

**CHILD ADOPTION UNDER THE CHILD'S RIGHTS LAW OF DELTA STATE,
2008: AN APPRAISAL**

Ekpewu Okpako James

Delta State University, Abraka, Nigeria

Abstract

Child adoption is accepted as one of the solutions to childlessness. It has become part of Nigeria's legal system. Before the enactment of the Children's Rights Act 2003, various statutes shaped adoption practices. Delta State domesticated the Act in 2008. Reasons for adoption include infertility, gender preference, natural disasters/war, disease, and helping children in need. This paper examines adoption under Delta State's Child Rights Law 2008, particularly Part VII. The article used a doctrinal research method. Despite legal backing, challenges persist, such as social stigma, fraud and conflict with customary practices. Findings include the absence of a set timeline for adoption, the reluctance of orphanages to release children, and a preference for younger children. This paper recommends setting clear timelines, lowering the minimum age for single applicants from 35 to 30 and public sensitization by the government and NGOs.

Keywords: Child, Adoptive Parents, Adoption, Child's Rights Law

Introduction

Adoption has become an accepted practice in recent times, with various laws and institutions established at both national and international levels to regulate the process¹. The practice of adoption can best be described as the full transfer of parental rights and responsibilities over a child or young person from one set of parents to another². Under common law, adoption is not recognized because the legal relationship between a child and their biological parents is considered indissoluble and cannot be terminated³. Adoption dates back to 6th century Rome, where families without male heirs adopted boys from families with many sons, as inheritance passed through the male line. In the 19th century, the U.S. introduced the Massachusetts

¹ Y. Olomjobi, *Human Rights Legal Protection of Children in Nigeria* (Lagos Princeton & Associate Publishing Co. Ltd., 2022) 247

² B.O. Alloh, *Family Law* (Delsu Press 2020) 438

³ N. Tijani, *Matrimonial Causes in Nigeria- Law and Practice* (2nd edn, Lagos Renaissance Law Publishers Ltd 2017) 320

Adoption of Children Act of 1851, emphasizing the child's best interest. This was later followed by the Hague Convention, which established ethical rules for inter-country adoption, ensuring that each adopted child is a true orphan and the process is properly regulated⁴ The first adoption law in Nigeria was the Eastern Region's Adoption Law No. 12 of 1965, followed by similar laws in Lagos State (1968) and other Southwestern states, including Bendel State's Adoption Edict of 1979⁵ which shared many similarities. Two decades later, the global community adopted child-focused laws—the United Nations' Convention on the Rights of the Child (1989) and the OAU's African Charter on the Rights and Welfare of the Child, both of which Nigeria signed⁶. The Child's Rights Act of 2003 unified child welfare laws in Nigeria, with 25 out of 36 States adopting it, while the remaining 11, all in the North, and are yet to do so. In 2008⁷, Delta State enacted the Child's Rights Law, with Part VII specifically addressing child adoption procedures and regulations. Section 3 of the Child's Right Law of Delta State provides that in every action concerning a child, whether undertaken by an individual, public or private body, institutions or service, court of law, or administrative or legislative authority, the best interest of the child shall be the primary consideration⁸. Adoption in Nigeria can be compared to foster care and guardianship, though it offers numerous unique benefits. These include preventing child trafficking, providing care and protection for the child, ensuring access to fundamental human rights, and giving adoptive parents the chance to raise and nurture a child, thereby contributing positively to society⁹. This paper primarily focuses on evaluating child adoption under the Child's Rights Law of Delta State, 2008, as an alternative solution to childlessness and the need to embrace the practice. Former Vice President Prof. Yemi Osinbajo, at the 2nd Heritage Adoption Support Group Conference in Lagos, advocated for the simplification of adoption processes and increase public awareness to encourage more Nigerians to adopt and support vulnerable children.¹⁰

The Concept of Child Adoption

To clearly define child adoption, it is essential to examine its meaning from multiple perspectives, including legal writers, law dictionaries, statutes, treaties, and socio-cultural

⁴ Olomojobi (n 1) 249

⁵ E.I. Nwogugu, *Family Law in Nigeria* (Revised edn, Ibadan HEBN Publishers Plc 2011) 313

⁶ U. Anyalechi, 'An appraisal of the concept of child Adoption as an Alternative form of child care in Nigeria,' <https://www.academia.edu/124722038/AN_APPRAISAL_OF_THE_CONCEPT_OF_CHILD_ADOPTION_AS_AN_ALTERNATIVE_FORM_OF_CHILD_CARE_IN_NIGERIA?auto=download&email_work_card=download-paper> accessed 13 January 2025

