusively, this study contents that even if there is a right to tracing in the adoption law in Nigeria and Edo State in particular, poor record keeping will frustrate the exercise.

This study aligns its views with the proponents of close adoption to the extent that due to some of our own cultural values and individual orientation¹⁶⁴, close adoption should be done when the child or adoptee is orphaned or the biological parents cannot be traced, this is to prevent adoption disruption. The seal records and total anonymity policy of the birth parents was used as a primary safe guard for adoptive parents.

2.5.2 Open Adoption

Baran and Pannor posit that open adoption is a process in which the birth parents and the adoptive parents meet and exchange identifying information.¹⁶⁵ They further stated that the birth parents relinquish parental rights to the adoptive parents and retain the rights to continuing contact and access to knowledge on behalf of the child. Grotevant and McRoy assert that adoption openness is a broader term which refers to a range of pre-placement and

¹⁶⁴ Some cultures in Nigeria are strongly against child adoption, while some individuals are against adopting a child whose origin are unknown

¹⁶⁵ Baran and Pannor: note 166, 318

post placement contact between birth parents and adoptive parents including accessibility to exchange information¹⁶⁶ either directly or through a mediator, participation by birth parents in section of adoptive parents, placement arrangements and indirect or face to face interactions between birth parents and adoptive parents.

According to Baran and Pannor the practice of open adoption begins with the first contact with both the birth parents and the prospective adoptive parents.¹⁶⁷ It is discussed as an integral part of agency procedure in the adoption of all children. The birth parents relinquish legal rights and basic child rearing rights to the adoptive parents, while both set of parents retain the right to the continuing contact and access to knowledge on behalf of the child. The Child Welfare League at its Biennial meeting in San-Francisco, November 1988, endorsed the practice of open adoption with the following resolution.¹⁶⁸

All members of the adoption triad are affected by the adoption and as such should be consulted as to their desires, needs and capacities in determining the level of openness in their particular adoption plan selection and utilization of the level of openness is based on the consensus of the birth parents, the prospective adoptive parents and the child if he or she is of age or has ability to make such a decision.

The American Adoption Congress¹⁶⁹ seems to have followed the footsteps of the Child Welfare League when at its annual national conference in Boston Massachusetts made the following policy statement.

The Board of Directors of the America Adoption Congress unanimously supports the policy of open adoption as standard practice.

¹⁶⁶ H.D. Grotevant and R.G. McRoy, *Openness in Adoption: Employing Family Connections* (1998 thousand oaks) C.A.

¹⁶⁷ Baran and Pannor, note 166 319.

¹⁶⁸ Child Welfare League of America, *Standard for Adoption Practice* (New York: Welfare League of America, 1980).

¹⁶⁹ Child Welfare League of America, *Standard for Adoption Practice* (New York: Welfare League of America, 1980).

The major proponents of open adoption practice are Sorosky, Baran and Pannor.¹⁷⁰ They are of the view that close adoption has serious psychological effect on members of the adoption triangle. On the other hand, open adoption will go a long way to reduce the psychological effect of adoption on members of the adoption triangle particularly the adoptee which might result in identity crisis. However, events have shown that open adoption is not without its peculiar problem as exemplified in the celebrated cases of Baby Jessica and Baby Emily.¹⁷¹ On February 8, 1991, Cara Clausen an unmarried Iowa woman gave birth to a baby girl who later became known as Jessica Deboer. Two days later, the baby was given up for adoption by Cara and Scott Seefeldt, the man Cara named as the baby's natural father, executed a release of custody four days later.¹⁷² On February 21, 1991 Roberta and Jan Deboer filed an adoption petition.¹⁷³ In Juvenile court in Iowa¹⁷⁴ held the same day that the parental rights of Cara and Scott were terminated. In addition, the Deboers were granted custody of Jessica and returned with her to their home in Ann Arbor, Michigan. On March 6, 1991, Cara filed a request in the Iowa juvenile court to revoke, on several grounds, her consent to the adoption.¹⁷⁵ Primarily she claimed that she lied by naming Scott Seefeldt as the natural father and that Daniel Schmidt was Jessica's actual father. Later that month, Daniel filed an affidavit of paternity and sought to intervene in the Deboer's adoption proceedings on the grounds that he had never consented to the adoption. The Iowa district court ordered blood

¹⁷⁰ Baran and Pannor, Open Adoption in D. M. Brodzinsky and M.D. Schechter (ed), note 168, 319.

¹⁷¹ Andrew S. Rosenman: Babies Jessica, Richard and Emily, 'The need for legislative Reform of Adoption Laws,' *Chi. Kent L. Rev.* 1851 (70) (1995).
<<https://scholarship.kentlaw.edu/cklawreview/vol.70/ISS4/18.>> accessed 20th August, 2020

¹⁷² In re Clausen, 501 NW 2d 193, 194 (Mich. Ct. App)

¹⁷³ An adoption petition sets forth background information regarding the child and both sets of parents and ask the court to approve the adoption.

¹⁷⁴ A court hearing is conducted to determine whether the contemplated adoption is a proper one. Courts will usually examine all available information in making their decision.

¹⁷⁵ Cara claimed that the release of her parental rights was procured by fraud, coercion, and misrepresentation. She also argued that she had "good cause" for revoking her consent because her release of custody was obtained forty hours after birth in violation of Iowa law. The relevant portion of Iowa statute requires that a release of custody be signed not less than seventy two hours after birth of the child to be release by all living parents. Iowa CODE ANN S 600A.4(2)(d) (West 1981)

tests which ultimately revealed that there was 99.9% chance that Daniel was the biological father and 0% chance that Scott was the biological father. As a result of the blood tests, the Iowa district court ruled in late 1991 that Daniel's parental rights had not been terminated and that he had not consented to Jessica's adoption.¹⁷⁶ Therefore, the court found Daniel (who had married Cara during the proceedings) was entitled to the custody of Jessica and ordered that Jessica be returned to the Schmidts. At this stage in the litigation Jessica was rapidly approaching her first birthday. Appeals were taken to the Iowa Court of Appeals and then to Iowa Supreme Court, which affirmed the Court of Appeal ruling on September 23, 1992 when Jessica was already nineteen months old. The Iowa Supreme Court maintained that its decision did not invalidate an adoption decree. Adoption of the baby was denied by the district, court because the father's parental rights were not terminated. The court also refused to consider the issue of Jessica's best interests, emphasizing that "courts are not free to take children away from their parents simply by deciding another home offers more advantages." Finally the DeBoers appealed to the United States Supreme Court to stay enforcement of the Michigan Supreme Court's decision. The application was initially heard by Justice Stevens. He denied the DeBoers request because there was neither a reasonable probability that the other justice would grant certiorari, nor a "fair prospect that if the court did hear the case, it would conclude that the decision below was erroneous. Justice Stevens subsequently referred the applications to the full court which in a 6-2 decisions issued on July 30, 1993 the Supreme Court refused to uphold the adoption of baby Jessica. After a twenty-nine month legal battle, Jessica returned to Iowa with the Schmidts on August 3, 1993.¹⁷⁷

¹⁷⁶ The district court also rejected the DeBoers arguments that Daniel was an unfit parent and had abandoned Jessica because DeBoers failed to prove each of these claims by clear and convincing evidence

¹⁷⁷ The emotional custody dispute ended with the "haunting video tape of a 2 year old child weeping as she was carted away" from the DeBoers home in Ann Arbor. Robeta de Boer, from start, Media took sides in Baby Jessica case *Star Tribune* 23 August, 1993, at 11A

However, in Baby Emily case,¹⁷⁸ the United State Supreme Court upheld the adoption of baby Emily on October 13, 1995 on the ground that there were substantial competent evidence to support the trial judge’s finding of “clear and convincing” evidence that Gary abandoned Baby Emily.

2.5.3 Domestic Adoption

Is an adoption in which both the adoptee and adoptive parents are within the same state or country. Zamostry et al¹⁷⁹ asserts that this type of adoption is usually practiced among America children. It can be public domestic adoption or private domestic adoption. Public adoptions (Forster care) involve children, in State child welfare systems who cannot be returned to their birth families for safety or other reasons. Private domestic adoptions can be arranged through non profit agencies that are licensed by the State or through independent adoptions that involve a third party assisting birth parents and adoptive parents with the direct placement of children. This type of adoption is the one that is mostly practiced in America.

2.5.3 International Adoption

This is also known as inter-country adoption. It means adoption of children that involves two countries, the country of origin, the child’s or the adoptees own country and the receiving country where the prospective adoptive parents are citizens. Cantwell posits that inter-country adoption is an exceptional protective measure when a child’s general adoptability has been shown to be legally possible, warranted and desirable.¹⁸⁰ He emphasized that inter-country adoption is one possible component of a wider child care and protective provision, to be used only when no suitable alternatives exist or can be created in the child’s own country. According to Selman inter-country adoption began as an altruistic response towards orphans

¹⁷⁸ In re Adoption of Baby E.A.W, 647/so,2d 918m 920 (Fia District App. 1994) (enbanc) offd, 650 SO 2d 961 (Fla 1995)

¹⁷⁹ Zamostny et al, The Practice of Adoption: History, Trend, and Social Context: 2.

