

THE BEST INTERESTS OF THE CHILD: THE CHILD RIGHTS ACT 2003 AND THE *MAQĀSĪD AL-SHARĪ'AH* PERSPECTIVE ON CHILD'S RIGHT TO HEALTHCARE

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ABSTRACT

The best interests of a child are a fundamental principle under the Nigerian Child Rights Act, 2003, requiring consideration in all decisions affecting a child's healthcare. Similarly, *Maqasid al-Shariah* (the higher objectives of Islamic Law) contains robust provisions for child protection. Despite this framework, an under-five mortality rate still stands at 102/1,000. This article compares how the Child Rights Act 2003 and the *Maqāṣid al-Sharī'ah* operationalise the "best interest of the child" in medical decisions. The article employs a doctrinal method, which includes analyses of primary and secondary data. It is found that twelve (12) northern states show *Sharī'ah* adoption cut infant deaths by 36% and raised vaccination uptake 30%, yet 1.3 million under-fives remain partially immunised where parental refusals persist. The article concludes that both legal frameworks- through the CRA's judicial override provision and *Maqāṣid's* imperative of *hifṣ al nafs* (protection of life) provide authoritative grounds for authorising life-saving medical treatment against parental objection.

Keywords: Healthcare, child; best-interest; Nigeria; *Maqāṣid al-Shar'iah*

Introduction

Nigeria's 218 million citizens make it the most populous country on the African continent and the seventh-largest national polity on earth. Roughly half of that population is under the age of eighteen, a demographic reality that places an extraordinary premium on any legal

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rule, cultural norm or institutional practice that affects the health and survival of children.¹ Yet the very size, diversity and constitutional architecture of the Nigerian federation mean that the rules governing childhood are anything but uniform. A single child in Kano State may, in theory, be simultaneously subject to the federal Child Rights Act (CRA) of 2003, the Sharia legal system reintroduced in that state in 2000, the customary law of the Hausa-Fulani emirates, and the general common-law principles inherited from British colonial rule. When parents refuse a blood transfusion, a vaccination or an emergency caesarean section because such interventions violate their religious or cultural beliefs, clinicians and judges must navigate this dense thicket of overlapping and sometimes colliding normative orders. The stakes are not academic: Nigeria still records an under-five mortality rate of 102 deaths per 1,000 live births, and vaccine-preventable diseases such as measles and meningitis continue to claim thousands of young lives every year.²

The CRA was enacted in 2003. It represents a comprehensive attempt to domesticate the United Nations Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC). Its flagship provision, section 1, declares that “in every action concerning a child, the best interest of the child shall be the primary consideration”. Section 13 goes on to spell out an enforceable right to “the best attainable state of physical, mental and spiritual health,” including routine immunisation, essential medicines and emergency care. The Act authorises courts to override parental decisions that jeopardise a child's life and imposes criminal penalties on caregivers who fail to secure basic preventive services such as vaccination.

Furthermore, within three years of the CRA's enactment, twelve northern states home to roughly forty per cent of Nigerian children had either declined to domesticate the statute or had passed resolutions calling for its revision on the ground that several of its provisions abolish the very basis and essence of the Sharia and Islamic culture.³

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¹National Population Commission (NPC).

²UNICEF Nigeria, 'Childhood Diseases' <<https://www.unicef.org/nigeria/childhood-diseases>> accessed 12 October 2023.

³A Raufu, 'Northern Nigerian States Oppose Child Rights Act' (2005) 330 *British Medical Journal* 1484.

These objections crystallise around four flash-points: (i) the CRA's definition of a child as any person under eighteen, which conflicts with the classical Islamic threshold of puberty; (ii) its prohibition of child marriage; (iii) its recognition of full legal adoption, a concept that severs biological lineage and is therefore not recognised in Islamic jurisprudence; and (iv) its juvenile-justice model that emphasises rehabilitation over retributive punishment. The result is a patchwork legal map in which the CRA is fully operational in the southern twenty-five states and the Federal Capital Territory, while the northern twelve states apply a parallel Sharia-based regime that draws upon the Qur'an, the Sunnah and the classical science of the higher objectives of Islamic law (*Maqāsid al-Sharī'ah*).

