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AN OVERVIEW OF THE NIGERIAN CHILD RIGHTS ACT, 2003: KWARA STATE AS CASE STUDY.

BIOLA ADIMULA *

INTRODUCTION:

The trio of The United Nations Convention on the Rights of the Child (CRC); the African Charter OAU on the Rights and Welfare of the Child and the Nigeria's Child's Rights Act (CRA), describes a child as every human being below the age of eighteen (18) years.

It is evident in our society that this category of human beings faced peculiar problems which they are unable to solve for themselves as a result of the state of their immature minds and the positions they occupy in their homes and society at large.

Special Problems faced by millions of Nigerian Children range from problem of disadvantage, discrimination, abuse and exploitation sometimes in appalling circumstances. These problems not only compound the risks of survival and create formidable obstacles for the development of children, but are major challenges in their own right, requiring special protection measures if they are to be addressed effectively¹.

The United Nations Committee on the Rights of the Child (CRC) expressed a deep concern on the Rights of the Child² as a result of the inadequacies of the existing legal frame work, the policy regime and social programme to provide effective protection for children against various form of abuse, exploitation, discrimination and disadvantages.

The UN Committee on the Rights of the Child, in its concluding observations of 11th October, 1996 on Nigeria's initial report on the implementation of the Convention on the Rights of the Child (CRC) expressed the following deep concerns, among others:

- i.. the persistence of certain harmful traditional practices and customs that have a negative bearing on the enjoyment of the

* LL.M; Member, Kwara State Child Rights Implementation Committee

1. See UNICEF and FGN: (2001), *Children's and Women's Rights in Nigeria: A wake up Call-Situation Assessment and Analysis*, pp 1-12.

2. UN Committee on CRC (1996):- *Concluding Observation Nigeria's Initial Report on the Implementation of the CRC in Nigeria*, Vol. 2, National Child Rights Implementation Committee, Abuja.

rights guaranteed under the convention;

- ii. the problems of violence against children, and the physical abuse of children in the family, in schools, in the community and in the society;
- iii. current legislation with regard to the administration of juvenile justice institutionalisation of children does not appear to conform to the principle and provisions of the Convention.

These concluding observations are highlighted in order to condition the rationale for the Child Rights Act, 2003.

The three main objectives of this paper are: to proffer answer to why Nigeria is obligated to promote and protect children's rights, using law among other measures; examine the structure and contents of the Child Rights Act, 2003 and to identify specific practices against children the Child Rights Act seek to eliminate, using Kwara State as a case study.

OBLIGATION TO PROMOTE AND PROTECT THE RIGHTS OF THE CHILD³

By virtue of Nigeria's ratification of both the UN Convention on the Rights of the Child in 1991 and the African Charter on the Rights and Welfare of the Child in the year 2000, Nigeria is obligated under Article 4 of CRC to "undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention".

Thus the answer to the above is based on the following reasons⁴:

- a. recognition of the fact that Children's rights are human rights and that children constitute the most vulnerable segments of humanity in our society.
- b. glaring evidence that children have been among the main victims of the deepening poverty and the related crisis of governance.
- c. the well being of children in every State is largely the responsibility of the governments under whose rule they live.

3. See Ladan M.T., *An Overview of State Obligations in respect of Children's Rights in Nigeria. A paper presented at the National Stakeholders Forum on the passage of the Child Rights Bill, 2003, at the National Assembly Complex, Abuja, March 18, 2003, pp31-38.*

4. *Ibid*, at pp 32-36. See also Federal Ministry of Women Affairs and Youth Development, *Abuja:- National Report to follow up to .1990.*

- d. It is the responsibility of the State to use law, policy, other measures, to protect the best interests of children from abuse, violence and war in Nigeria, from all universal harm, deprivation, access to good health and health services in order to reduce child and adolescent mortality rates, preventable diseases, ill-health and malnutrition which threaten and destroy many lives in Nigeria.
- e. Children's rights are survival issues in Nigeria (the right to life and health).
- f. Children's rights are development issues in Nigeria, that is the process by which an individual is able to a greater or lesser extent to develop to his or her full potential.
- g. Children's rights are protection issues in Nigeria such as sexual exploitation, trafficking in girls for commercial sex work (prostitution), child labour, child begging, selling members of their children, girl-child/sexless marriages, involvement of adolescents in communal conflicts, violence against children, weak juvenile justice etc.
- h. Children's rights are participation issues in Nigeria. Reluctance of children to participate progressively in decisions as their maturity develops, absence of consent in child betrothal, limited opportunities for youth participation in decision making on issues affecting their lives and the life of the community of which they are part of - fueling frustration.