¹⁸⁰ Nigel Cantwell: The Best Interest of a Child in Inter-country Adoption

and the abandoned children of servicemen in World War II, the Korean War and the Vietnam War, due to the decline of babies available for adoption in receiving countries.¹⁸¹ The abandonment and institutionalization of children caused by extreme poverty in countries of origin increased awareness that children overseas could be adopted Van-Loon posits that the adoption of children internationally has long raised legal concerns about the power of the court to make orders in respect of adoption of children from other jurisdiction, the recognitions of orders and the purpose of inheritance rights.¹⁸² Trischotis asserts that the growth of inter-country adoption has also raised ethical concerns as practice has tended to focus on the requirements of adults than the wellbeing of children.¹⁸³ He further stated that adoption could provide individual children with a materially better life, it has the potential of removing them from their culture and may expose them to racism, abandonment, child sale and kidnapping.¹⁸⁴ As at 2018 – 2019, the United States represented the highest receiving country in intercountry adoption while the top five sending countries or countries of origins are China, Indian, Ukraine, Colombia, South Korea, and Haiti.¹⁸⁵ Finally, it was the growth of intercountry adoption and the global concerns about its potential to abuse and violation of the rights of children involved in intercountry adoption that led to the drafting of the Hague Convention on intercountry adoption which came into force in 1995.

This study contend that International Adoption is not without its disadvantage, this type of adoption could result in trafficking of children while some children could become victims of organ harvesters where there is actual adoption and the child is taking out of its country of origin, the child might be completing cut off from his or her root resulting in high level of

¹⁸¹ P. Selman, 'The Demographic History of Inter-Country Adoption,' P. Scchman (ed) *Inter-country Adoption* (2000)

¹⁸² J. Van Loon, Report on Inter-country Adoption (Hague Conference on International Law, 1990).

¹⁸³ J. Triseliotis, 'Intercountry adoption global trade or global gift adoption and fostering,' (2000)(24)(2), 25

¹⁸⁴ Abuses have made some countries to declare a moratorium on inter-country adoption, DNA tests are sometime used in some case to ensure the adoption is the child's biological mother.

¹⁸⁵ <<https://www.statistics.com.statues>> accessed 24th June 2019.

identity crisis. Nigeria is not a signatory to the Hague Convention apparently due to the associated risk mentioned above. However, section 131(1)(d) of the CRA and section 146 of the CRA endorse intercountry adoption. This study contents that intercountry adoption should be last resort when there is not alternative in the child's country of origin.

2.5.4 Transracial adoption

Transracial adoption can be either domestic or international and refers to the placement of children with adoptive parents of a different race or ethnicity. Silverman and Feigelman assert that transracial adoption is the joining of racially different parents and children together in adoptive families.¹⁸⁶ The following case illustrates transracial adoption.

In *Re B (Adoption Setting Aside)*¹⁸⁷ a baby whose mother was an English Roman Catholic and whose father was a Kuwaiti Muslim, was placed with a Jewish couple who were told that the baby's father was Jewish. When they discovered that the boy was Jewish, they arranged to have him admitted to the Jewish faith. The boy was brought up as Jewish and emigrated to Israel. There he was assumed, because of his appearance, to be an Arab, he was forced to leave. He made inquiries about his origin and wanted to have the adoption order revoked so he could take on an Arab identity and be accepted in Kuwait, his application and his appeal were refused.

Adams and Kim explicated that the first mass transracial adoption involved Asian children brought to United States after the end of the Korean War.¹⁸⁸ Since then thousands of Korean orphans or abandoned Korean children have been placed in American homes by voluntary

¹⁸⁶ Arnold R. Selverman and William Feigelman: Adjustment in terracial Adoptees. An Overview: David M. Brodzinsky and Marshall D. Schechter (eds), *The Psychology of Adoption* (New York: Oxford University Press, 1990),189

¹⁸⁷ (1995)1 FLR FD, (1995)2 F.L.R. I CA

¹⁸⁸ J E Adams and H B Kim, A Fresh look at Intercountry adoptions children (1971)(18)(6)214-21

organization. According to American Academy of Pediatrics.¹⁸⁹ A follow up of these adopted Korean children indicates that they have made a remarkably good adjustment in their America homes of adoptive parents. Nonetheless transracial adopters will do well to head to the advice of Joyce Ladner,¹⁹⁰ in her book “mixed families.”

To adopt a black child means that these parents have forfeited their rights to be regarded as a “white family.” They cannot try to continue to fit the role of the idealized white middle class nuclear family who happen to have a black adopted child. Therefore they will never be able to successfully retreat in to their previously protected all-white enclaves without risking psychological harm to the child, to their biological children and to themselves.

This type of adoption is not practice in Nigeria.

2.5.5 Special Needs Adoption

According to Barth and Berry, special needs adoption refers to the adoption of children, usually from the child welfare system, who are older than five years of age, members of minority or siblings groups or have physical, emotional, or developmental problems.¹⁹¹ “Children with special needs” are also described as children who are hard to place. In the adoption process finding adoptive families for children and matching a particular child with an adoptive parent is a major social work responsibility. According to Farmer and Dance,¹⁹² The government in England and Wales expressed concerns that insistence on the part of the social workers on finding a “perfect” rather than a good enough match for the adoptee and prospective adoptive family was leading to delays, particularly for black ethnic minority (BEM) Children and the children with special needs or hard to place children. Farmer posits

¹⁸⁹ American Academy of Pediatrics, Committee on adoptions: Identity development in adopted children pediatrics (1971)(47) 984-49

¹⁹⁰ JA Ladner, *Mixed Family: Adopting Across Racial Boundaries* (Garden City, N.Y.: Anchor Press/Doubleday, 1977), 204.

¹⁹¹ P.R Barth and M Berry, *Adoption and Disruption: Rates Risks and Responses* (New York: Aldin De Gryyter, 1099)

¹⁹² Elaine Farmer and Cherilyn Dance, ‘Family Finding and Matchive in Adoption: What help to make a good match,’ *British Journal of Social Work Oxford University Press*, (2016)(4)994-992.

that hard to place children are those who are older, no longer infants or who have physical handicaps or severe psychological, mental, emotional or behavioral problems.¹⁹³ According to Hardley Centre for Adoption, matching can be defined as the process of identifying a family whose resources will as far as possible meet the assessed needs of a particular child or sibling group.¹⁹⁴ Kadushin posits that applicants who were given children with special needs were very likely to be those with marginal eligibility as adoptive parents¹⁹⁵ and went further to state that in recent years retarded and handicapped or special needs children have been accepted easily by prospective adoptive parents due to the shortage of healthy babies. According to Gallagher retired director of children's Bureau, that parents who adopt mentally retarded children should be persons who¹⁹⁶

- (i) Emphasis giving to a child rather than receiving from him
- (ii) Have a healthy attitude toward mental retardation based on sound information
- (iii) Do not want to adopt a child as an "extension of self"
- (iv) Expect no more of a child in school or on a job than he can achieve – his social adjustment will mean far more to them than his academic or professional success
- (v) Feel secure in accepting a child with limitations and can cope with the questions of relatives, neighbors, and friends
- (vi) Are able and willing to accept a child who is more than normal dependent on them, but are ready to encourage the child to develop himself

¹⁹³ Troy D. Farmer, 'Protecting the Right of hard to place Children in Adoption,' *Indian Law Journal*, (1997)(73)116

¹⁹⁴ Hadley Centre for Adoption and Forster Care Studies Research summary; Matching children and families in permanent family placement: Hadley center for adoption and foster care studies, school for policy studies, Bristol, University of Bristol, 2002

¹⁹⁵ A. Kadushin, 'A study of Adoptive Parents of Hard to Place Children' *Social Case – Work*, (1962) (43)(2) 27-33

¹⁹⁶ U. M Gallagher, 'The Adoption of Mentally Retarded Children,' (*Children* 1968) (15)(1)17-21

- (vii) Have patience beyond that of most parents and are satisfied with small, slow gains and rejoice at gradual improvements they have a high tolerance to frustration
- (viii) And are flexible and can change both their short and long-term plans for the child.

This study contends that this type of adoption is practically impossible in Nigeria. In other jurisdiction like in the United State and Europe, special needs children are given special attention. They have access to free medical attention, their parents or care givers are given financial support by the government that is almost twice the financial support given to normal children due to their mental or physical ability. In Nigeria, where there is no access to free medical care both by normal children or special needs children or the physically challenge children. Most prospective adoptive parents due to financial constraints cannot afford to adopt special needs children.

2.5.6 Stepparents Adoption

Stepparents adoption refers to the adoption of a spouse's child. Sorosky, Baran and Pannor asserts that due to liberalized divorce legislation and a breakdown in the traditional view of marital commitment the rate of divorce among married couple continues to rise.¹⁹⁷ This has resulted in the growing increase in the number of stepparents adoption following the remarriage of divorced parents. Masson, Bailey-Harrison and Probert¹⁹⁸ explicated that stepparent adoption are basically like the other forms of adoption and have the same effect. The birth parent and the stepparent becomes the child's legal adoptive parents. The original birth certificate is replaced with an adoption certificate, and if the applicants are mother and stepfather the child's surname is changed to reflect the name of the legal adoptive parents.

¹⁹⁷ . Sorosky Baran .-Pannor,,,note 122, 205.

¹⁹⁸ Judith Masson. Rebecca Bailey-Harris and Rebecca Probert, (ed)., Principles of Family Law, (London: Sweet and Maxwell, 2008)

Sorosky, Baran and Pannor further argue that step parent adoption is more appropriate for the preadolescent child, who requires a sense of familial intactness and stability for healthy identification and emotional development, particularly when the noncustodial parent has shown little or no interest in the child.¹⁹⁹ For the adolescent a change of name and identity can lead to further conflicts no matter the severity of the abandonment or rejection by the noncustodial parents. They further argued that for children adopted by step parents early in life the same pattern are seen as in a non-related adoptions. Questions information and the where about of the noncustodial parent are usually a common occurrence especially if it is the same sex parent. Searching and reunion are not unusual during the young adult years. A case of stepparent adoption played out in the following case.