What has received far less scholarly attention has been how these dual regimes operate within clinical and surgical settings. When a Jehovah's Witness parent refuses a life-saving blood transfusion for an eight-year-old in Lagos, the Pathfinder case of *Esanubor v Faweya*⁴ tells us that the Court of Appeal will authorise the transfusion under the CRA's best-interest principle.⁵ But what happens when the objection is voiced not by a Witness in Lagos but by a Muslim father in Kano who insists that a proposed chemotherapy protocol contains alcohol-based excipients that violate the Qur'anic prohibition of *khamr*? Or when polio-vaccination teams are turned away from households that have heard sermons claiming that the oral vaccine is a Western plot to sterilise Muslim girls? These are not hypothetical scenarios: Nigeria was, until 2020, one of only three countries in the world where wild poliovirus remained endemic, and the final chains of transmission were located precisely in the Sharia-adopting states of Kano, Borno and Yobe.⁶

However, recent empirical work in health economics has added a quantitative dimension to the debate. Alfano (2022) employs a triple-difference design to show that the reintroduction of Sharia in northern Nigeria between 2000 and 2004 was associated with a 36 per cent reduction in infant mortality, a 30 per cent increase in vaccination

⁴ [2009] 16 NWLR (Pt. 1166) 169 (CA)

⁵ *Esanubor v Faweya* [2009] 16 NWLR (Pt. 1166) 169 (CA).

⁶ World Health Organisation, 'Poliomyelitis' <https://www.who.int/news-room/fact-sheets/detail/poliomyelitis> accessed 12 October 2023.

uptake and an additional two months of exclusive breastfeeding.⁷ These findings suggest that the *Maqāṣid*-based emphasis on preservation of life (*ḥifẓ al-nafs*) can translate into measurable public-health gains. Yet the same dataset reveals that when life-saving interventions are refused on putatively religious grounds, mortality risk spikes unless a statutory override, typically the CRA, intervenes. The policy challenge, therefore, is not to choose between secular rights and religious duties, but to engineer a legal and institutional environment in which both normative systems reinforce rather than undermine each other.

Best Interest of the Child Principle under the CRA 2003

The Nigerian Child Rights Act (CRA) of 2003 represents a landmark legislative effort to consolidate and enforce the rights of children across the nation, drawing heavily from international human rights instruments. The Act's primary objective is to ensure the holistic development and protection of every Nigerian child, a goal that is fundamentally anchored in the principle of the best interest of the child. This principle is not merely a guiding philosophy but a legally enforceable standard that permeates the entire legislation, influencing how all stakeholders, including government bodies, parents, and institutions, must approach decisions affecting children. The CRA was enacted to harmonise the patchwork of existing, often uncoordinated, laws related to children, such as the Constitution of the Federal Republic of Nigeria, various state-level Children and Young Persons Laws, and the Marriage Act, into a single, comprehensive legal framework. This consolidation was deemed necessary to provide a clear, unified, and child-specific legal structure that could effectively address the multifaceted challenges faced by children in Nigeria, from abuse and discrimination to inadequate access to essential services like healthcare and education. The Act's structure, comprising 278 sections divided into 24 chapters and 11 schedules, underscores its comprehensive scope, aiming to translate the lofty ideals of international conventions into tangible domestic law.

Foundational Provisions of the CRA 2003

The foundational provisions of the Child Rights Act (CRA) 2003 are meticulously designed to enshrine the best interest of the child as a paramount legal principle, ensuring that the welfare and well-being of

⁷M Alfano, 'The Effects of Religious Legal Systems on Child Health: Evidence from the Introduction of Sharia Law' *Journal of Health Economics*, (2022) 83 (10) 2623.

the child are the primary focus in all matters affecting them. This is most clearly articulated in Section 1 of the Act, which establishes the overarching standard for all subsequent provisions. The Act's drafters, drawing heavily from international human rights instruments, sought to create a domestic legal framework that not only protects children from harm but also actively promotes their holistic development. The comprehensive nature of the Act, which consolidates and harmonises previously fragmented laws, reflects a deliberate effort to move away from a patchwork of uncoordinated statutes towards a unified, rights-based approach to child protection. This consolidation is crucial in a diverse nation like Nigeria, where multiple legal systems including statutory, customary, and Islamic law coexist, often leading to conflicts and inconsistencies in the application of justice for children. By establishing a clear, statutory "best interest" standard, the CRA provides a powerful tool for courts, government agencies, and child protection practitioners to navigate these complexities and prioritise the child's needs above all other considerations, including cultural or religious norms that may be detrimental to the child's welfare.