It is pertinent to mention here that the ratification of the Convention on Right of the Child in 1991 and the OAU Charter in 2000 has made the obligation therein binding on the State Parties unless it is domesticated into Nigerian domestic law. Article 12 of the 1999 Nigerian Constitution states "no treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into the Law by the National Assembly".

Neither the Convention on the Rights of the Child nor the OAU Charter has yet been "domesticated" into Nigerian law, a serious legislative omission in the protection of the Children's rights.

STRUCTURE OF THE CHILD RIGHTS ACT (CRA) 2003

The structure of the Child Rights Act⁵ emanated by the mandate to draft a legislation which incorporates all the rights and responsibilities of children and which will consolidate all laws relating to children into one single piece of legislation, as well as specify the duties and obligation of government, parents and other authorities organizations and bodies in relation thereto.

Within the context of such a mandate, therefore the Act has been divided into twenty-four (24) Parts and eleven (11) schedules. The various parts address broadly rights and responsibilities, protection and welfare of children, duties and responsibilities of government, institutions for children, as well as other miscellaneous matters. The schedules on their own part deal with rules and regulations, procedures and specified forms for applications and/or for decisions⁶.

CONTENTS OF THE ACT

The Child Rights Act borrowed a leaf from the UN, CRC and the OAU Charter in respect of the guiding principles for the promotion and protection of the rights of children⁷.

Under sections 1-2 (Part 1), the Act provides that the best interest of the child shall be of primary or paramount consideration in all actions to be undertaken whether by an individual, public or private body, institutions or service, court of law or administrative or legislative authority. Further, the Act provides that necessary protection and care shall be given to the child for his/her well-being, taking into account the rights and duties of the child's parents, legal guardians and other bodies legally responsible for the child.

Part II (Sections 3-20) of the Act provides for the rights and responsibilities of a child in Nigeria. Accordingly, it entrenches the following fundamental rights⁸ for the child, namely, the rights to survival and development, to a name, to freedom of association and peaceful assembly, to freedom of thought, conscience and religion, to private and family life, to freedom of movement, to freedom from discrimination, to dignity of the child, to leisure, recreation and cultural activities, to health

5. *The Child Rights Act, 2003, sets out in 278 Sections (24 Parts and 11 Schedules) the rights and responsibilities of a child in Nigeria and provides for a system of child justice administration and the care and supervision of a child amongst other things.*

6. *Ibid*, sections 1-278

7. *Ladan supra* note 6, at pp 31-38.

8. *Under Section 3 of the Child Rights Act 2003, in addition to the provisions of Chapter four of the 1999 Constitution, or any successive constitutional provisions, every child has the rights set out in Part II of this Act.*

and health care services, to parental care, protection and maintenance, to free, compulsory and universal primary education, as well as encouragement of the child to attend and complete secondary school education⁹.

The Act also guarantees the right to special protection measures of a child in need of such protection as is appropriate to his/her physical, social, economic, emotional and mental needs and under conditions which ensure his/her dignity, promote the child's self-reliance and active participation in the affairs of the community, as well as the provision to a child with such assistance and facilities necessary for the child's education, training, employment, rehabilitation and recreational opportunities in a manner conducive to the child's overall development.

Further, the right of an unborn child to protection against any harm or injury caused willfully, recklessly, negligently before, during or after the birth of that child. And to benefit from the estate of the deceased parents if any one of them dies intestate, having survived any one of them.

Furthermore, the Act provides for the contractual right of a child only for necessities, and any contract entered into by a child below the age of legal majority, that is, 18 years, for repayment of money lent or for payment of goods supplied, shall be void.