Jim is a fifteen year old youngster whose parent divorced when he was an infant.²⁰⁰ His mother remarried and had a daughter with her second husband. The stepfather adopted Jim when he was six years. When Jim became fourteen he acted out and incurred the wrath of both of his parents. He began to fantasised about his birth father when he figured he could count on him to take him out of his difficult situation. He ran away from home and arrived hundreds of miles away in the town where his birth father was last heard from. He searched through the phonebooks to no avail and an abortive attempt at searching through the neighbor bars and hang-outs. The police picked him up and returned him home. Where he became extremely depressed and withdrawn. It was until he entered therapy that these abandonment conflicts were brought out in to the open and dealt with more effectively by his mother and stepfather.

This type of adoption is not practiced in Nigeria. Divorced parent do not allow adoption of their children by their new spouse.

¹⁹⁹. Sorosky, Baran Pannor, note 122 190.

²⁰⁰ Sorosky, Baran and Pannor, note 122, 206

2.5. Single Parents Adoption

Herman explicated that in the early decades of the twentieth century single parent adoption were not allowed in the field of adoption in the United States.²⁰¹ Singles were viewed as less desirable parents than married couples. Many States welfare officials in the United States enacted regulations making it difficult if not almost impossible for agencies to place children in the care of a single individual. In 1950 Child Welfare League of America stated simply that adoptive families should include both mother and father, no mention was made of single parents. In the 1960s, however, systematic efforts to recruit single parents were initiated by advocates of special needs revolution in adoption. These advocates insisted that children who were hard to place should have equal opportunities to grow up in families in spite of their mental or physical disabilities, advanced ages minority or mixed race, status or a combination of all these factors. Most prospective adoptive parents were looking for healthy white infants.

According to Herman the first organized effort to enlist single parents was a program of the Los Angeles Bureau of Adoptions in 1965,²⁰² where the Public Agency sought out single African-Americans in order to locate same-race parents for African American children for whom married parent could not be found. According to the Los Angeles Bureau director Waiter, A. Health “two parents are preferable but one parent is better than none.” In 1968, Child Welfare League of America revised its adoption standards and conceded that “married parent were an unattainable luxury for some children.” Single parent adoption were permissible in “exceptional circumstances where the child would not otherwise be adoptable.

²⁰¹ Ellen Herman, *The Adoption History Project, Single Parent Adoption*, Department of History, University of Oregon (2012) Eugene, Oregon, 97403-1288 <<https://pages.uoregon.>> accessed 5th August, 2020

²⁰² Herman, note 202.

Jordan and Little explicated that Los Angeles County Department of Adoptions which had been accepting applications from single persons since 1965²⁰³ described their policy thus;

In addition to the usual qualities that we look for in all adoptive parents, we have established some guidelines for use in our single applicant's studies. We believe it is important to establish that the applicant is not a re-cause who seeks child for companionship, for this reason, we explore social contacts and activities and are particularly interested in social activities with couples who have children. It is also our opinion that close family ties and the support of the extended family are most important for the single adoptive parents. We believe too that it is important for the single parent to be comfortable in her role as a man and to be acceptable of the opposite role. The child should have the opportunity for identification with both roles preferably in the extended family or with friends on a continuing basis.

Herman opined that single parent adoption illustrates change as well as continuity that some adults who were previously ineligible or even unfit for parenthood were eventually recognized as a positive resource for children attests to the democratization of adoption.²⁰⁴ In Nigeria by virtue of *section 129(c) of the CRA*.²⁰⁵ Single person who have attained the age of thirty five years of age can adopt a child provided the child to be adopted is of the same sex as the person adopting. By virtue of *section 126(c) of the CRL*²⁰⁶ a single person who has attained the age of thirty-five years of age can adopt a child provided the child to be adopted is of the same sex as the person adopting.

2.5.8 Related Adoption

Related adoption refers to the adoption involving children who are related to the adoptive parents, related adoption involved biologically related caregivers: stepparents grandparents, uncle, aunts and other relatives adoption are examples of related adoption. In the practice of

²⁰³ V.L. Jordan and W.F Little, Early Comments Single Parents Adoptive Homes, Child Welfare, (1966)(45)546-38

²⁰⁴ Ellen Herman, *The Adoption History Project*, Single Parent Adoption, 2

²⁰⁵ CRA 2003 s129(c)

²⁰⁶ CRL s126(c)

child adoption in Edo State, this common form of adoption is usually refer to as ‘siblings adoption.’ The applicants do not need to go in search of the child because the child is readily available. Hoopes referred to this form as within family adoption.²⁰⁷

This type of adoption is commonly practiced in Nigeria. The study contend that this adoption is the best form of adoption as the adoptee is still within his biological family. No change of name is necessary; it is devolved of the usual psychological impact of adoption of the tried members.

2.5.9 Black Market Adoption

Hill and Emanuel explicated that the term “black market” comprises a wide variety of methods by which a child is procured from the birth mother and subsequently adopted by the adoptive parents.²⁰⁸ It is an illegal way of adopting a child, apart from the agency placement and legal private placement, there is an illegal “Black market” in babies which afford childless couple a chance to obtain a child. Turano asserts that babies like any other commodity are subject to the law of supply and demand,²⁰⁹ that whenever there is increase in demand at a time when supply decreases conditions are ripe for the growth of a black market. Turano defines black market in babies as that section of the market which seeks to profit from placing a child for adoption.²¹⁰ According to her, a representative of the Adoptive Parents Group of Philadelphia testified before the subcommittee on Children and Youth that a certain lawyer whom she approached in hopes of obtaining an adoptable child quoted her a price of \$10,000 plus hospital expenses and added if she had come three months earlier the price

²⁰⁷ Janet L. Hoopes, Adoption and Identity formation in David D. Brodzinsky and Marshall D. Schechter (eds.) *The Psychology of Adoption*, 147.

²⁰⁸ Myron G. Hill and Steven Emanuel, *Family Law*, The Professor Series, 168

²⁰⁹ Margaret V. Turano, *Black Market Adoption*, *The Catholic Lawyer* (1976), 22, <<https://scholarship.law.stJohns.edu>> Accessed 27th July 2020. 54

²¹⁰ Turano, Note 209, 56

would have been seven hundred dollars, they attributed the increase in price to the change in supply and demand.

Alex reported in an article, the incredible real-life stories of orphans who survived the Tennessee's children 'S Home Society.²¹¹ Peggy Koenitzer in the book tells the story of her mother.

Her mother was one of the seven siblings who lived with their mom. On one fateful day six of them were lured into a Limozine by Georgia Tann, she took them to the orphanage home where they were separated from their siblings and adopted across the country, her mum never got over the trauma of being taken from her parents and separated from her siblings. She lived a very sad life.

Turano further asserts that in a black market adoption, the sole aim is profiteering, the safeguards presents in a normal adoption is completely neglected.²¹² The welfare of the adoptee, the birth mother and the fitness of the adoptive parents are subordinated to the profit motive of the black marketers. Prospective adoptive parents need not show the marketers that they are fit for parenthood but rather that they can afford the fees. According to Turano this disregard by these unscrupulous marketers lead to the shocking technique called "auction-blocking." This is where the prospective adoptive parents are told that the child for which they have contracted has been born but that complications have arising which may cost additional fees, the marketer informs them that they have another couple who are willing to pay the extra cost. When the original couple agrees to pay the extra cost, the same ploy is used on the second couple to boost the price. Consequently, the existence of a black market promotes a system in which only the rich can adopt a child.

In Nigeria, illegal baby factories that are uncovered across some States in the country are typical example of a black-market adoption. According to Huntley, baby factory are usually

²¹¹ Alex Schroeder, 'Orphan Victims of a Black Market Baby Business Share their stories' in a Book titled Before and After Written by Judy Christie and Lisa Wingate, *On Point* 22 October, 2019, <<https://www.tpr.org.post.orphan.>>

²¹² Turano, note 210, 58

buildings or institutions; such as maternity homes, or orphanage homes that have been converted to shelters for young pregnant girls and women for the purpose of delivery and selling off their babies²¹³. He further stated that crimes in this baby factories include baby breeding, forced impregnations, sales of babies, illegal adoptions and even human trafficking or5 organs harvesting. This study contends that Black market in adoption is destructive of the best interest of the child, the birth parents and the adoptive parents. It is the sale of babies from one person to another.²¹⁴ Black market adoption is a negation of the principle of the best interest of the child, an outright violation of Articles 3 and 21 of the CRC and Article 7 of the Guidelines for the Alternative Care of Children and should be condemned by all and sundry.

2.5.10 Older Children Adoption

The older hard to place children available for adoption are usually children over the age of three who have experienced many separations and loses. Gauthier et al²¹⁵ assert that some of these children are from foster care or institutional rearing with histories of maltreatment such as physical and psychological neglect, physical abuse, sexual abuse and are at risk of developing psychiatric problems. Sorosky Baran and Pannor posit that adopting an older child is more like a marriage than a birth²¹⁶ and they further stated that “it is a process whereby individual already equipped with consciousness, memories, patterns of thoughts and reaction and large stories of life experience, link their lives together” Sorosky Baran and Pannor described these older hard to place children as the “orphans of the living”²¹⁷ are

²¹³ S. Huntley, the phenomenon of baby factory in Nigeria as a new trend of human trafficking. International Crimes Database (2013).
<<http://www.internationalcrimesdatabase.org/upload/documents/20131030T045906ICD%20Brief%203%20-%20Huntley.pdf>> Accessed 12 August 2019.

²¹⁴ Children are not for sale, they are gifts from God see the book of Psalm 127 vs 3-5, that is the reason both the rich and the poor are gifted with children.

²¹⁵ L. Gauthier G. Stollack L. Messe and J. Arnoff, ‘Recall of Childhood neglect and physical abuse as Differential Predictory of Current Psychological Functioning’ Child Abuse and Neglect (1996)(20)(7)549-550

²¹⁶ Sorosky, Baran, Pannor, note 122, 198.