The Primacy of the Child's Best Interest

Section 1 of the Child Rights Act (CRA) 2003 serves as the cornerstone of the legislation, unequivocally establishing the "best interest of the child" as the paramount consideration in all actions concerning a child. The provision states: "In every action concerning a child, whether undertaken by an individual, public or private body, institutions, court of law, administrative or legislative authority, the best interest of the child shall be the primary consideration". This language is not merely aspirational; it imposes a legal duty on all actors, from parents and guardians to government officials and judicial bodies, to prioritise the child's welfare above all else. The inclusion of this principle as the very first section of the Act underscores its fundamental importance and sets the tone for the entire legal framework. It acts as a guiding interpretive tool for all other sections of the Act, ensuring that any decision or policy is filtered through the lens of what is most beneficial for the child. This provision is a direct reflection of Article 3(1) of the United Nations Convention on the Rights of the Child (CRC), demonstrating Nigeria's commitment to aligning its domestic laws with international human rights standards. The broad scope of Section 1, applying to "every action," ensures that the principle is not confined to specific contexts like custody disputes or criminal proceedings but extends to all areas of a child's life, including healthcare, education, and social

welfare, making it a truly comprehensive and transformative legal standard.

The best interest of the child principle, as enshrined in Section 1 of the CRA, is a multifaceted concept that requires a careful and individualized assessment in each case. The Nigerian judiciary has played a crucial role in interpreting and applying this principle, particularly in cases involving child custody and guardianship. In the case of *Williams's v Williams*⁸ the Supreme Court of Nigeria interpreted the phrase "paramount consideration" to mean "preeminent and superior consideration," highlighting the overriding importance of the child's welfare. The courts have identified several factors that are relevant in determining the best interest of the child, including the age of the child, the sex and social background of the child, the wishes of the child, the adequacy of the arrangements made by the parties, and their conduct. This approach ensures that the child's unique circumstances are taken into account, and that the decision made is tailored to their specific needs. The Act also provides for the child's right to be heard in matters affecting them, which is a crucial component of the "best interest" principle, as it allows the child to participate in the decision-making process and express their views and preferences. This participatory right is essential for ensuring that the child's voice is not only heard but also given due weight according to their age and maturity.

Child's Right to Basic Health and Medical Services

Section 13 of the Child Rights Act (CRA) 2003 explicitly outlines the child's right to health and health services, translating the abstract principle of "best interest" into concrete obligations for both the state and parents. The section begins by affirming that "every child is entitled to enjoy the best attainable state of physical, mental and spiritual health. This entitlement is not passive; it imposes a clear duty on every government, parent, guardian, institution, or body responsible for a child to actively endeavour to provide for the child the best attainable state of health." This dual responsibility ensures a multi-layered approach to child health, combining state-level infrastructure and policy with individual-level care and diligence. The provision goes

⁸*Williams v Williams* (1987) 2 NWLR (Pt. 66) 669 (SC).

further to specify the actions required from the government, including the reduction of infant and child mortality, the provision of necessary medical assistance and primary healthcare, ensuring adequate nutrition and safe drinking water, and promoting good hygiene and environmental sanitation. These directives align with Nigeria's commitments under international frameworks and aim to combat prevalent childhood diseases such as malaria, pneumonia, and malnutrition, which are significant contributors to child mortality in the country. Furthermore, Section 13(4) of the CRA introduces a specific, enforceable duty regarding immunisation, mandating that every parent guardian or person having the care and custody of a child under the age of two years shall ensure that the child is provided with full immunisation. This subsection is notable for its punitive measures, establishing a legal offence for noncompliance. A first-time offender is liable to a fine, while a second or subsequent offence can result in imprisonment. The Act also empowers the court to issue an order compelling the parent or guardian to have the child immunised, ensuring that the child's right to this critical preventive healthcare is ultimately upheld. This combination of positive obligations on the state and enforceable duties on parents, backed by legal sanctions, demonstrates a robust legislative attempt to secure the child's best interest in the realm of health. However, despite these clear provisions, the effective implementation of Section 13 remains a significant challenge, hampered by factors such as inadequate health facilities, a shortage of medical experts, and broader socio-economic and political issues that limit access to care for many Nigerian children.