⁷ O. I. Onianwa, 'Child Rights Act and Girl Child Education in Rural Communities in Oshimili South Local Government Area,' (2024) <<https://papers.ssrn.com/sol3/papers.cfm?id=4970453>> accessed 13 January 2025

⁸ Section 125, 126, 127, 128, 129, 130, 131, 132, 133, 136, 137, 140, 141, 142, 143, 148 of the Child Rights Act, 2003 Cap C23 Laws of the Federation 2004

¹⁰ D. Ojerinde, 'Osinbajo wants child adoption process simplified' *The Punch* (Lagos, 19 November 2018) <<http://www.google.com/amp/s/punchng.com/osinbajo-wants-child--adoption-process-simplified/%3famp>> accessed 13 January 2025

contexts.¹¹ However, the term "adoption" is a noun derived from the verb "adopt." The word "adopt" carries various meanings depending on context; in relation to child adoption, it refers to legally bringing a child from another family into one's own, thereby becoming the child's lawful parent¹². Agarwal defines adoption as a process in which a child is fully separated from their biological parents and legally becomes the child of the adoptive parents, gaining all the rights, privileges, and responsibilities of a biological child¹³. The Black's Law Dictionary defines adoption as:

“the creation of a parent-child relationship by judicial order between two parties who are unrelated; the relation of parent and child created by the law between persons who are not in fact parent and child”¹⁴

Based on the above definitions, adoption can be described as the complete separation of a child from the birth parents, with all rights, duties, obligations, and liabilities transferred to non-biological parents through a court order. The 1989 United Nations Convention on the Rights of the Child¹⁵ recognizes adoption as one of the forms of alternative care for children who are temporarily or permanently deprived of their natural family environment. Adoption is primarily a statutory creation recognized in most legal systems worldwide, but it is not acknowledged under English Common Law or Islamic Law.¹⁶

Legal Framework Regulating Child Adoption in Nigeria

There are laws regulating the practice of child adoption in Nigeria. They are as follows;

- 1) The Constitution of the Federal Republic of Nigeria 1999 (as Amended)
- 2) The Child Rights Act 2003
- 3) Adoption Laws of Delta State/Child Rights Law of Delta State 2008

¹¹ M. Robinson and G. Davidson (eds) Chambers 21st Century Dictionary, Revised Edition, (New Delhi, allied Chambers India Limited) 17

¹² O. O. Ogwezzy, 'Legal Perspective of Child Adoption under the Nigerian Law,' (2018) <<http://univagora.ro/jour/index.php/aijs>> accessed 23 December 2024

¹³ K. Agarwal, 'Critical Analysis of Adoption Laws in India with special reference to Shabnam Hashmi vs Uoi Air,' 2014.

<[Google.com/search?q=critical+analysis+of+adoption+laws+in+india+with+special+reference+shabnam+hasmi+vs+Uoi+Air&client=ms-opera-mini-android&channel=new#vhid=zephyr:0&vssid=atritem-https://jlrjs.com/wp-content/uploads/2023/04/16-Khushi-Agarwal.pdf](https://www.google.com/search?q=critical+analysis+of+adoption+laws+in+india+with+special+reference+shabnam+hasmi+vs+Uoi+Air&client=ms-opera-mini-android&channel=new#vhid=zephyr:0&vssid=atritem-https://jlrjs.com/wp-content/uploads/2023/04/16-Khushi-Agarwal.pdf)> accessed 23 December 2024

¹⁴ B. A. Garner, Black's Law Dictionary (8th edn, United State of America, West Publishing Co) 52

¹⁵ Article 20 of the United Nations Convention on the Rights of the Child 1989

¹⁶ T.O. Ibraheem, "Adoption Practice in Nigeria- an Overview,' (2013) <http://www.academia.edu/37334607/Adoption_Practice_in_Nigeria_an_Overview?au=download&email_work_card+download-paper> accessed 13 January 2025

4. African Charter on Human and Peoples' Rights.
5. African Charter on Human and Peoples' Rights.
6. The African Charter on the Rights and Welfare of the Child (ACRWA) and the Convention on the Rights of the Child (CRC).
7. Beijing Declaration: Fourth World Conference on Women
8. National Human Rights Commission Act

a) The Constitution of the Federal Republic of Nigeria 1999 (as Amended)

The 1979 Nigerian Constitution explicitly protects children and young persons from all forms of exploitation and neglect¹⁷. Although the 1999 Constitution lacks the earlier provision, Chapter IV clearly affirms that every Nigerian's fundamental rights must not be violated¹⁸. The Child Rights Act, 2003, Part II, clearly states that:

‘the provision of Chapter IV of the 1999 Constitution and any successive constitutional provisions relating to fundamental rights shall apply to this Act; and every child is entitled to the rights set out in this part.’