²¹⁷ Sorosky, Baran, Pannor, note 122, 198

abandoned, neglected or abused and have had poor living experience in numerous homes, institution or orphanage homes.

Lyons-Ruth and Jacobvitz asserts that older hard to place children are at risk of developing a disorganized attachment which is associated with a number of developmental problems,²¹⁸ including dissociative symptoms as well as depressive anxiety and acting – out symptoms which can result in failed adoption.

This type of adoption is practiced here in Nigeria. The adoptive parents are usually come fronted with the problems of rearing the children.

Conclusively, this study contents that older children adoption and the problem associated with it can be avoided when children are given out early in adoption.

2.5.11 Embryo Adoption

Clark posits that human infertility are extremely complex physiologically, psychologically financially, legally and ethically. It is estimated that 85-90% of infertile couples will receive conventional treatment and 10-15% may become candidates for various forms of Assisted Reproductive Technologies (ARTS) to assist them in having their own biological children. In-vitro fertilization (IVF) is one of the most utilized reproductive procedures that has allowed couples to have their own biological children.²¹⁹ When couple undergo in-vitro fertilization (IVF) to conceive a child, often they have embryo (egg and sperm) joined together that are not used. These remaining embryos are often cryopreserved or frozen and put into storage for later use, once an embryo have been cryopreserved, decision must be made on their behalf. These embryos can be stored for future family building or discarded or

²¹⁸ Lyons-Ruth and Jacobvitz, 'Attachment Disorganization: Unsolved loss Relational Violence and Lapses in Behavioural and Attentional Strategies' in J Cassidy and P. Shaver (eds) *Hand Book of Attachment*, (New York Guilford Press, 1999), 520-554.

²¹⁹ Peter A. Clark: Ethical implications of Embryo Adoption
<<https://www.intechopen.com/books/p/uripotent-stem-cell-biology-advancesun.mechanisms-methods-and-models/ethical-implications-of-embryo-adoption.>> Accessed 10 March 2020

submitted to sciences for research purpose or donated to another couple that is struggling with infertility.²²⁰

The transfer of donated embryos to another couple struggling with infertility is often referred to as embryo adoption. Lester reported that some call embryo donation/adoption as a “rescue mission” in that transferring donated embryo to a woman’s uterus was akin to saving a life.²²¹ He stated “these children are being abandoned in a frozen state” and would be dead if they are not adopted.

According to Clark, abortion rights groups argue that the word ‘adoption’ encourage people to view the frozen embryos as equivalent to children, instead it should be called “donation.”²²² He argued that the distinction between “embryo adoption” and “embryo donation” may be trivial but from a legal perspective raises numerous issues. The Supreme Court of Tennessee in *Davis v. Davis*²²³ said that “semantic distinctions are significant in this context because language defines legal status and can limit legal rights.” The court held that the frozen embryos are not strictly speaking either person or property but occupy an interim category that entitles them to special respect because of their potential for human life. The American Society of Reproductive Medicine has echoed the conclusion that “the embryo deserves respect greater than that accorded to human tissue but not the respect accorded to actual persons²²⁴.

It does appear that the practice of embryo adoption is a well-known phenomenon in Nigerian even though some treatment clinics in places like Lagos deal with sperm donation and embryo preservation. This study investigation revealed that there is a center for Advanced

²²⁰ Clark, note 220

²²¹ Caroline Lester, Embryo ‘Adoption’ is growing but it is getting tangled in the Abortion Debate New’ York Times, 17 February 2019

²²² Peter A. Clark, Ethnical Implication of Embryo Adoption.

²²³ 842SWZD 488604 (Tenn 1992) <embryo.asu.edu.: accessed 7 June 2020.

²²⁴ Ibid

Fertility Treatment in Nigeria with branches in Abuja, Lagos and Delta State. Our unofficial interactions with some medical practitioners confirm that human embryo donation is an ethically and legally acceptable way for infertile couple to form families. That embryo donation only takes place where the woman involved is unable to produce fertile eggs that can meet with her husband sperm to form an embryo.

2.5.11 Lesbian, Gay, Bisexual and Transgender (LGBT) Adaption²²⁵

LGBT adoption is the adoption of children by lesbians, gays, bisexuals and transgender. This maybe in the form of a joint adoption by same-sex couples, adoption by one partner of a same-sex couples of the other's biological child (step-parent adoption) and adoption by single LGBT person. According to Karla before 1973 state courts barred gay and lesbian individuals from holding a parenting role especially through adoption.²²⁶ The American Psychological Association has supported adoption by same sex couples, citing social prejudice as harming the psychological health of lesbians and gays while noting there is no evidence that their parenting causes harm.²²⁷

Adoption by same sex couples is legal in twenty eight countries and in some territories worldwide, Netherlands Belgium, Spain, Canada, South Africa, Norway, Sweden, Portugal, Iceland, Argentina, Denmark, France, Brazil, Uruguay, New Zealand, Britain Luxembourg and Finland, United States and Mexican have regional or court directed provisions enabling same sex couple to adopt. The only Africa country to allow joint adoption by same sex couples is South Africa. The 2002 decision of the Constitutional Court in of *Du Toit & other*

²²⁵ <<https://en.m.wikipedia.org/wiki>.> Accessed 7 June 2020.

²²⁶ Starr Karla, Adoption by Homo-Sexual: A look at differing State Court opinions Ariz LRW, 40 (1998): 1497.

²²⁷ R.U. Paige, Proceedings of the American psychological Association Incorporated for the legislative year, 2004, minutes of the meeting of the council of Representative 28 and 30 July 2004: Honolulu Retrieved 18th November, 2004.

*v Minister of Welfare and Population Development and others*²²⁸ amended the Child Care Act 1983 to allow both joint adoption and step parent adoption by “permanent same-sex life partners.”²²⁹ The Child Care Act has since been replaced by the children’s Act 2005 which allows joint adoption by “partners in a permanent domestic life partnership” whether same or opposite sex and stepparent adoption by a person who is the permanent domestic life partner of the child’s current parent.²³⁰ *In the adoption of Tammy*²³¹ both members of a lesbian couple were permitted to simultaneously adopt the biological child of one of them. However, *in re Robert Paul P*,²³² H 57 and S 50, were homosexuals who lived together for twenty five years. H petitioned to adopt S, according to them “We are a family and seek to formalize such.” The relevant statute that allows for adult adoption is silent on the express issue of whether a gay couple may adopt another. However the statute provides that adoption is “the legal process whereby a person takes another person into the relations of child and hereby incurs the responsibilities of parent. The court held that adoption here is not permitted under the statute. While adult adoptions is generally allowed it must occur in a situation where there are some incidents of parent-child relationship; that if the adoption laws are to be changed so as to permit sexual lovers, whether homosexuals or heterosexual to adopt one another, it is for the legislature, not the court to do so. In Nigeria, lesbian, gay, bisexual and transgender (LGBT) adoption does not exist. Currently Nigerian law does not specifically prohibits homosexual couples from adopting children from Nigeria. However based on the requirement of person who can adopt as stated in adoption laws gay and lesbians couples are not among them. By virtue of the provision of the same sex marriage (prohibition Act) 2013 Same Sex

²²⁸ [2002] 2 ACC 20 (2002)10 BCLR 1006 (CC) 2003 (2) SA 198 (CC)

²²⁹ Lesbians, Gays, can Adopt Children: News 24 10 September 2002 Retrieved 8th October 2017.

²³⁰ Lynley Donnelly, A media guide to the children’s Act 38 of 2005 (PDF) Centre for children law media monitoring project page 40. Achieved from the original (PDF) on 19 October 2015 Retrieved 8 October 2017.

²³¹ 619 N.E. 2d 315 (Mass 1993)

²³² 471 NE 2d 424 (N.Y. 1984)

Marriage is illegal and constitutes a criminal offence and for same sex couple who co-habit attracting a sentence of 14 years imprisonment. The prohibition of same sex marriage in Nigeria precipitates the notion that same sex adoption is unknown in the field of child adoption practice in Nigeria. Finally same sex couple adoption of children is not practice in any state in Nigeria and Edo State in particularly.

2.5.12 Customary Adoption

Nwogugu posits that adoption as an institution is not unknown to some systems of customary law in Nigeria.²³³ However care should be taken to distinguish cases of adoption from guardianship as the two are usually confused under customary law. This is because guardianship involves the exercise of some parental rights especially as regards custody, control and maintenance of an infant. Ogungbe asserts that adoption under customary law may be formal or informal, formal adoption involves the arrangement of a meeting between the prospective adoptive parents and the adoptee or child to be adopted.²³⁴ At the meeting the prospective adoptive parents will announce to both families their intention to adopt the child and make him his heir; this is followed by the consent of the birth family and a performance of an initiation ceremony. At this meeting a formal transfer of parental rights and obligations is performed with the approval of both families. This practice can be found among the Ishan speaking people of Edo State.²³⁵

However among the Bini-speaking people of Edo State, child adoption is referred to as “Omonrieyihomo.” From what is obtainable and eye-witness accounts, the prospective adoptive family meets with the birth parents of the child and makes its intention known to them; usually, the adopter could be a distant uncle or aunt of the child. No ceremony is done, no announcement made to the whole world. It is done with utmost confidentiality between

²³³ E.I. Nwogugu, *Family Law in Nigeria*, (HEEB Publishers,1990), 328

²³⁴ Mojisola Ogungbe, *Family Law through the Cases*, (College of Law, Igbinedion University 2004), 190

²³⁵ C.G. Okojie, *Ishan Native Law and Customs*, (John Okwesi and Co., Yaba Lagos 1960), 60.

both families and extended family members. A formal transfer of parental rights and obligations is made. Subsequent acts or actions of both families in relation the child will indicate/inform the general public that an adoption has occurred.