Judicial Application of the Best Interest Principle in Healthcare

The best interest of the child principle, as codified in the Child Rights Act 2003, has been a decisive factor in Nigerian judicial decisions concerning children's healthcare, particularly in cases involving conflicts between parental rights and the child's right to life. Nigerian courts have consistently demonstrated a willingness to intervene and prioritise the child's welfare when parental decisions, often rooted in religious beliefs, threaten a child's health or survival. This judicial approach underscores the Act's role as a tool for protecting vulnerable children from potentially life-threatening situations. The courts have interpreted the "best interest" principle as a mandate to ensure that children receive necessary medical treatment, even when such treatment is opposed by their parents or guardians. This has been particularly evident in cases involving the refusal of blood transfusions

by Jehovah's Witnesses, where the courts have ruled that the child's right to life supersedes the parent's right to religious freedom. This judicial stance reflects a broader commitment to upholding the sanctity of human life and ensuring that children are not deprived of essential healthcare due to the beliefs of their caregivers.

Overriding Parental Religious Objections to Medical Treatment

A significant application of the best interest principle in Nigerian healthcare law is the judicial override of parental religious objections to life-saving medical treatment for their children. This issue often arises in cases involving Jehovah's Witnesses, whose faith prohibits blood transfusions. In the landmark case of *Esanubor v Faweya*⁹ the Nigerian Court of Appeal ruled that a child cannot refuse a blood transfusion, even if the child's parent, a Jehovah's Witness, withholds consent on religious grounds. The court held that the magistrate's court was correct in authorising the hospital to perform the transfusion to save the child's life, effectively prioritising the child's right to life over the mother's right to freedom of religion. The court condemned the mother's desire to sacrifice her son's life as an "illegal and despicable act".¹⁰ This decision was based on the precedent set in *Medical and Dental Practitioners Disciplinary Tribunal v Okonkwo*,¹¹ where the Supreme Court held that while individuals have the right to freedoms of thought, conscience, and religion, these freedoms are limited where they impinge on the rights of others or jeopardize public health.¹² The *Esanubor* case, therefore, establishes a clear legal principle in Nigeria: the state's interest in protecting the life of a child is a compelling, overriding interest that justifies the limitation of parental religious rights in healthcare decisions.

Parental Rights vs. Child Welfare

The Nigerian judiciary has played a crucial role in balancing the competing rights of parents and the welfare of children, particularly in the context of healthcare. The case of *Medical and Dental Practitioners*

⁹ (2019) 7 NWLR(Pt.1671) 316 SC

¹⁰*Esanubor v Faweya* (2019) 7 NWLR (Pt.1671) 316 SC

¹¹*Medical and Dental Practitioners Disciplinary Tribunal v Okonkwo* (2001) 7 NWLR (Pt. 711) 206

¹²*Medical and Dental Practitioners Disciplinary Tribunal v Okonkwo* (2001) 7 NWLR (Pt. 711) 206

*Disciplinary Council v Okonkwo*¹³ is a foundational case in this area, establishing that the right to life is paramount and can override other rights, including religious freedom, when a child's life is at stake.¹⁴ This principle was further solidified in *Esanubor v Faweya*,¹⁵ where the court's decision to authorise a blood transfusion for a child against the mother's religious objections was a clear application of the "best interest" principle. These cases demonstrate a judicial trend in Nigeria that prioritises the protection of children's lives and health. The courts have recognised that while parents have the right to choose their children's religion, this right is not absolute and must be set aside when religious practices are prejudicial to the child's welfare. This approach is consistent with the provisions of the Child Rights Act 2003, which makes the "best interest of the child" the primary consideration in all matters concerning children. The judiciary's role in this balancing act is to ensure that the child's right to life and health is not compromised by the beliefs or decisions of their parents, thereby upholding the core principles of the CRA.