Responsibilities of a Child and Parent¹⁰

The Child rights Act provides that subject to age, ability and other legal limitations, every child in Nigeria shall work towards the cohesion of his/her family and community; respect his/her parents and elders at all times and assist them in case of need; serve the Federal Republic of Nigeria by placing his/her physical and intellectual abilities at service; contribute to the moral well-being of the society; preserve and strengthen solidarity and achievement of Nigerian, African and World unity, peace, security, freedom, equality and justice for all persons; and to relate with other members of the society, with different cultural values in the spirit of tolerance, dialogue and consultation.

The duty to provide the necessary guidance, discipline, education and training for the child in one's care in order to secure the necessary assimilation, appreciation and observance of the child's responsibilities mentioned above, lies on every parent, guardian, institution, persons and authority responsible for the care, maintenance, upbringing,

9. This is consistent with Chapter Two of the 1999 Nigerian Constitution

10. See Section 19 of the CRA, 2003.

education, training, socialization, employment and rehabilitation of the child¹¹.

Protection of a Child against Discriminatory, Harmful¹² and Exploitative Practices.

Part III (sections 21-40) of the Child Rights Act provides for the protection of the rights of the child through the prohibition of child marriage, child betrothal, infliction of tattoos and skin marks, exposure to use, production, trafficking, etc of drugs and psychotropic substances, use of children in any criminal activity, abduction and unlawful removal and transfer of a child from lawful custody, forced, exploitative or hazardous child labour, including outlawry of employment of child as domestic helps outside their own home or family environment, buying, selling, hiring or otherwise dealing in children for the purpose of hawking, begging for alms, prostitution, unlawful sexual intercourse, other forms of sexual abuse and exploitation prejudicial to the welfare of the child¹³.

Further, the Act prohibits recruitment of children into the Armed Forces of Nigeria, and importation of harmful publication which portray information such as the commission of crimes, acts of violence, immoral and indecent representations which tends to corrupt or deprave a child; whilst the Act further preserves the continued application of all criminal law provisions securing the protection of the born or unborn child.

Additional Child Protection through Civil and Welfare Proceedings

Part IV (Sections) 41-49) of the Act provides for additional protection through civil and welfare proceedings. Thus, it makes provisions for securing assessment orders in relation to the ascertainment of state of health or development of, or the way in which the child has been treated, with a view to enabling a determination as to whether the child is suffering or is likely to suffer significant harm. And to this end, the Appropriate Authority may secure an order from the Family Court for emergency protection of children where and when necessary. The Act additionally imposes duties on a State government to safeguard or

11. *Ibid* Section 20.

12. By the removal of the original section 25 retained as section 22 in the draft Bill and when the draft was officially gazetted but before the October 2002 unfortunate rejection of the Bill due to some grey areas, such as the Prohibition of Female Genital Mutilation (FGM) in the above section, Children especially the girl child, today, do not enjoy any legal protection against one of the most harmful and discriminatory traditional Practices in Nigeria. The deletion of the above section on FGM from the current current Act is not only unfortunate but also very disappointing.

13. On the rationale behind the new Child Justice Administration in Nigeria see UNICEF Fact Sheet, June, 2002:- on Child Trafficking in Nigeria, pp. 1-4; UNICEF Fact Sheet, 2003:- Sexual exploitation in Nigeria pp. 1-5.

promote the welfare of any child in danger or suspected to be in danger of suffering significant harm within its jurisdiction.

Protection of Children in need of care and Protection from Physical or Moral danger

Part V (Sections 50-52) of the Act empowers a child development or police officer or any other authorized person to bring a child in need of care and protection before a court for a corrective order, if he has reasonable grounds for believing that the child is an orphan or is deserted by his relatives, neglected, ill-treated or battered by his parent or guardian or custodian, or found destitute, wandering, homeless, or surviving parent undergoing imprisonment, mentally disordered, or otherwise severely handicapped; or found begging for alms, in company of a reputed/common thief or prostitute, or otherwise beyond parental control or exposed to moral or physical danger.

Other provisions of the Act are: General care and Supervision order, sections 53-62; use of Scientific Testing in determining Paternity or Maternity of a Child, Sections 63-67; Possession and Custody of Children Sections 68-81; Guardianship, Wardship, Fostering and Adoption Sections 82 -92; establishment of the Family Court, Child Minding, Day Care Centres and Allied Homes Sections 149-203; Child Rights Implementation Committees Sections 260-271; Miscellaneous Matters Sections 272-274.