Therefore, it is important to note that the rights outlined in Chapter IV of the 1999 Constitution, as applied to the Child Rights Act 2003, are essentially the same as the rights of the Nigerian child.’

b) The Child Rights Act 2003

The Child's Rights Act 2003, enacted by the National Assembly on 31st July 2003, outlines the rights and responsibilities of Nigerian children, including provisions for child justice, care, and supervision¹⁹. Part XII of the Child's Rights Act 2003 regulates adoption nationwide, but state adoption laws remain valid since child welfare and adoption fall under State legislative competent per the 1999 Constitution²⁰. The Act is enforceable as such only in the Federal Capital Territory, Abuja for which the National Assembly has the powers to make laws.²¹ The Child

¹⁷ U. Anyalechi, ‘An appraisal of the concept of child Adoption as an Alternative form of child care in Nigeria,’ <https://www.academia.edu/124722038/AN_APPRAISAL_OF_THE_CONCEPT_OF_CHILD_ADOPTION_AS_AN_ALTERNATIVE_FORM_OF_CHILD_CARE_IN_NIGERIA?auto=download&email_work_card=download-paper> accessed 13 January 2025

¹⁸ Ibid

¹⁹ T.O. Ibraheem, ‘Adoption Practice in Nigeria- an Overview,’ (2013) <http://www.academia.edu/37334607/Adoption_Practice_in_Nigeria_an_Overview?au=download&email_work_card+download-paper> accessed 13 January 2025

²⁰ Part II of the Second Schedule, Constitution of the Federal Republic of Nigeria 1999 (as Amended)

²¹ Section 1 of the Child Rights Act, 2003 Cap C23 Laws of the Federation 2004

Rights Act provides²² the best interest of the child to be paramount consideration in all actions relating to the child. That is in every action concerning a child, whether undertaken by an individual, public or private body, institution or service, court of law, or administrative or legislative authority, the best interest of the child shall be the primary consideration.

c) Adoption Laws of Delta State/Child Rights Law of Delta State 2008

Statutory adoption was introduced in Bendel State in 1979, and the same law, now applicable in both Edo and Delta States, governs the adoption of children under 18 who are abandoned and whose parents or relatives are unknown or untraceable, as certified by a juvenile court²³. With the enactment of the Child's Rights Law of Delta State in 2008, the earlier 1979 Adoption Law was repealed, and in any case of conflict, the provisions of the Child's Rights Law take precedence.

d) African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights, 1990, is an international treaty to which Nigeria is a signatory. It provides for the protection and care of a child that:

‘The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions’²⁴

The above provision of the African Charter clearly signifies international recognition and support for the protection and care of children, as evidenced by the specific mention of the word "child."

e) The African Charter on the Rights and Welfare of the Child (ACRWA) and the Convention on the Rights of the Child (CRC).

These are the two international instruments which make special provisions for the protection and care of the child. The above treaties have been signed and ratified by Nigeria. The major high points of the provisions is that; ‘.....and State shall ensure to the maximum child survival and development’²⁵

f) Beijing Declaration: Fourth World Conference on Women

The Beijing Declaration focuses on child rights, with Declarations 23, 24, 29, and 32 specifically emphasizing the rights of the girl child. Declarations 23 and 32 affirm her full enjoyment of human rights and fundamental freedoms, along with protection from violations, while Declaration 24 calls for the prevention of all forms of infringement against the girl child. Declaration 24 calls for the prevention of all forms of infringement against the girl child, while

²² Section 4(1), (2) of the Child Right Law of Delta State, 2008 (No. 14)

²³ Anyalechi, Ibid

²⁴ Article 18(3) of the Africa Charter on Human and Peoples' Right Act, 1990

²⁵ ‘An Examination of the Child Rights Protection and Corporal Punishment in Nigeria’, <<https://www.google.com/search?q=History+Children+and+young+persons+Act+in+Nigeria&client=ms-opera-mini=android&channel=new#vhid=zephyr:0&vssid=atritemhttpswwww.php/naujilj/article/view/82391/72546>> accessed 24 January 2025. Ibid

Declaration 29 extends this protection to girls in general. These provisions are vital to child rights, though they primarily focus on females, they also include protections for adopted children under the same declarations²⁶. The Convention on the Elimination of All Forms of Discrimination against Women supports the Beijing Declaration, which Nigeria ratified on June 13, 1985²⁷.

g) National Human Rights Commission Act

This Act was enacted on September 27, 1995, the National Human Rights Commission Act protects human rights and serves as a comprehensive framework supporting all child rights laws, including international instruments²⁸. Section 5(a) of the Act mandates the Commission to handle all matters related to promoting and protecting human rights as guaranteed by the aforementioned laws, including those addressing child rights.