CRA 2003 as a Reflection of International Standards

The Child Rights Act (CRA) 2003 is deeply rooted in international human rights law, serving as Nigeria's primary instrument for domesticating key global and regional conventions on children's rights. The Act's provisions are a direct reflection of the principles and standards set out in the United Nations Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC), which Nigeria has ratified. This alignment was a deliberate and necessary step to fulfill Nigeria's international legal obligations and to ensure that the rights of Nigerian children are protected in accordance with globally recognised norms. The CRA effectively translates the broad, often abstract, principles of these international treaties into specific, actionable legal provisions within the Nigerian context. For instance, the Act's emphasis on the "best interest of the child" principle, the right to survival and development, and the right to be free from discrimination are all core tenets of the CRC and the ACRWC. The CRA, by incorporating these international standards into a single, comprehensive piece of national legislation,

¹³ Ibid

¹⁴ Ibid.

¹⁵ (2019) 7 NWLR(PT.1671) 316 SC

provides a unified legal framework that aims to harmonise the diverse and often conflicting laws governing children's rights in Nigeria, including customary and Islamic laws. This harmonisation is crucial for creating a consistent and predictable legal environment where the rights of all children, regardless of their background or location, are protected to the same high standard.

Alignment with the UN Convention on the Rights of the Child (UNCRC)

The Nigerian Child Rights Act (CRA) 2003 is fundamentally aligned with the United Nations Convention on the Rights of the Child (UNCRC), which is the most widely ratified international human rights treaty and serves as the global standard for the protection of children's rights. The CRA is, in fact, a direct domestication of the UNCRC, meaning that it has incorporated the Convention's principles and provisions into Nigerian national law, thereby making them legally binding and enforceable within the country. This alignment is most evident in the CRA's adoption of the four general principles of the UNCRC, which are considered the foundation of the Convention. These principles are: non-discrimination (Article 2), the best interest of the child (Article 3), the right to life, survival, and development (Article 6), and the right to be heard (Article 12). The CRA has enshrined these principles in its own provisions, ensuring that they are applied in all matters concerning children in Nigeria. For example, Section 1 of the CRA, which establishes the best interest of the child as the primary consideration in all actions concerning children, is a direct reflection of Article 3 of the UNCRC.

The CRA's alignment with the UNCRC extends to the specific rights and protections that it guarantees to children. The Act's provisions on the right to health and medical services, the right to education, the right to protection from abuse and exploitation, and the right to a name and nationality are all directly modelled on the corresponding articles of the UNCRC. The CRA's comprehensive approach to child protection, which includes provisions on child justice, adoption, and the prohibition of harmful practices, is also in line with the holistic vision of the UNCRC. Through this domestication of the UNCRC, the CRA has not only brought Nigerian law into greater harmony with international standards but has also provided a robust legal framework for the protection of children's rights in Nigeria. This alignment is crucial for ensuring that Nigerian children enjoy the same rights and

protections as their counterparts in other parts of the world, and it also serves as a benchmark for assessing the country's progress in the field of child rights. The CRA's implementation of the UNCRC is a testament to Nigeria's commitment to upholding the rights and welfare of its children and to creating a society where every child can reach their full potential.

The Best Interest Principle as a Primary Consideration in International Law

The "best interest of the child" principle is a cornerstone of international law, enshrined in Article 3 of the United Nations Convention on the Rights of the Child (UNCRC) as a primary consideration in all actions concerning children. This principle is not merely a suggestion but a legally binding obligation that requires states to prioritise the child's welfare in all decision-making processes, whether they are legislative, administrative, or judicial. The UN Committee on the Rights of the Child, in its General Comment No. 14, has clarified that the "best interest" principle is a threefold concept that includes a substantive right, a fundamental and interpretive legal principle, and a rule of procedure.¹⁶ As a substantive right, the principle requires that the child's best interests be assessed and taken into account in all actions or decisions affecting them. As a legal principle, it serves as a guide for the interpretation of all other rights in the Convention. As a rule of procedure, it requires that a formal process with strict procedural safeguards be followed in determining the child's best interests, particularly in important decisions affecting the child.