KWARA STATE AS CASE STUDY:

"Child" as a subject is not mentioned in the 1999 constitution of the Federal Republic of Nigeria, the Constitution however in chapter 4 makes provisions for the Fundamental Human Rights of Persons who are Nigerians which still covers a child, because a child is a "person".

The Child's Rights Act is the over all review and codification of all laws and rights relating to the welfare of the child in a single Law Book, compiled by competent hands, and passed by the National Assembly, thus to have a similar legislation in the State we have to enact a similar one by amending the present Child's Rights Act to suit our environment.

The concept of the Child's Rights Act 2003 therefore, is to enable the Nigerian child to have specific Rights. Although there are existing Laws in relation to the rights of the child, e.g chapter 19 of the Laws of Eastern

Nigeria 1959, chapter 21, of the Laws of Northern Nigeria 1959, and chapter 20 of the Law of Western Nigeria 1946, Laws of Bendel State 1946 and other Laws. These laws are however old and due for review, amendments and codification.

At the National level, the Child's Rights Act has been passed and States urged to produce domesticated version of same and pass them into Law¹⁴.

All the House of Assemblies throughout the nation have been urged to adopt the Act. Many have already adopted it. While doing this we must look at our environment, consider the provisions and amend it to suit the peculiarity of our immediate community so that the Act will be enforceable and acceptable to the larger proportion of our people.

In Kwara State, just like other parts of Nigeria, children are suffering and need to be protected. The mortality rate among children calls for concern, this arises from many sources, including malnutrition, lack of immunization, etc, polio is an example, most children that would have walked and be useful to the society are crippled. It has been observed that some parents are careless.

Children are worst affected by poverty, illiteracy, child trafficking, prostitution, hawking, child labour, destitution, early marriage, thurgery, pick pocketing, theft and crimes in various categories.

The Child's Rights Laws seek to eliminate the following:-

- a. **Illiteracy:** it is common in some parts of Kwara State to see school age children that are not registered in schools, while in other areas only the male children are trained. This situation has brought some type of backwardness and deprivations to communities concerned, leading to lack of knowledge of one's right talk less of fighting for it by the affected children. With passage of the Bill into Law, children education will be enforced and this will lead to knowledge of their rights. An example is a sixteen year old orphan, having lost both parents, brothers and sisters, she is the only surviving child of a deceased Policeman. Her Paternal Aunty was pursuing her father's benefits and gratuity, she wrote¹⁵ the International Federation Of Women Lawyers, Kwara State Branch to help intervene to have her late father's benefits for her academic pursuits. Today, through the Association's intervention and the Police understanding, she has

14. I. Banire, pp 6 of paper presented during the advocacy on Child Right Bill in Kwara State at Kwara Central Senatorial District.

15. Letter dated 16th November, 2004.

collected part of her father's benefits. Her success was largely due to her literacy.

It is the writer's submission that with the domestication of Child Rights Act, Section 15 will have room for enforcement, of government responsibility to provide free, compulsory and universal basic education, with parents and guardian ensuring primary, junior and senior secondary education for their children and wards, failure which violators will face the penalties.

b. **Early marriage- Section 21 provides that:**

"No person under the age of 18 years is capable of contracting a valid marriage and accordingly, a marriage so contracted is null and void and of no effect."

Early marriage is a situation where a girl-child that is suppose to be in school is forced into early marriage, turned to children producing machine with no specific trade, later in life she is abandoned by her husband for her well educated, articulate colleague who went to school and made good a chosen career.

More pathetically is the situation where these girl-children are introduced to sex and child birth in their early life when their body system is not matured enough, this often resulted in to vescio, vagina fistula (VVF)¹⁶ an ailment that will render that girl-child useless for the rest of her life. VVF brings about continuous flow of urine and even feaces, which brings about continuous bad odour that, does not allow for socialization etc. At times the young girls are married to much older men, sometimes men old enough to be their fathers or grandfathers. It leads to withdrawal from school and the society.

It is important to mention that the provisions of sections 21 to 23 of the Child Rights Act will take care of this problem in Kwara State.

c. **Child Trafficking- Section 30 (2) (d).**

This is the act where children are taken to neighbouring States and Countries or even overseas. They become shop keepers, hawkers, prostitutes, etc They are subjected to all inhuman conditions at their tender age, such children return to Nigeria and take vengeance on the society. They will so much hate the society and make people miserable since they may be of the opinion that their parents, society etc have failed them by not taking care of them and providing for their needs. They become

16. Banire, pp 10 of paper presented during the advocacy on Child Right Bill in Kwara State at Kwara Central Senatorial District.