Definition of a Child

There is no generally accepted definition of a child due to different terminologies ascribed to it. The term 'child' may be used to refer to 'juvenile', 'minor', 'young person' or 'infant'. However, there are various definitions of a child. The Blacks' Law Dictionary 9th Edition, defined a child as: 'A person under the age of majority.'²⁹ The UN Convention on the Rights of the Child (UNCRC) defines a Child as every human being below the age of eighteen (18) years unless, under the law applicable to the Child, majority is attained earlier³⁰. While the Child's Rights Act 2003, Section 2 define a child as every human being under the age of eighteen (18) years.³¹ Again, the Child Rights Law of Delta State, 2008 defines a child to mean a person under the age of eighteen years.³² The Labour Act³³, by virtue of Section 91, also defines a child as a young person under the age of twelve, and a young person is defined as anyone under the age of eighteen. In view of the statutory definitions of a child, it is pertinent to state that even with the age differences of who a child, it is best and appropriate to adopt the definitions of that of the Child Right Law of Delta State which defined a child to means a person under the age of eighteen years because the above definition is similar with that of the UN Convention on the Rights of the Child (UNCRC), 1989 and the Child's Rights Act, 2003.

Types of Child Adoption

There are two types of Child Adoption. They are³⁴; Open and Closed Adoption.

²⁶ .C. Nwabachili and C.P. Iloka, 'Adoption of Children in Nigeria: Problems and Prospect', (2023) <<https://www.nigerianjournalsonline.com/index.php/ACARELAR/article/download/3831/3731>> accessed 22 June 2025

²⁷ Article 5(b) of the Convention of all Forms of Discrimination against Women, 1979

²⁸ Nwabachili and Iloka, *ibid*

²⁹ B. A. Garner, *Black's Law Dictionary* (9th edn, United States of America: West Publishing Co. 2009) 271

³⁰ Article 1, CRC, 1989 Nigeria ratified in 1991 and domesticated in 2003

³¹ Section 277 of the Child's Right Act, 2003 Cap C23 Laws of the Federation 2004

³² Section 2 of the Child Right Law of Delta State, 2008, (No. 14)

³³ Labour Act, 1974 Cap L1 Laws of the Federation of Nigeria 2004

³⁴ *Ibid*

a) Open Adoption: This is the type of child adoption where the biological parents of the Child and the adoptive parents have direct communication with each other. In practice, this type of adoption is otherwise known as in-house adoption.

b) Closed Adoption: This type of child Adoption may arise whereby the natural parents has no knowledge or contact with the adoptive parents³⁵. In Nigeria, child adoption occurs through customary, statutory, and Islamic forms.

Reasons for Child Adoption in Nigeria

There are numerous reasons why people adopt children, with the most common reasons in Delta State being;

1. Childlessness: This may result from infertility or the loss of all a woman's children, especially when she can no longer conceive. In the Igbo (even some tribes in Delta), Effik, and Ibibio cultures of Eastern Nigeria, a childless married woman is often seen as lacking honor in her husband's family, as she is typically blamed for the inability to bear children. Adopting a child serves as an alternative means to ensure the continuity of the family name and legacy³⁶.

2. Male Child Syndrome: This is another factor that drives many African traditional families toward adoption, as in Eastern Nigeria, the absence of a male child is often seen as a major threat to the stability of a marriage³⁷. The same situation also applies in Delta State. In most African traditional societies, inheritance follows a patrilineal system, where the absence of a male child is seen as a misfortune. In Igboland, especially, both husband and wife strongly desire male children, as they are seen as essential to validating the marriage. A woman gains status and respect by bearing at least one son, as customs dictate that only a male child can inherit property, take over the family home, and continue the family name³⁸.

3. Helping Children in Need: In African societies, kinship adoption occurs when relatives, such as grandparents or uncles, adopt and care for a child whose parents have died or are unable to provide due to illness or poverty.

4. Infertility³⁹: Another key reason for child adoption in Nigeria is infertility, often faced by married couples due to various health conditions; for women, hormonal imbalance may lead to childlessness, prompting them to consider adoption.

5. Natural Disasters/War: Natural disasters like earthquakes, floods, and volcanic eruptions, as well as war, can cause significant loss of life—leaving many older, childless couples to turn to adoption, while also rendering many children orphaned and homeless.