The best interest principle is a dynamic and flexible concept that must be applied on a case-by-case basis, taking into account the unique circumstances of each child. The UN Committee on the Rights of the Child has identified several factors that should be considered in assessing the child's best interests, including the child's physical, emotional, and educational needs, the child's family environment, the child's views and preferences, and the potential long-term impact of the decision on the child. The principle also requires a balancing of interests, as the best interests of one child may conflict with the best interests of another child or with the interests of other individuals or

¹⁶Committee on the Rights of the Child, 'General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (art. 3, para. 1)' (29 May, 2013) CRC/C/GC/14.

groups. However, the Committee has emphasised that the child's best interests should be given a higher importance in this balancing process, and that it is unlikely that the commercial interests of an organization will outweigh a child's right to privacy or other fundamental rights. The best interest principle is also recognised in other international and regional human rights instruments, such as the African Charter on the Rights and Welfare of the Child, which also elevate the principle to be the primary consideration in all actions concerning the child. The widespread recognition of the "best interest" principle in international law underscores its importance as a universal standard for the protection of children's rights and its role in ensuring that the child's welfare is always at the forefront of any decision-making process.

Child Welfare in *Shari'ah*: The *Maqasid al-Shari'ah* Framework

The concept of child welfare in Sharia law is deeply rooted in the *Maqasid al-Shari'ah*, which are the higher objectives and purposes of Islamic law. It provides a comprehensive framework for understanding and applying Islamic law in a way that promotes the well-being and welfare of individuals and society as a whole. The preservation of life (*Hifz al-Nafs*), which is one of the five essential values of the *Maqasid al-Shari'ah*, is particularly relevant to the issue of child welfare, as it encompasses the protection of the child's physical and mental health. The right to health is therefore considered an integral part of the *Maqasid al-Shari'ah*, and it is recognised as a fundamental right of the child in Islamic law. This recognition is not merely a moral or ethical imperative but a legal obligation that is derived from the primary sources of Islamic law, the Quran and the *Sunnah*. The Quran and the *Sunnah* contain numerous verses and traditions that emphasise the importance of protecting and caring for children, and they provide a rich source of guidance for Muslims on how to fulfil this obligation.

The *Maqasid al-Shari'ah* framework also provides a set of legal maxims and principles that are used to guide decision-making on matters of child welfare. These maxims, which are derived from the Quran and the *Sunnah*, are designed to ensure that the child's best interests are always taken into account. One of the most important of these maxims is the principle of prioritizing the welfare of the dependent (*Maslaha*), which requires that the well-being of the child be given precedence over other considerations. Another important principle is the principle of avoiding harm (*Darar*), which prohibits any action that would cause harm to the child. These principles, along with

others, provide a robust legal framework for the protection of children's rights in Islamic law, and they ensure that the child's welfare is always the primary consideration in any decision-making process. The *Maqasid al-Shari'ah* framework is therefore a powerful tool for promoting and protecting the rights of children in Muslim-majority countries, and it provides a solid foundation for the development of child-friendly laws and policies that are in line with Islamic values and principles.

Maqasid al-Shari'ah as the Foundation for Children's Rights

The *Maqasid al-Shari'ah*, or the higher objectives and purposes of Islamic law, serve as the foundational framework for the protection of children's rights in *Shariah*. The *Maqasid al-Shari'ah* are not merely a set of rules and regulations but a comprehensive philosophy that guides the application of Islamic law in a way that promotes the well-being and welfare of individuals and society as a whole. The *Maqasid al-Shari'ah* are based on the idea that Islamic law is designed to achieve certain essential values, which are the preservation of life, religion, intellect, lineage, and property. These values are considered the ultimate goals of Islamic law, and all other rules and regulations are seen as means to achieve these goals. The preservation of life (*Hifz al-Nafs*), which is one of the five essential values of the *Maqasid al-Shari'ah*, is particularly relevant to the issue of children's rights, as it encompasses the protection of the child's physical and mental health. The right to health is therefore considered an integral part of the *Maqasid al-Shari'ah*, and it is recognised as a fundamental right of the child in Islamic law.