In an informal adoption under customary law, a relation usually an uncle or aunt takes the child of a relative or an orphans into his family, brings him up and treats him same way as the biological children of the adopter. In the case of *Meribe v. Egwu*²³⁶ a childless woman procured her niece in marriage to her husband in order to have children for her. The court held that the practice was not repugnant to natural justice equity and good conscience. In the same vain, in *Martin v. Johnson*²³⁷ the plaintiff as sister and next of kin of Agnes Martin who died at Bena Cameroon intestate, claimed to have, as such grant of letters of administration. The defendant was claiming to be the person entitled to inherit the estate on the ground that he is the adopted child and was brought up by the deceased herself and appointed to succeed to her property. The court held where a claim such as this is based on native law and custom, that particular native law and custom must be established by clear and convincing evidence. Ogungbe asserts that under customary law adoption the consent of the adoptee is more important than the consent of the birth parents. Where the child is an infant and unable to form an opinion, then on attainment of majority the consent may be obtained, where he refuses to consent, there will be no adoption. Once an adoption is done under customary law, the child takes the name of the adoptive parents and will be treated as his biological child, the adoptee has a right to inherit the properties of the adoptive parent just like the biological children. The adopted child cannot marry any of the biological children of the adoptive parents because by virtue of the adoption a consanguineous relationship has been formed between the adoptee and the biological children of the adoptive parents. In case of *Olaiya v.*

²³⁶ (1976) NMLR 323

²³⁷ (1936)3 WACA 91

Olaiya,²³⁸ the first respondent, Mrs. Cornelia Olaiya, married Solomon Kayode Olaiya in 1963 under the Marriage Act in England. The couple lived together in England and later returned to Nigeria where they lived together as husband and wife until the husband died intestate in 1981. There was no biological child of the marriage. Upon the death of the husband, his brothers, the 2nd and 3rd respondent took over the deceased's estate and continued to manage same without any reference to the deceased widow. She sued them claiming, among other reliefs, a declaration that the plaintiff and the children of the deceased namely Emmanuel Olaiya, Sarah Olaiya and Remilekun Olaiya were the exclusive beneficiaries of the intestate estate of the deceased. In her pleadings, the plaintiff claimed that the first two children were both children of the deceased by legal and valid adoption under the applicable law and were brought up and recognized as such prior to the deceased's death in 1981. However, the defendants denied the averment that their deceased brother ever adopted the children. The trial court accepted the plaintiff's oral evidence that she and her deceased husband adopted the two children. Accordingly, it held that the children were entitled to share in the intestate estate of the deceased and the Court of Appeal upheld the decision. On further appeal to the Supreme Court. The Apex Court held that where a child is alleged to have been adopted under and Adoption Law, the best evidence of the adoption should come from the Adopted Children Register established under the Law. Since the adoption of the two children in question had not been proved in the manner required by the Law, the Supreme Court held that they were not entitled to share in the intestate estate of the deceased.

With all due respect to the learned justices of the Supreme Court the above judgment cannot be said to be promoting the best interest of the child or protecting a child centered adoption law. The Supreme Court fail to take cognizance of the fact that there are other forms of child

²³⁸ (2002)8 NWLR (Pt. 782) 652; (2005)2 SMC 84

adoption beside the legal adoption. There was evidence before the court that the two children, Emmanuel and Sarah Olaiya have lived with their parent visually all their live, they bore the family name and cannot be regarded as strangers in the family. There is prima facie presumption of adoption in favour of the two children.

Again the Supreme Court also fail to avert its mind to the legal theory of non-discrimination laid down in section 42(2) of the Constitution of the Federal Republic of Nigeria as amended. That no child should be discriminated against by reason of the circumstance of his or her birth. In this instant case can best be described as the customary adoption and prove of adoption from Adopted Children's Register as prescribed by law was not required and as such the children should be entitled to share from the intestate estate of their deceased father.

2.6 Theories of Adoption

One great theorist who impacted in adoption is Sigmund Freud; Freud had a significant influence on modern adoption theory and practice.²³⁹ His ideas about unconscious desires, erotic instincts and critical childhood stages in the formation of adult personality and behavior shaped the way that many parents and professionals thought about adoption, especially its special challenges and potential hazards.²⁴⁰ Brodzinsky posits that adoption is viewed as a highly successful solution for the problem confronting children who are deprived of their family,²⁴¹ for women experiencing unwanted and unplanned pregnancies and for infertile couple who wants to be parents. He argued that professionals and lay people often have difficulty accepting the possibility that the solution itself could as well be a problem. He further argued that in the past three decades a sizeable body of empirical clinical and

²³⁹ Sigmund Freud, On narcissism. In J. Strachey (ed. and Trans.) The Standard edition of the complete psychological works of Sigmund Freud (vol. 9 London: Hogarth Press, 1959) 74-78.

²⁴⁰ Ellen Herman, 'Sigmund Freud, Retrieved from the Adoption History Project' (2012)

²⁴¹ David M. Brodzinsky, 'Long-term outcomes in Adoption,' *The Future of Children* (1993)(3)(1).

theoretical writings have emerged focusing on the complexities of family life and on the possible psychological risk associated with adoption triad.²⁴²

Cadoret asserts that a number of theoretical perspective have been offered to explain developmental patterns adjustment difficulties and effects of adoption on the members of the adoption triangle and their families, some based on biological models, others on psychoanalytic, theory, attachment theory social role theory, fertility theory, family system theory, stress and coping theory. The theoretical framework of this study will be based on the following theories as it relates to our study and the problems we are trying to engage. Psychological theory, psychoanalytical theory, attachment theory, infertility theory, the theory of non-discrimination and legal transplant theory.²⁴³ If the lessons associated with these theories are taking into consideration and internalize into our adoption policies and laws, it will promote the best interest of a child principle and pave way for a child centre adoption law.

2.6.1 Psychological Theory

Hindle and Shulman posit that adoption offers the possibility of a new beginning and of regeneration but also has the potentials for disappointment, destruction and psychological disaster.²⁴⁴ They argued that psychologically, adoption is a highly “charged” or “supercharged” process; it is a field in which diverse realms of individual experience and society interact. It involves the internal worlds of the birth parents, the adoptee and the adoptive parents and their families. The law, legal system, social and cultural values beliefs ideology and even myth. As a psychological field adoption thus involves a distinctive constellation of emotional forces. Hockenburbg defines emotion as “a complex psychological

²⁴² Brodzinsky, Note 242, 2

²⁴³ JR Cadoret, Biologic Perspective on adoptee adjustment: In the psychology of Adoption D Brodzinsky and M Schechter, (eds) (New York: Oxford University Press, 1990), 25

²⁴⁴ Debbie Hindle and Graham Shulman, (eds.) The Emotional Experience of Adoption: A Psychoanalytic Perspective. (Routledge: London and New York, 2008), 1

state that involve three distinct component: a subjective experience, a physiological response and a behavioral or expressive response.”²⁴⁵

Psychology emotion is defined as a complex state of feeling that results in physical and psychological changes that influences thought and behavior.

The psychological impact of adoption on members of the adoption triangle cannot be overemphasized. According to Freud all members of the adoption triangle face some form of psychological dysfunction.

2.6.1.1 Physiological Theory: Impacts on Adoptee

For the adoptee, according to Clothier a child deprived of the benefit of growing up with his biological parents, does not know them or any of his biological siblings is an individual who has lost is thread of family continuity.²⁴⁶ Clothier further asserts.

Every adopted child at some point in his development, has been deprived of this primitive relationship with his mother. This trauma and the severing of the individual from his racial antecedents lie at the core of what is peculiar to the psychology of the adopted child.²⁴⁷

She stated further that a child who is separated from his biological mother soon after birth misses the mutual and satisfying mother-child relationship, the roots of personality growth where the physiological and psychological are merged both for the child and the natural mother. For most adopted children the loss of their birth parents as a result of adoption may set the stage for the feelings of loss and grief, as well as anger, anxiety and fear. Afifi explicated that the loss experienced by adopted persons may be characterized as an ambiguous loss or the loss of someone who is still alive or may not be alive and thus feeling of loss will also increase the feelings of uncertainty.²⁴⁸ Apart from the loss of their birth

²⁴⁵ D. Hockenbury, *Discovering Psychology*, (4th ed., Worth Publishers Inc, 2007).

²⁴⁶ Florence Clothier, ‘The psychology of the Adopted Child,’ *Mental Hygiene*, (1943)(27) 222-226

²⁴⁷ Ibid

²⁴⁸ P.A. Afifi, ‘Uncertainty Management and Adoptee Ambiguous Loss of their Birth Parents,’ *Journal of Social and Personal Relationships* (2005):129-155.

parents, adopted children may also suffer secondary loss, loss of the siblings, aunts, uncles or grandparents; and for those children who were adopted as older children they may suffer the loss of friends, foster families, pets, schools and neighbours and familiar environment.²⁴⁹ Another issue face by an adoptee is the issue of identity. Erikson wrote identity development is partially established through identification with parents,²⁵⁰ particularly the same sex parents, for the adoptee the process is complicated because he or she is aware that an essential part of the self has been cut off and remain on the other side of the adoption barrier. Kornitzer supports Erickson's views that this development will result in confusing the psychological identity of the adoptee.²⁵¹ Sorosky et al described these adoption-related conflicts as resulting in "identity lacunae" that can lead to a sense of show embarrassment and lowered self-esteem.²⁵²

2.6.1.2 Psychological Theory: Impacts on Birth Mother

According to Henney relinquishing a child for adoption can be traumatic for the birth parent. Birth parents continue to mourn the loss of their child throughout their life time but with varying intensity.²⁵³ Lewis shared the same view with Henney, that parents who cannot keep their infants have a sense of worthlessness and considerable feelings of guilt.²⁵⁴ Smith emphasized that birth mother who relinquish her baby for adoption is trying to give her child what she know he or she needs and what she want her baby to have, love, care and security from two parents in a normal home situation that she cannot provide.²⁵⁵ Once the adoption

²⁴⁹ Ibid

²⁵⁰ HE Erikson, *Identity: Youth and Crisis*, (New York Norton)

²⁵¹ M Kornitzer, 'The Adopted Adolescent and the Sense of Identity,' *Child Adoption* (1971)(66):43-48

²⁵² D A Soroky A Baran and R. Pannor, 'Identity Conflicts in Adoptees' *American Journal of Orthopsychiatry* (1975)(45)18-27

²⁵³ S M Henney, 'Evolution and Resolution' Birthmothers Experience of Grief and Loss at different levels of openness' *Journal of Social and Personal Relationships* (2007): 875-889.