³⁵ Ibid

³⁶ ³⁶ C.A. Maria, 'Socio-cultural challenges of Child Adoption in Eastern Nigeria in West Africa', (2014) 87 <<https://mgmesjournals.com/hssr/article/download/hssr213/28/58> > accessed 2 February 2025

³⁷ Ibid

³⁸ Ibid

³⁹ A. N. Onyiriuka, 'Child Adoption, Posttraumatic-Stress Disorder and the Role of a Paediatrician in the Adoption Process,' (2018) <<https://www.nepjol.info/index.php/JNPS/article/download/20815/1897> > accessed 13 January 2025

6. Disease such HIV/Aids: Married couples or single individuals living with HIV/AIDS often turn to adoption to avoid passing on the virus, choosing to create a family safely and ensure they have a heir to carry on their legacy.

Child Adoption under the Child's Right Law of Delta State 2008

The Delta State Government enacted the Child's Rights Act of 2003 into state law in 2008 to address the need for the protection and care of children⁴⁰. The Child's Rights Law of Delta State, 2008 has significantly improved the adoption process in the state, exemplified in January 2011 when the Ministry for Women Affairs, led by Hon. Commissioner Betty Efekodha, facilitated the adoption of 35 children⁴¹. Currently, there is a growing number of applicants seeking child adoption, with prospective adoptive couples waiting in line for child placements⁴² in Delta State. Child adoption has been vital in reducing child trafficking, racketeering, abuse, and labor, as highlighted by Mrs. Kevwe Agas, Permanent Secretary of the Ministry of Women Affairs, Social and Community Development, who reported that 22 children were rescued from traffickers in Delta State. This achievement is attributed to the Delta State Child's Rights Law of 2008. Part xii of the Child's Rights Law of Delta State, 2008 contains child adoption practice in Delta State.

Establishment and Jurisdiction of the Family Court on Child Adoption

Section 142 of the Child's Right Law of Delta State, 2008 established the Family Court, the Section stated as follow:⁴³

‘There shall be established for the State, a Court to be known as the Family Court (in this Law referred to as the “Court”) for the purposes of hearing and determining matters relating to children.’

The Court is at two level⁴⁴ and Section 145 and 146 of the Child's Rights Law of Delta State 2008, provided for the above jurisdiction. Section 144(1) of the same Law also provided for the general jurisdiction thus:

‘Subject to the provisions of this Law and in addition to such other jurisdiction as may be conferred on it by any other law, the Court shall have unlimited jurisdiction to hear and determine-

- a) any civil proceedings in which the existence or extent of a legal right, power, duty, liability, Privilege, interest, obligation or claim in respect of a child is in issue; and
- b) any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence

⁴⁰<https://www.google.com/search?q=reason+for+adopting+the+child+rights+law+of+delta+state+200&client=ms-opera-min-android&chann/el=new&tpsf=opminienf#vhid=zephyr:0&vssid=atritem->>

⁴¹ Nigeria: Children's Day-Delta Releases 35 Children for Adoption (2012) <<https://allafrica.com/stories201205280373.html>> accessed 23 December 2024

⁴²NGO (2021) 'Child adoption in Delta on the rise' <<http://www.nationalaccordnewspaper.com-adoption-in-delta-on—the-rise-ngo/>> accessed 23 December 2025

⁴³ Section 149 of the Child's Rights Act 2003. No. 26.

⁴⁴ Section 143 of the Child's Rights Law of Delta State 2008. Section 150 of the Child's Rights Act 2003

committed by a child against a child or against the interest of a child.

(1) The reference to civil or criminal proceedings in this section includes a reference to a proceeding which originates in the Court and that which is brought by the Court at the High Court level to be dealt with by the Court in the exercise of its appellate or supervisory jurisdiction.

(3) The Court shall, in any matter relating to or affecting a child or a family and at all stages of any proceedings before it-

(a) be guided by the principle of conciliation of the parties involved or likely to be affected by the result of the proceedings, including-

- i. The child,
- ii. The parents or guardian of the child, and
- iii. Any other person having parental or other responsibility for the child; and

(b) Encourage and facilitate the settlement of the matter before it in an amicable manner.

Furthermore, Section 145 of the Law provided for Judges of the High Court and assessors, who shall be Officers not below the rank of Chief Child Development Officers.⁴⁵

The members of the court are also appointed by the Chief Judge of the State.⁴⁶

Pursuant to the above, the Court at the High Court level shall have the power to-

- a. Deal with all matters relating to the enforcement of the rights of the child as set out in this law on the application for redress by a child who alleges that a right has been, is being, or is likely to be infringed in respect of him;
- b. Deal with all offences punishable with death, or terms of ten years and above.
- c. Deal with divorce and custody of a child; and
- d. Hear appeals from the court at the magisterial level.⁴⁷

Additionally, the Delta State Child's Rights Law of 2008 provides for a designated magisterial body comprising magistrates of at least Chief Magistrate rank and members appointed by the State's Chief Judge, with assessors being officers not below the rank of Chief Child Development Officer⁴⁸. The court is properly constituted when it includes a Magistrate and two assessors—one of whom must be a woman and the other a person with substantial knowledge in child psychology or education. According to Section 146(4) of the same law, the magistrate-level court has the authority to try offences and handle all matters not specifically reserved for the High Court. Based on the above, both High Courts and Magistrate Courts have jurisdiction on matters relating to children welfare generally, not limited to adoption.