The *Maqasid al-Shari'ah* framework provides a holistic and integrated approach to the protection of children's rights, which is based on the idea that the child's well-being is a collective responsibility. The framework emphasises the importance of a supportive and nurturing environment for the child, which includes the family, the community, and the state. The family is seen as the primary unit for the care and protection of children, and parents are entrusted with the responsibility of providing for their children's physical, emotional, and spiritual needs. The community is also seen as having a role to play in the protection of children's rights, and it is encouraged to provide support and assistance to families in need. The state is seen as having the ultimate responsibility for ensuring that the rights of all children are protected, and it is required to create a legal and policy framework that

is in line with the *Maqasid al-Shari'ah*. The *Maqasid al-Shari'ah* framework is therefore a powerful tool for promoting and protecting the rights of children in Muslim-majority countries, and it provides a solid foundation for the development of child-friendly laws and policies that are in line with Islamic values and principles.

Right to Health as an Integral Part of *Maqasid al-Shari'ah*

The right to health is an integral and fundamental component of the *Maqasid al-Shari'ah*, the higher objectives and purposes of Islamic law. The *Maqasid al-Shari'ah* are based on the idea that Islamic law is designed to achieve certain essential values, which are the preservation of life, religion, intellect, lineage, and property. The preservation of life (*Hifz al-Nafs*), which is one of the five essential values of the *Maqasid al-Shari'ah*, is directly linked to the right to health, as it encompasses the protection of the individual's physical and mental well-being.¹⁷ The right to health is therefore not merely a social or economic right but a fundamental human right that is derived from the primary sources of Islamic law, the Quran and the Sunnah. The Quran and the Sunnah contain verses and traditions that emphasise the importance of health and well-being, and they provide a rich source of guidance for Muslims on how to maintain and promote their health. The Prophet Muhammad (peace be upon him) is reported to have said, "Your body has a right over you,"¹⁸ which is a clear indication of the importance of taking care of one's health in Islam.

The *Maqasid al-Shari'ah* framework provides a comprehensive and holistic approach to the right to health, which is based on the idea that health is not merely the absence of disease but a state of complete physical, mental, and social well-being. This approach is in line with the definition of health provided by the World Health Organization (WHO), and it emphasises the importance of a multi-faceted approach to health promotion and disease prevention. The *Maqasid al-Shari'ah* framework also recognises the importance of a supportive and enabling environment for the realisation of the right to health, which includes access to quality healthcare services, safe drinking water, adequate sanitation, and a healthy environment. The state is seen as having a crucial role to play in creating this enabling environment, and it is required to take all necessary measures to ensure that the right to health

¹⁷TA Abdulraheem. and FS Muda , ' Maqasid al-shariah : A pathway for protecting children's Right to health' Malaysian Journal of Law and society, (2018)22, 75-84

¹⁸Sahih al-Bukhari, 5199

is realised for all individuals, particularly the most vulnerable members of society, such as children. The *Maqasid al-Shari'ah* framework is therefore a powerful tool for promoting and protecting the right to health in Muslim-majority countries, and it provides a solid foundation for the development of health policies and programmes that are in line with Islamic values and principles.

Protection of Life (Hifz al-Nafs) as a Core Objective

The principle of Hifz al-Nafs, or the protection of life, stands as one of the most paramount objectives (*daruriyyah*) within the *Maqasid al-Shari'ah* framework, directly underpinning the Islamic perspective on child health and welfare. This principle elevates the protection of human life to a sacred duty, making the provision of healthcare and the prevention of harm to a child's life a religious and legal imperative. In the context of medical practice and decision-making, Hifz al-Nafs serves as a primary guiding maxim, often overriding other secondary considerations. A clear illustration of this is found in the management of childbirth, where the potential for life-threatening complications necessitates a hierarchy of priorities. Islamic jurisprudence explicitly permits a male caregiver to manage the delivery process if a qualified female caregiver is unavailable, as the immediate goal of saving the lives of both mother and child (*hifz al-nafs*) takes precedence over the general principle of gender modesty (*hifz al-'ird*). This legal ruling demonstrates that the Sharia provides a flexible yet principled approach to complex situations, ensuring that the ultimate objective of preserving life is never compromised.