²⁵⁴ H P Lewis, *The Psychiatric Aspect of Adoption*, in J.H. Howells (ed.), *Modern Perspectives of Child psychiatry* (New York: Brunner/Mazel, 1971).

²⁵⁵ E Smith, *Readings in Adoption*, (New York: Philosophical Library, 1963).

proceedings have been completed, the birth mother becomes the forgotten parent. Sorosky, Baran and Pannor maintained that relinquishment and adoptive placement has a traumatic experience on the birth mother that remained with them throughout their life.²⁵⁶

2.6.1.3 Psychological Theory: Impacts on Adoptive Parents

For the adoptive parents, the relationship within the adoptive families are subject to conflicts not found within their nuclear family. Pringle opined that this conflict creates stress on the adoptive parent with problems similar to those of having a handicapped child.²⁵⁷ Seglow, Pringle & Wedge described the adoptive parent as one caught in a double bind implored to “make the child your own, but tell him he is not.”²⁵⁸ Hartman and Laird posit that most adoptive parents experience difficulties and anxiety in telling, retelling, sharing and the reconstruction of the adoption story to their adopted child.²⁵⁹ Kirk emphasized that if the adoptive parents can accept the fact that they are different from the biological parents rather than denying it, they will be able to communicate better with the adoptee regarding his or her adoptive status and have the possibility of handling any problem that might arise throughout the child development with loving support, understanding and empathy. This study has explicated the various proponents of psychological theory and the psychological effect of child adoption on the triad members. This study agrees with their views that adoption impacts on members of the adoption triangle particularly the adoptee. Unlike the birth parent or adoptive parents that at one point in time made a decision to relinquish or to adopt a child but the adoptee according to Simmonds is a passive victim of the birth parents transgression, thus left without a choice.

²⁵⁶ Sorosky, Baran and Pannor, note 122, 78.

²⁵⁷ M.L.K. Pringle, ‘Adoption facts and Fallacies,’ A Review of Research in the United States, Canada and Great Britain between 1948 – 1965 London, Longman 1967

²⁵⁸ Seglow, J. Pringle, MLK, & Wedge P. *Growing up Adopted*, Windsor, Acta, National Foundation for Educational Research in England and Wales, (1972).

²⁵⁹ Ann Hartman and Joan Laird, Family Treatment after Adoption: Common Themes, in the Psychology of Adoption, David M. Brodzinsky Marshall D Schechter (eds) (New York: Oxford University Press, 1990),221-232.

In the field of adoption in Edo State, when children are abandoned and rescued by a stranger who takes them to the orphanage home, they become once again a victim of the home, as they are treated like a chattel waiting for the highest bidder to adopt them. A child separated from his or her birth mother is a traumatized child, early adoption can help the child recover from the initial effect of separation.

This study contents that it is on the basis of this theory that institutional rearing or orphanage homes was gradually phased out in the United State, due to their deplorable state and its negative impact on this children, this resulted in the creation of foster care parentage and residential rearing of children before final adoption. For a child centre adoption law, early adoption of children from orphanage home should be enforced.

2.6.2 Attachment Theory

Attachment theory is focused on the relationships and bonds between people particularly long-term relationship between romantic partners, attachment is an emotional bond to someone. Bowlby described attachment as a “lasting psychological connectedness between human beings.”²⁶⁰ He further asserts that the earliest bonds formed by children with their primary caregivers have a tremendous impact that continues throughout life and that attachment helps to keep the infant close to his mother, thus improving the child’s chances of survival. Schechter and Bertocci posits that bonding between child and adult is an intimate, continuous and consistent interplay of communication, the adult given evidence of recognizing the expressions and intuiting the child’s emotion at every level of need, the adult responses to these feelings with action based on an empathic sense of the child’s emotion at every level of need, or of the child’s inner state.²⁶¹ According to Golding attachment theory

²⁶⁰ John Bowlby, ‘Fifty years of attachment theory,’ The Donald Winnicott Memorial Lecture, (London: Karnae 2004).

²⁶¹ Marshall D. Schechter and Doris Bertocci, The meaning of the search in the Psychology of Adoption, David M. Brodzinsky and Marshall D. Schechter (eds) (New York: Oxford University Press 1990), 83

helps in the understanding of children who grew up in an institutional, foster care, orphanage home or adoptive homes.

Attachment is concerned with early years of life, a time of life that is most troubling for fostered and adopted children and the impact of this early experience on later social, emotional development and subsequently on cognitive development is explained within this early experiences or relationships.²⁶² Golding stated further that children/who are securely attached as infants tend to develop stronger self-esteem and better self-reliance as they grow old, these children also tend to be more independent, perform better in school and have successful social relation and experience less depression and anxiety.²⁶³ On the other hand, Berth²⁶⁴ assert that research has shown that children who fail to form secure attachments early in life can result to a negative impact on their behavior all through their lives, that children diagnosed with Oppositional Defiant Disorder (ODD) conduct disorder (CD) or post-traumatic stress disorder (PTSD) usually display attachment problem probably due to early abuse, neglect or trauma and further stated that clinicians suggest that children adopted after six months of age have a higher risk of attachment problems.

Bowlby a foremost attachment theorist explicated further that attachment relationship is the foundational relationship of a child's life.²⁶⁵ Early experience can alter a child's developmental pathway, that attachment theory provides us a framework for understanding the resulting behavior and guidance about ways of parenting children that can foster/increased trust and security. Wassell²⁶⁶ asserts in the area of adoption early attachment

²⁶² K. Golding, Attachment Theory as a support for Foster Careers and Adoptive Parents (2007) 31 <<http://www.johnwhitwell.com>.> Accessed 3/4/2010.

²⁶³ Ibid

²⁶⁴ CR Barth, 'Beyond Attachment Theory and Therapy.' Towards sensitive and evidence-based interventions with Foster and Adoptive Families in Distress Child and Family Social Work (2005) 257-288

²⁶⁵ Bowlby, note 261

²⁶⁶ Sally Wassel, 'Why is Early Development Importable.' The Emotional Experience of Adoption, 42

relationship need to be understood in order to inform the emotional caregiving within the new adoptive home. Wassell postulated four key systems of behavior which can inform the careful assessment of the impact, of previous experience on a child's attachment security. The first key governs a child's need for closeness and the ways developed to alert their caregiver to their need for reassurance, accurate and prompt response to experiences of distress and arousal. The second key is, the caregiver needs to be attuned to the child's signals of need in order to respond in a sensitive way, the adult behaviors, both in responding and initiating socio-emotional interactions make up the caregiving system. Schofield and Beek put it this way "the child's experience of having needs met and then of relation and wellbeing is also a learning experience at a psychological level, it shapes beliefs and expectations. ²⁶⁷ The caregiver and the child communicate what it is in their minds by their behavior."

The third key is when a child's basic need for reliability and responsiveness is met, they are free to devote their energies to exploring their environment. These behavioral initiatives are described as the exploratory system. The sensitive caregiver offers a base for the child to venture always from the relationship knowing that he or she can return when in trouble, this secure base is fundamental to a child's capacity to develop competence in task completion, promoting resilience and mastery. According to Wassell the fourth key was the original idea of Bowlby which he described as "sociable and affiliative."²⁶⁸ This fourth behavioral key emphasizes the importance of other relationship with adults and peers for an overall sense of security in the outside world. According to Ainsworth attachment theory has its root in ethological theory and attachment relationships develop gradually over the first six to eight

²⁶⁷ G Schofield and N. Beek, 'Attachment Handbook for Foster Care and Adoption.' London British Association for Adoption and Foster, 2000

²⁶⁸ S. D. M Ainsworth, The Development of infant-mother Attachment. In B.M. Caldwell and H.N. Ricciuti (Eds), *Review of Child Development Research*, (Chicago: Chicago University Press, 1973), 3

months of a child's life and emphasized that roots of secure attachment lie in the caregiver's responsiveness to the needs of the infant.²⁶⁹

Finally this study agrees with the proponents of attachment theory, the instinctive propensity for humans to form bonds with attachment figures which diminish feelings of strangeness fear and isolation. Bowlby emphasized that when this attachment relationship are threatened by separation, the child can be subjected to acute physiological and emotional distress. However, it can be argued that when this relationship with attachment figure is abusive and devoid of love there can never be bonding. This theory brings to the fore the reason some jurisdiction like in the United State is against institutional hearing/orphanage homes rearing of children abandoned or orphaned. The continuous changing of care givers of these children in these homes have impacted negatively on the mental and emotional health of these children, hence the emphasis on early adoption from these homes. This study further contends that the law should be amended to expressly state the period a child should stay in an orphanage home for final adoption.