⁴⁵ Section 145 of the Child's Right Law of Delta State. Section 152 of the Child's Right Act 2003

⁴⁶ Section 145(3) of the Child's Rights Law of Delta State 2008

⁴⁷ Section 145(4) of the Child's Rights Law of Delta State 2008

⁴⁸ Section 146(1) a & b of the Child's Rights Law of Delta State 2008

Persons Who May Adopt

Section 122 of the Child's Rights Law of Delta State, 2008 provided for persons who may apply to the Court for an adoption order thus;⁴⁹

- 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 had attained the consent of his spouse, as required under section 125 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.) all cases specified in paragraphs a, b and c of this section, adopter or adopters shall be persons found to be suitable to adopt the child in question by the appropriate investigating officers.

In *Re P (a minor) (Adoption)*⁵⁰, the Court held that a single person, regardless of gender, can adopt a child, and further ruled that unmarried couples are also eligible to adopt jointly. The Court also held that a man is eligible to adopt a child, challenging the common belief that only women can do so.⁵¹

A person who may be adopted

Generally, it is only juveniles, i.e. persons under the age of seventeen, that can be adopted.⁵² By virtue of Section 121 of the Child's Rights Law of Delta State 2008, which provided that⁵³; 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 should be adopted.

The Child's Rights Law sets out specific requirements that applicants must meet before an adoption order can be granted, as outlined in Section 124 of the Law. These requirements include:

- a. The applicant or, in case of a joint application, one of them is less than twenty-five years old and is not 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 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 State in which the application is made for a period of at least five years;
- d. The applicant is a citizen or, in case of a joint application, both applicants are citizens of Nigeria;

⁴⁹ Section 122 of the Child's Rights Law Delta State 2008. Section 129 of the Child's Rights Act 2003

⁵⁰ *P v P (1978) 4. S.C 141*

⁵¹ *Adedoyin Adepoju v. Adegoke Adedoyin & Anor (1994) 2 NWLR (Pt. 334) 358*

⁵² Section 2 of the Child's Rights Law of Delta State 2008; Section 275 of the Child's Rights Act 2003

⁵³ Section 121 of the Child's Right Law of Delta State 2008; Section 128 of the Child's Rights Act, 2023

- 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;
- 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.

Type of Consent

There are three main types of consent required in granting an adoption order by the Court: consent of the other spouse, consent of the parents and consent of third parties. They are discussed below:

- a) Consent of the other spouse: This situation occurs when either the husband or wife applies alone for adoption; in such cases, the other spouse must give consent before the court can grant the adoption order. In *Adoptive Couple v. Baby Girl*, the U.S. Supreme Court upheld the adoptive parents' rights despite the biological Cherokee father's lack of consent, ruling that his absence due to military service did not invalidate the adoption⁵⁴.
- b) Consent of parents: Consent of parents may also arise in the adoption of a child. Under the Child's Rights Law of Delta and in practice where both opened (in-house) and closed adoption practice takes place, consent of the parents of the child is necessary for an adoption order to be effected by the Court. While on that of closed adoption, which is the main adoption, where the consent of the natural parent is not necessary because the child to be adopted is being abandoned, and there is no trace or link to the birth parents. Consent may be waived if the child is abandoned or the parents are missing or unable to consent, but the applicant must show reasonable efforts were made to locate them, including inquiries with relatives⁵⁵. Notably, if there is no practical way to reach a parent, even if their location is known, the Court may deem that the person "cannot be found"⁵⁶.
- c) Consent of a third party: Sometimes, the Court may require the consent of a third party who is not the child's biological parent, especially if that person exercises parental rights or control based on a court order or a customary law agreement⁵⁷.

Procedure for Adoption under the Child's Rights Law of Delta State, 2008

The Child's Rights Law of Delta State, 2008, governs child adoption in the state, beginning with an application submitted to the High Court or Magistrate (Family) Court, accompanied by the following documents:

- a. Where the applicant is a married couple, their marriage certificate or a sworn declaration;
- b. The birth certificate or sworn declaration of age of each applicant;
- c. Two passport photographs of each applicant;
- d. A medical certificate of fitness of the applicant from a Government hospital;
- e. Such other documents, requirements and information as the Court may require for the adoption.