Armed Robbers, fraudsters, Thieves, Prostitutes etc. some of these children taken by traffickers are packed in vehicle containers like goods. Further still, some are taken through the sahara desert and many die because of the harsh conditions.

- d. **Prostitution-** is well pronounced in our society, it is rampant among our young girls, many below the age of 18 years, some slightly above it, resulting in increase in the rate of HIV/AIDS this calls for much concern.

Section 30 (2) (a) provides that:
"a Child shall not be used for the purpose of begging for alms, guiding beggars, prostitution, domestic or sexual labour or for any unlawful or immoral purpose."

- e. **Street Hawking- Section 30 (2) (c).**
 This is very common in our society. It is a situation where wares are hawked about by children some wares may not even be more than N50-N200 worth. While engaged in this act, many lose their lives. They are picked by human traffickers and sold into slavery, some are picked by ritualist and their body parts used for ritual purposes, many of them are even raped. There is the pathetic story of a girl of 8 years old involved in street hawking that was killed by a 100 ton truck, when she tried to sell her wares to somebody on the other side of the road. She decided to dash quickly under the truck that was held in a traffic hold-up. While she was under the truck trying to get across, the traffic started to move and so did the truck and she was crushed by the truck¹⁷.

- f. **Ritual Killing:**
 Killing and maiming of children for rituals are common in Kwara State. It is usual to hear of missing children only to find their corpses few days later in shrines or unusual places in the bush, with some sensitive parts of their body already removed by ritualists. Some are lucky not to have died, but maimed, they remain a burden to the society for the rest of their lives.

For Example, recently, a child went to farm with his father in a village in Ifelodun Local Government Area of Kwara State, being sent on errand by the father in the farm, he fell into the hands of ritualists who removed his two eyes, but for the timely intervention of neighbouring farmers who discovered the boy's situation and alerted the father. Today, the boy is being trained at

17 I. Banire, pp 10 of paper presented during the advocacy on Child Right Bill in Kwara State at Kwara Central Senatorial District.

the Kwara State School for the Handicapped courtesy of the Kwara State Government¹⁸.

- g. **Unlawful Sexual Intercourse with a child: Section 31.**
This is a situation where somebody have a sexual intercourse with a child i.e persons below 18 years of age. The punishment is enforced on the violator of the Section whether he knows that the child is under 18 years or not.
We have heard of some schools Principals most especially violating this provisions. The Principal of a well entrenched Mission School in Ilorin has been relieved of his job as a result of putting girls in family way and regular seductive and unholy touch of the young girls bodies, exposing them to premature sex. It is important to note that the Act has put the Teachers and Principals as Protectors of these children under Section 16 (2).
- h. **Child neglect: Section 20** of the Act put the responsibility of protecting the children and giving necessary guidance to them on the parents, guardians, institutions and other Authorities. These roles are largely neglected by these categories of people (bodies) and this has brought hardship, ill health, depression and even untimely death to some children.
The story of a 12 year old boy of Gaa Akanbi LGEA school in Ilorin, Kwara State who died in May, 2005 is a pathetic one. The little boy went to school on the fateful day after early morning hawking for his mother. Not being catered for, looking dirty for not taking his bath, he went to school rough. The Teachers who were irritated by his look sent him back to go and take his bath at home and dress properly. On his way home, the poor boy discovered a block constructed water reservoir and he put off his clothes and shoes and packed them with his book beside the reservoir before jumping into the reservoir to bath and he eventually died in the water. When the passers by discovered the corpse, they reported to the school where nobody responded or showed any concern until his mother was traced. In her cry for her dead son, she confessed she went to plait her hair that morning that was why she could not ensure proper appearance of her son before leaving for school.
- Child in thuggery, child in crime, child labour, child abuse are all product of child neglect, parents throw their children into the streets to fend for them, in the process, they are exposed to all sorts of dangers, they get hardened and become experts in evil and immorality, Children education are relegated to the

18. R.A Adimula on paper presented during advocacy visit on passage of Child Rights Bill into Law in Kwara State on 25th May, 2005, pp 8-9.

background. Through child neglect/abuse, parents run away from their responsibilities of taking care of the feeding, clothing and education of their children.