2.6.3 Psychoanalytic Theory

Freud stated that psychoanalysis is part of psychology, not of medical psychology in the old sense, not of the psychology of morbid processes, but simply of psychology.²⁷⁰ Brinch posits that psychoanalysis is an invaluable research technique for understanding the complexities of adoption because of its appreciation of the unconscious aspects of human psychic functioning that are often neglected by other perspectives.²⁷¹ Brodozinsky et al explain that psychoanalytic theory suggest that the circumstances surrounding the child's birth, adoptive parent's concern about infertility and the adoptee's concern about having two set of parents

²⁶⁹ J Bowlby, *Attachment and Loss Separation, Anxiety and Anger*, (London Hagarth Press 1973), 11.

²⁷⁰ Freud Sigmond, An outline of psychoanalysis. In J. Strachey (ed. and trans.), *The standard edition of the complete psychological works of Sigmund Freud*, vol 23 (Holgarth Press, 1964), 29

²⁷¹ Paul M. Brinich, 'Adoption from the inside out: A psychoanalytic perspective' in D M Brodozinsky and M.D. Schechter (Eds). *The Psychology of Adoption 1990*: 49.

can result in emotional disorders in adoptee children.²⁷² According to Hart and Luckoet a psychoanalytic perspective offers a window into the inner world of the adopted child through clinical encounters.²⁷³ Hindle and Shulman identify five key psychoanalytic concepts that are central to adoption triad. The first key psychoanalytic concept is the inner world. In this psychoanalytic model of the inner world, later versions, internal representations of people and experiences from childhood, adolescence and adulthood do not erase earlier ones but co-exist in the mind with varying degrees of consciousness of them, that when this earliest experience continues to exert significant influence on a person's mental life in later development, this may have a negative effect on attachment and intimate relationships. It is for this reason that an understanding of an adopted child's inner world is important, particularly when the child has a history of trauma, abuse and neglect.

The second key psychoanalytic concept is that of psychic pain or mental pain, according to them psychoanalytic is in part based on the systematic study of psychic pain; the way the mind deals with psychic pain and the impact of psychic pain on the development and growth of the mind, the personality and relationships. The question is whose pain is this? The pain of the primal wound, according to Verrier experienced by the adopted child from the initial separation from his or her birth mother and the pain of the infertile couple.²⁷⁴ The third key psychoanalytic concept is ambivalence. This refers to the feelings of both love and hate towards the same person. This third concept is all about the feelings a child has towards his or her primary attachment figure who is usually the birth mother. Hindle and Shulman further stated that when a child feels cared for, loved and understood by the mother it will evoke loving feelings towards the mother. In contrast when a very young baby feels pain, frustration

²⁷² David M. Brodzinsky et al, 'Psychological and academic adjustment in adopted children.' *Journal of Consulting and Clinical Psychology*, (1984)(52) 582-590

²⁷³ A Hart and B Luckoet, *Developing adoption and therapy: New Approaches for Practitioners*. (London Jessica Kingsley 2004)

²⁷⁴ Nancy Newton Verrier, *The Primal wound: The Effect of Separation from the Birth Mother* (Gateway Press 1993), 10.

and distress it equally evokes the feelings of hate towards his mother. The constant interaction of love and hate starts in the first week or months of a child's life. Klein saw this as "the most fundamental and archaic dimension of emotional life." The capacity to hold these opposing feelings towards the same person if not properly guided remains a challenge in the life of a child.

The fourth key psychoanalytic concept is splitting: this refers to the state of inner conflicts and tension arising from co-existence of love and hate toward the same person. This experience can be overwhelming and can lead to the fear that hate will destroy love. Splitting as a defence against the pain of love and hate is a primitive form of intra-psychic mental functioning which has its origin in infancy and the relationship to the mother of primary attachment figure. The fifth key psychoanalytic concept according to Hindle and Shulman is Bion formulation about a type of knowledge and learning based on truthfulness to emotional experience. Bion conceptualizes this in a form of a relationship in what he called the "K" link. "K" represents a particular kind of knowing based on emotional experience in a relationship. "K" according to Hindle and Shulman is getting to know someone and someone getting to know you. According to this theory, is relevant to the adoption process where being open to the emotional truth of knowing and knowing someone can present some challenges especially when it involves a child with a seriously disturbed inner world for whom psychic pain is extreme.

This study concludes that this theory gives a better understanding of the inner feelings of members of the adoption triangle particularly the adoptee and the adoptive parents. Further, it is this theory that draws the attention of the adoption world to the fact that some triad member could be victims of emotional trauma and mental health disorder particularly the adoptee, due to the effect of the initial separation from the birth mother and therefore require the attention of medical and mental personnel, clinicians, social workers and medical health practitioners.

This study agrees with the proponents of this theory, that a better understanding of this theory would help them cope with the problems associated with raising an adopted child. However, this study argues that, it is not only adopted children that are prone to medical or mental health conditions, that non adopted children can also have some medical conditions that require the attention of psycho-analysis. This study argues that there is, this hasty conclusion on the part of some of this professional health workers that adopted children are generally prone to emotional and mental health conditions. This study contents that, it is an effort to stigmatise the adopted children. Furthermore, this study argues that, it is when the adopted child has access to a psychoanalysis that such a child can be helped and can understand and be better equipped to deal with the warring emotions of the inner world. However, this study argues that adopted children in the field of adoption in Nigeria, Edo State in particular, do not have access to free medical care much less a psychoanalyst. So when some adoptees display ambivalent behavior, the adoptive parents are usually at loss not knowing what to do. In a child-centred adoption law, the triad members should have access to free medical care particularly the adoptee, when this is in place, the adoptee can have access to psychologists, psychoanalyst, mental health practitioners, clinicians and social workers for therapy and counseling. It is this theory that led to the policy and laws in some jurisdictions, like in the United States that adoptee and the adoptive parents must go for a medical checkup, counseling and therapy at least once a month with the government footing all expenses.

2.6.4 Infertility Theory

Brinich posits that infertility is not something that usually “happen.”²⁷⁵ It is a reality that is forced on a couple over a period of months that can stretch into years. It includes anxiety about sexual performance and about bodily integrity, the taking of drugs, medical investigation and surgical interventions. It includes the shifting of blame from the man to the

²⁷⁵ Paul M. Briinich, ‘Adoption from the inside out: A psychoanalytic perception.’ In D. Brodzinsky GD Scheachter (eds) *the Psychology of Adoption* (1990) 46

woman or to both and it requires mourning,²⁷⁶ mourning in the sense that infertility implies some very significant losses, the loss of an image of one self or of one partner as biologically intact and capable of conceiving a child). Clark defined infertility as failure to get pregnant after one year of unprotected sex.²⁷⁷ He further stated that about 40% of infertility is due to female factors, 40% is also due to male factors while 20% is a combination of both male and female factors and some unknown causes.

Baran and Pannor defined adoption as a method by which babies born to unwed mothers could find permanent homes with infertile couples desiring to become parents,²⁷⁸ Sprince opined that prospective adoptive parents are not out looking for a traumatized child, they simply want to have a family after many years of struggling with the issue of infertility and years of painful longing for a child.²⁷⁹

Brinich asserts that adoption exists as a social institution because some couple do not want children while other couples who want children cannot conceive or bear their own biological children.²⁸⁰ He argued that it is impossible to understand adoption from all intrapsychic point of view without taking in to account these two facts: first that the child was not wanted by his biological parents and second that the adoptive parents were unable to conceive or bear children of their own.

²⁷⁶ Ibid

²⁷⁷ Peter A. Clark, Ethnical Implications of Embryo Adoption, *Pluripotect Stem Cell Biology. Advances in Mechisms. Methods and Models*, Craigs Atwood and Sivan Vadakkadath MEethal Intect open.

²⁷⁸ Annette Baran and Reubu Pannor, Open Adoption. In D Brodzinsky and M. Schreacter (eds) in the *Psychology of Adoption* (1990), 321.

²⁷⁹ Jenny Sprince, The Network around adoption: The Forever Family and the Ghosts of the Dispossessed: In Debbie Hindle and Graham Shulman (eds) in the *Emotional Experience of Adoption* (2008), 100.

²⁸⁰ Brinich, note 276, 45.

Schechter in his review of dynamic issues encountered among adoptive parents came up with the following subset, chosen on the basis of their intrapsychic importance to the infertile couple.²⁸¹

1. The discovery of one's infertility inflicts a narcissistic wound (Analogous to the amputation of a body part).
2. This wound requires both mourning and a painful reworking of one's own mental self-representation.
3. This wound provokes intense anger (at one's partner, parents, self, and other)
4. The sense of defectiveness, the envy of others' fertile sexuality, and the anger consequent to infertility can find expression in the adoptive parents' relationship to their adopted child and in the fantasies about the child's biological parents.
5. Many of these issues are reencountered when the adopted child reaches puberty. Envy of and anger about the adopted child's sexuality and fertility.

Deutch asserts that the psychological impact of infertility and adjustment to knowledge of same are regarded as central issues in determining qualification for adoptive parenthood.²⁸²

Infertility is described as a narcissistic blow with resulting emotional trauma. She further stated that the infertility itself maybe an expression of unconscious rejection of parenthood and most agencies have ruled out prospective adoptive parents where no organic reason for infertility can be found.²⁸³

The traditional and primary function of women in our society is to bear children and care for them, failure to do this will result in the feelings of insecurity and inadequacy. According to her it is important to know how the adoptive parents have learned to live with the knowledge

²⁸¹ Marshall D. Schechter, About adoptive parents. In EJ Anthony and T. Benedek (Eds) *Parenthood: Its psychology and psychopathology*: Boston Little Brown 1970.