⁵⁴ (2013) 133 S. ct. 2552

⁵⁵ Tijani, (n 1) 312

⁵⁶ Ibid

⁵⁷ Section 125(2) of the Child's Rights Law of Delta State 2008. Section 132(2) of the Child's Rights Act, 2003

Upon receiving the application, the Court will order an investigation by a child development or supervision officer to assess the suitability of both the applicant and the child for adoption⁵⁸. Once the application is received, the Court appoints a guardian ad litem, usually a welfare officer, to investigate and report on the adoption, while the adopter must give three months' notice and have the child in their care for three continuous months before the order is granted.

In reality, the interim Court Order is subject to the bureaucratic processes of the executive administration. Prospective adopters must still submit a request to the Ministry, attaching the Court's interim Order, and pay the sum of N50, 000 administrative fee. They must also provide the required documentation as specified in Section 118 of the Law. Upon submission of the relevant documents, the Ministry invites applicants for an interview. However, it is common for prospective adopters to be denied forms by the Ministry, effectively screening them out of the adoption process due to unsuitability or ineligibility. This practice grants the Ministry quasi-judicial powers, undermining the intent and purpose of Section 118 of the Law and subjecting the Court's interim Order to administrative discretion.

However, it is not the law to subject the Order of the Court to bureaucracies of executive administration, but both coexist like a Siamese twin, and one cannot exist without the other, before the final Order transferring all rights, obligations and liabilities to the adoptive couples.

Legal Effect of Child Adoption

Once the Court grants an adoption order, the following legal consequences shall take effect:

1. Adoption not only extinguishes parental responsibility but also vests parental responsibility for the juvenile in the adopters.
The adopted child is legally regarded as the biological child of the adopter(s), and once the adoption order is granted, the birth parents lose all legal rights, including the right to seek contact⁵⁹.
2. A blood relationship is created between the adopter and the adopted juvenile. Therefore, the adopter is legally barred from marrying an adopted daughter, and marriage between the adopter's natural child and the adopted child is also prohibited; any sexual relationship in such circumstances is considered incestuous and punishable by up to five years' imprisonment⁶⁰.
3. In respect to succession, the adopted juvenile succeeds to property under the adopter's will or settlement unless a contrary intention is indicated. If the adopter dies without a will, the estate is inherited by the adopted child as though they were the adopter's biological child. In *Aduba v. Aduba*⁶¹, where Titus Aduba was disinherited based on Igbo custom despite living with his adoptive father for 30 years, the trial Court held it

⁵⁸ Section 119(2) of the Child's Rights Law of Delta State, 2008

⁵⁹ *Re: R (A Minor) Adoption: Access (1991) 2 FLR 78*

⁶⁰ *Alloh, (1) 446*

⁶¹ *Aduba v. Aduba (2018) LPELR-45756 (CA)*

inequitable; on appeal, the Court held that the disinheritance violated Section 42 of the 1999 Constitution and was contrary to natural justice. In a similar vein, in the case of *Ukeje & Anor. v. Ukeje*,⁶² it was held that the circumstances of birth of an individual is not grounds to discriminate against him in sharing or succeeding to property.

4. An adoption Order, where made, will discharge any person who was prior to that time obligated to maintain the juvenile.

For purpose of maintenance order under the Matrimonial Causes Act, an adopted child is a child of the marriage.⁶³

Challenges of Adopting Children

There are plethora of challenges that affect the practice of child adoption in Delta State. They are as follows:

1. **Social Stigma:** Married couples facing infertility often avoid adoption due to social stigma, while adopted children also face discrimination, being labeled as rootless or constantly reminded that their adoptive parents are not their biological ones⁶⁴.
2. **Corruption and Fraud:** Corruption, deeply rooted in Nigeria, also affects the adoption process, where bribes, falsified documents, and closed-door proceedings hinder transparency, often compromising the child's best interest despite legal provisions.
3. **Complex Adoption Procedure:** One major deterrent to adoption in Nigeria, especially in Delta State, is the complex and time-consuming process, which often discourages prospective adoptive couples. This cumbersome nature was highlighted by Nwaka and Odoeme (2019, pp.6-7) thus:⁶⁵

‘The legal adoption process has a lot of encumbrances that make it less accessible to adoptive parents. Stringent demands and requirements for adopting a child keep away some adoptive parents who may not meet those requirements. For example, prospective single adopters face more challenges than couples in the process of adoption in Nigeria. In the same way, a low-income earner may not be able to meet all the needed requirements for adopting a baby through an orphanage. Arguably, formal adoption in Nigeria is not for the poor. In addition to these procedural challenges is the long period of waiting for babies. Since most of these formally established institutions depend on abandoned babies and orphans, couples wanting babies for adoption often spend months and years waiting. To avoid such long waiting and other

⁶² *Ukeje & Anor. v. Ukeje* (2014) LPELR- 2272 SC

⁶³ Section 69 Matrimonial Causes Act.