- i. **Child abuse:** Child abuse refers to a situation in which a child suffers serious physical injury inflicted by others, than accidental means. It is suffering harm by reason of neglect, malnutrition or sexual abuse, is going without necessary basic physical care or is growing up under conditions which threatens his or her physical & emotional survival. The protection of children from such abuse is an important feature of the Convention on the Rights of the Child and Child Rights Act under Sections 30 and 33.

- j. **Child labour:** Section 28 prohibits exploitative forced child labour.

Children are not to be used for the purpose of begging for alms, guiding beggars, prostitution or unlawful immoral purposes; or as slaves, debt bondage, hawking, production of pornography or used for any activity in the production or trafficking of illegal drugs and any other activities relating to illicit drugs as specified in the National Law Enforcement Agency Act. Among reasons commonly adduced for child labour is family financial supplementation. However, this is a very short term gain of which the long term loss is inevitable.

- k. **House Helps:** Section 20 (d) provides that:

"no child shall be employed as a domestic help outside his own home or family environment".

The employment of school age children as domestic helps and the middle men who see it as a lucrative business trading in the lives of these children, mortgaging their future will be curtailed if the Child Rights Bill is passed into Law and the children that falls in this category will be able to live a better and educated lives. During the awareness and sensitization campaign of the Child Rights Act in all the Local Government Areas in Kwara State, some Local Government Areas of Kwara North Senatorial Districts where this practice is common, expressed bitterness of the evil the practice brings to them and their communities, as some of their children sent to be househelps may never return to them, others become prostitutes, some are impregnated prematurely with no father to claim the children born, while many can not live a fulfilled life again after the job. However, the cause

Violence against Children: violence in the home undermines children's survival and children who witness abuse or are themselves abused, exhibit poor health, social and behavioral problems. Physical (including sexual) abuse leave children traumatized and unable to build the relationship of trust and intimacy that are essential for their healthy development. Millions of Africa's children, as well as many children around the world, have their rights to live put at risk by continuation of violence that stretches from household situations in which children are often exposed to or are victims of violence and abuse on a routine basis, to conflict situations at community/national level as a result of which many children are exposed to violence.

* A child shall not be used, procured or offered for any activities in the production or trafficking of illegal drugs and other activities relating to illicit drugs as specified in the National Drug Law Enforcement Agency Act*.

Sections 25 and 26 also prohibits exposure or involvement of a child in the use of narcotic drugs and psycho tropic substances and in any other criminal activities.



n. Recruitment into the Armed Forces. Section 34 provides that:

"No child shall be recruited into any of the branches of the armed forces of the Federal Republic of Nigeria"

(2) "The Government or any other relevant agency or body shall ensure that no child is directly involved in any military operation or hostilities."

The Act has imposed on the government responsibilities to protect the child against violence and armed conflict. The effect of armed conflict on the rights of the child cannot be over-emphasized. Available data shows that in the last decade alone, 2 million children were slaughtered, 6 million were seriously injured or permanently disabled and 12 million were left homeless. More than two-thirds of the situations of armed conflict in the world are taking place in Africa.

CONCLUSION:

It is evident that from the above, the rights of the children can not be compromised for any reason, as all the rights stated in the Act are for the progress, physical and intellectual development of our children. One can safely say that it is a way of preparing our future leaders for a better tomorrow if the children are given opportunity to enjoy these rights. It is noteworthy that, millions of the world's children lead safer, healthier and fuller lives than they did many years ago when the Convention on the Rights of the Child was adopted and when the World Summit for Children was held. However, "yet too many children still live outside the protection of the society. Too many still see their rights abuse or threaten". Most of this 'toomany' are found in developing countries like Nigeria. Their daily plight must challenge governments of which we are part.

The role of the Government cannot be over emphasized, government need to give a conducive environment to her citizenry to allow for the workability of these provisions. The issue of poverty in Nigeria and especially Kwara State needs to be addressed. But the truth is that, the level of poverty in our society is very high, revealing that the generality of the populace need to participate and sacrifice wealth and commitment to make the law have the intended effect in the society.