²⁸² Helene Deutch, 'Adaptive Mother's: Ruth Brenner.' A follow up study of Adoptive Families Child Adoption Research Committee, New York (1951), 397

²⁸³ Deutch, note 283, 270

of their infertility: is it still so painful to discuss it; can they freely talk about it; do they look upon it as a disgrace? Have they reconciled themselves to it? Do they continue to long for their biological children? Can they tell their friends and family about adoption or will they feel impelled to hide their infertility? The answer to these questions may well determine whether the adoptive child will be given a healthy and secure family environment or be a symbol of the parents frustrations. The admission of infertility and acceptability of child adoption as an option of child bearing can be heart renting. This study agrees with the proponents of this theory. Infertility is like a serious wound that can cause acute pain. However, but when a couple accepts adoption and lets go, they can find happiness again as parents to an adopted child.

Conclusive, this study argues that, this theory of infertility was one of the primary purpose that the foundation of adoption was laid. Adoption was mainly used to satisfy the desire of infertile couple of becoming parents. Infact, adoption in the antiquity era, it was only the infertile couple that is allow to adopt a child. Evidence of years of childless and efforts made through medical investigation and treatment to overcome the state of childless must be shown. Again, it must be shown whether the childlessness was self-imposed or not, for instance a childless couple who deliberately refuse to bear children of their own will not be allow to adopt a child, because their refusal to bear children is seen as a rejection of parenthood. The development in the adoption field in Nigeria is that child adoption is open to all and sundry as long as the requirement for adopting a child is meant and they have the resources to so do. This study contents that priority should be given to the childless couple to adopt a child before any other person in the adoption field. If this lesson and the experience from this theory are internalized in our policies and laws, this will effectively promote the best interest of the child and protect a child-centred adoption process.

2.7 The Theory of Non-Discrimination

The theory of non-discrimination is central to human rights. Non-discrimination in human rights law is both a theory and a principle. Waiwei asserts that the prohibition of discrimination was only dealt with in minority treaties which was limited in scope,²⁸⁴ with the adoption of the United Nation Charter in 1945 non-discrimination clause became a recognized part of international law.

According to him the notion that the UN is the international protector of individual rights was borne out of the tragic experience of the World War II and the horrendous violations of human rights committed by Hitler with the holocaust.²⁸⁵ One delegate to the Third Committee stated that “United Nations Organization had been founded principally to combat discrimination in the world.”²⁸⁶ Shestack observed that equality and non discrimination “are central to the human rights movement”.²⁸⁷

In December, 1948 Resolution 217A was adopted known thereafter as the Universal Declaration of Human Rights (UDHR). The UDHR elaborates the UN Charter equal rights. All the thirty articles are one way or another connected to equality. Article 7 provides

All are equal before the law and are entitled without any discrimination to equal protection of the law.

According to Besson the importance of the principle of non-discrimination has been recognized in almost all international human rights instruments. The three major international human rights instruments are the 1948 UDHR, 1966 International Covenant on Civil and Political Rights (ICCPR) and the 1966 International Covenant on Economic, Social and

²⁸⁴ Li Weiwei, “Equality and Non-discrimination under International Human Rights Law,” *Norwegian centre for human rights*, 2004. <<http://www.humanrightsuio.no/forskning/publ/publikasjonlistic.html>> accessed 5th April 2021.

²⁸⁵ Ibid

²⁸⁶ UN Document AC3SR, 100,

²⁸⁷ Jerome Shestack, “The Jurisprudence of Human Tights” in Theodore Meron (ed), *Human Rights in International Law: Legal and Policy Issues* 1984, 101.

Cultural Rights (ICESCR), and maintain that there are four major international guarantees of the principle of non-discrimination,²⁸⁸ which are spread out in universal UN instruments, but also in regional instruments like the ECHR and the ACRWC

i. The Universal Declaration of Human Rights

According to Article 2 UDHR:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

This general principle of non-discrimination is specified further in the legal context, according to Article 7 UDHR

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against discrimination in violation of this Declaration or against any incitement to such discrimination.

ii. The International Covenant on Civil and Political Rights

According to Article 2 par. 1 ICCPR

Each State Party to the Present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

This general principle is specified further in the legal context according to art. 26 ICCPR:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any grounds such as race, colour, sex, language, religion,

²⁸⁸ Samantha Besson, "The Principle of Non-discrimination in the Convention on the Rights of the Child 2005, 13, 441

political or other opinion, national or social origin, property, birth or other status.

iii. The International Covenant on Economic, Social and Cultural Rights

According to Article 2 par. 2

The State Parties to the present Covenant undertake a guarantee that the rights enunciated in the present covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

iv. The European Convention on Human Rights

According to Article 14 ECHR

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

According to Article 3 is on non-discrimination

Every child shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this Charter irrespective of the child's or his/her parents' or legal guardians' race, ethnic groups, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status.

Within the coming into force of the CRC in 1989, the principle of non discrimination took a central stage.

Article 2 of CRC, According to Rehman Article 2 is aimed at ensuring the applicability of the international norm of non-discrimination as it relates to children, especially discrimination

against children living in institutions.²⁸⁹ The Committee on the Rights of the Child in its concluding observation to Egypt noted that the principle of non-discrimination, as provided for under Article 2 of the Convention must be vigorously applied; and that State parties need to confirm whether the principle of non-discrimination relating to children has been incorporated in the State constitution or within domestic legislations. Again the 1999 Constitution of the Federal Republic of Nigeria (as amended) endorsed this principle of non-discrimination in section 42.

Furthermore, Nigeria domesticated the CRC in 2003 and enacted the Child Rights Act 2003. The CRA incorporates all the rights and responsibilities of children and consolidate all laws relating to children into a single law and endorsed the principle of non-discrimination in section 10 (1-2).

In Edo State, the CRA was passed into law in 2007. The Child Rights Law 2007 equally endorsed the theory of non-discrimination.²⁹⁰ This theory is relevant and applicable to our research especially in the area of supporting the law in adoption of children in Edo State. This theory, though independent of the law, is a legal acceptance and confirmation of the decision of the Court of Appeal in *Aduba & Ors. v. Aduba* over the sharing of the property of the plaintiff's deceased father where it was held that an adopted child cannot be discriminated against over inheritance as he or she has the same status and on the same footing with the biological children of their parents.

2.7 The Legal Transplant Theory

Probert asserts that the concept of child adoption is viewed as a legal transplant as the adoptive parents did not only have the care and custody of the child but become for all legal

²⁸⁹ Javid Rehman, *International Human Rights Law*, 561.

²⁹⁰ Section 10(1-2) of the Child Rights Law 2007.

intents and purposes the child's parents.²⁹¹ Baroness Hale stated in Rep (Adoption: Unmarried Couple),²⁹²

It creates a new legal relationship not only between the child and each of her adoptive parents' families. Their parent becomes her grandparents; their brothers and sisters her uncles and aunts.

Atta posit that the "legal transplant theory is actually the effect of an adoption order when made, the adopters is vested with parental responsibility, including responsibilities arising under any other order under the personal law of the parents of the child in relation to the future custody, maintained, supervision, education and all religious rights, rights to appoint a guardian and right to give consent or notice of dissent to marriage are extinguished against the parents or guardian and vested in the adopters.²⁹³

In other words, the adoptee stands in the place of a biological child of the adoptive parents, with all rights, privileges and responsibilities which accrue to a biological child also accruing to the adoptee. Consanguineous relationship is formed between the adoptee and the adoptive parents.

Diwan posits that adoption of a child means that the child is totally uprooted from the natural family and transplanted to the new family.

Interestingly section 14I (I-4) of the Child Rights Act²⁹⁴ and Section 138 (1-4) of the Child Rights Law²⁹⁵ adopted the legal transplant theory of child adoption.

Section 138(1-4)

On an adoption order being made:

²⁹¹ Rebecca Probert Cretney and Probert's, *Family Law* (Sweet and Maxwell, 2009)371

²⁹² 2008, UKHL 38

²⁹³ Micheal Atta, *Family Welfare Law in Nigeria* (Ambik Press, 2006), 210.

²⁹⁴ CRA 2003 s141(1-4)

²⁹⁵ CRL 2007 s138(1-4)

- (a) All rights, duties, obligations and liabilities, including any other order under the personal law applicable to the parents of the child or any other person in relation to the future custody, maintenance, supervision and education of the child, including all religious rights, right to appoint a guardian and to consent or give notice of dissent to marriage, shall be extinguished; and
- (b) There shall vest in, and be exercisable by and enforceable against the adopter:
 - i. All rights, duties, obligations and liabilities in respect of the future custody, maintenance, supervision and education of the child, and
 - ii. All rights to appoint a guardian and to consent or give notice of dissent to marriage of the child, as would vest in the adopter as if the child were a natural child of the adopter, and in respect of those matters, the child shall stand to the adopter in the relationship of a child born to the adopter.

(2) where a husband and wife are joint adopters of a child, the shall:

- (a) in respect of the matters specified under this section; and
 - (b) for the purpose of the jurisdiction of the court to make orders as to the custody and maintenance of and rights of access to the children, stand to each other and to the child in the same relationship as they would have stood if the child were their natural child, and in respect of those matters, the child shall stand to them in the relationship of a child born to the adopters.
- (3) For the purposes of the devolution of the property on the intestacy of the adopter, and adopted child shall be treated as a child born to the adopter.

(4) In a disposition of property made after the date of an adoption order, reference, whether express or implied, to:

- (a) the child or children of the adopter shall, unless the contrary intention appears, be considered as including, a reference to the adopted child; and
- (b) a person related to the adopted child in any degree shall, unless the contrary intention appears, be construed as a reference to the person who would be related to him in that degree if he were the natural child of the adopter and were not the child of any other person.

The Legal Transplant Theory is relevant and applicable to our research. As an approach to the study of adoption, the theory is on all fours with the purpose and intent of the law on

adoption of children and should provide a guiding principle for adoption of children in Edo State.

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