⁶⁴ N.O. Beautrice, ‘Child Adoption in Nigeria: A Legal Appraisal’ (2023) <https://www.Google.com/search?q=child+adoption+in+Nigeria%3A+a++legal+appraisal&client=ms-opera-mini-android&channel=new&tpsf=opminienpf#vhid=zephyr:0&vssid=atritem>
<<https://www.nigerianjournalsonline.com/index.php/IJOCLLEP/article/view/4958>> accessed 15 January 2025

⁶⁵ O.A.I. Chukwuma and C. Eze, ‘Baby Factories versus the objectification of surrogacy cum child adoption in Nigeria’ Human Affairs 31(2) (2021)
<<https://www.degruyterterbrill.com/journal/key/humaff/31/2/html#:~:text=The%20paper%20contends%20that%20the,stocks%2Din%2Trade>> accessed 23 June 2025

encumbrances associated with adoption, childless couples look out for alternatives, which ‘baby factories’ provide.’

Failure to follow adoption guidelines amounts to child trafficking, as seen in *Olaiya v. Olaiya*⁶⁶, where improper adoption led the court to reject the adoptee, prompting many desperate couples to seek illegal shortcuts.

4. Conflict between Customary Law and Statutory Adoption: Under customary law, adoption is often resisted due to the preference for blood ties, with adoption commonly mistaken for guardianship or foster care; many fear adopting a child from unknown origins due to concerns about inherited diseases, criminal background, or spiritual issues⁶⁷.
5. Lack of Public awareness of adoption practice: Another major challenge facing child adoption is the lack of public awareness, as many people do not fully understand it as a solution to childlessness. Consequently, some adoptive couples fall victim to illegal adoption, and many are unaware of the role of the Ministry of Women's Affairs in overseeing legal adoption processes.
6. Lack of Funds: Inadequate funding hampers the Ministry of Women Affairs from effectively carrying out its adoption-related responsibilities, often leading welfare officers to compromise the integrity of social inquiries on the suitability of adoptive couples, both before and after the court grants the adoption Order.

Conclusion

As earlier defined, adoption is the process by which a juvenile is fully separated from their birth parents and legally becomes the child of the adoptive parents, possessing all the rights, privileges, and responsibilities of a biological child. Child adoption under the Child's Rights Law of Delta State, 2008, as an alternative solution to childlessness and has come to stay to bring succour to prospective couples. This paper had a foray focus on the applicable legal frame works regulating child adoption, the relevant sections as to the requirements for adoption, who may adopt, who may be adopted, legal effects of adoption and challenges bedeviled the practice of adoption. According to the United Nations International Children's Emergency Fund (UNICEF), there are 153 million orphaned children worldwide, with 69 million suffering from malnutrition. In light of this, supporting child adoption aligns with UNICEF's mission by providing shelter and a sense of belonging to vulnerable children⁶⁸.

Recommendations

This paper has provided practical solutions to improve child adoption in Delta State. The following are the recommended measures:

1. A definite time frame should be set for completing child adoption under the Delta State Child's Rights Law 2008, as the current uncertainty discourages many prospective applicants.

⁶⁶*Olaiya v. Olaiya* (2002) 8 N.W.L.R (Pt. 782) 652

⁶⁷ Beatrice, *ibid*

⁶⁸ Olomjobi, (n 1) 260

2. Section 122(1)(c) of the Child's Rights Law of Delta State 2008 should be amended to reduce the minimum age for single applicants from 35 to 30 years, to encourage more adoptions and provide homes for abandoned children.
3. The Delta State Government and NGOs should use mass media to raise awareness on child adoption as a solution to childlessness, countering stigma and discouraging reliance on baby factories.
4. Officials of the Ministry of Women Affairs and Social Development in Delta State should be better trained to conduct thorough investigations before adoption Orders are granted.
5. Section 136 of the Child's Rights Law of Delta State 2008 should be amended to impose stricter penalties for bribery and corruption in adoption cases, as the current mild sanctions fail to deter offenders.
6. The Child's Rights Law of Delta State 2008 should be amended to include whistleblower provisions for exposing violations in child adoption practices.
7. We recommend that welfare officers conduct check-ups on adopted children at least every two years until they reach adulthood, with contact details provided if the child is abroad.
8. We recommend amending the Child Rights Law of Delta State 2008 to establish a specialized Children Police Unit to support child adoption in Delta State.