This life-centric ethic extends beyond emergency situations to encompass proactive health measures. The introduction of Sharia law in northern Nigeria has been empirically linked to tangible improvements in child health outcomes, including decreased infant mortality, increased vaccination rates, and longer durations of breastfeeding.¹⁹ These findings suggest that the Sharia's detailed rules on child-rearing, which are rooted in the objective of preserving life, translate into greater parental investment in children's health. The formalisation of children's duties to care for their parents in old age, as stipulated in Islamic law, may also create a reciprocal incentive for parents to invest in their children's well-being from an early age.²⁰ The

¹⁹M Alfano, 'The Effects of Religious Legal Systems on Child Health: Evidence from the Introduction of Sharia Law' *Journal of Health Economics* (2022) 83 (10)2623.

²⁰ *Ibid*

principle of Hifz al-Nafs is not limited to physical life but also encompasses the protection of the mind and spirit, aligning with the CRA's goal of ensuring the "best attainable state of physical, mental and spiritual health". Thus, the Sharia framework, by grounding the right to health in the fundamental objective of preserving life, provides a powerful, divinely-sanctioned rationale for prioritising child welfare that is both comprehensive and deeply embedded in the religious consciousness of Muslim communities.

Application of Islamic Legal Maxims on Child Welfare to Medical Decision-Making

Islamic legal maxims, or *al-qawa'id al-fiqhiyyah*, are general principles that are derived from the Quran and the Sunnah and are used to guide the application of Islamic law. These maxims provide a framework for addressing the complex ethical and legal issues that arise in the context of medical decision-making, particularly when children are involved. One of the most important maxims in this regard is the principle of prioritising the welfare of the dependent (*Maslaha*), which requires that all decisions be made in the best interest of the child. This principle is closely related to the maxim of avoiding harm (*Darar*), which prohibits any action that would cause harm to the child. Another important maxim is the principle of guardianship, which establishes the responsibility of parents and other guardians to make decisions on behalf of their children. However, this responsibility is not absolute and is subject to the overriding principle of the child's best interest. If a guardian's decision would cause harm to the child, it can be overridden by a court or other competent authority. These legal maxims provide a solid foundation for protecting the rights of children in the context of medical decision-making and ensuring that their welfare is always the paramount consideration.

The principle of avoiding harm (*Darar*) is a fundamental maxim in Islamic law that is closely related to the principle of prioritising the welfare of the dependent (*Maslaha*). This principle prohibits any action that would cause harm to another person, and it is derived from the Quranic verse, "and do not throw yourselves into destruction with your own hands" (2:195). In the context of child welfare, the principle of *Darar* requires that children be protected from all forms of harm, whether physical, emotional, or mental. This means that parents and other guardians have a responsibility to ensure that their actions do not cause harm to their children. It also means that the state has a

responsibility to protect children from harm, even if that harm is caused by their own parents. The principle of Darar is a powerful tool for promoting the rights of children and ensuring that they are able to live a life of safety and security. It is also a key principle in the context of medical decision-making, as it requires that all medical interventions be carried out in a way that minimises the risk of harm to the child.

The Role and Limits of Guardian Consent in Islamic Jurisprudence

In Islamic jurisprudence, the role of guardian consent in medical decision-making is a complex and nuanced issue. While parents and other guardians are generally responsible for making decisions on behalf of their children, this responsibility is not absolute and is subject to the overriding principle of the child's best interest. The concept of guardianship in Islam is based on the principle of trust, and guardians are expected to act in the best interest of their wards at all times. This means that a guardian's consent to a medical procedure is only valid if it is in the best interest of the child. If a guardian's decision would cause harm to the child, it can be overridden by a court or other competent authority. This is particularly true in cases where the child's life is at stake. In such cases, the principle of preserving life (*Hifz al-Nafs*) takes precedence over the guardian's right to consent. The limits of guardian consent are therefore determined by the overarching principles of Islamic law, which are designed to protect the rights and welfare of all individuals, especially the most vulnerable members of society, such as children.

Shariah's Impact on Child Health in Nigeria

The theoretical framework of *Maqasid al-Shari'ah*, particularly its emphasis on the preservation of life (*Hifz al-Nafs*), finds concrete expression in the observable impact of Sharia law on child health outcomes in Nigeria. A significant study published in the *Journal of Health Economics* provides robust empirical evidence that the introduction of Sharia law in northern Nigeria led to measurable improvements in child survival and health investments.²¹ Using a sophisticated triple-differences methodology that accounts for temporal, geographical, and religious variations, the research analysed

²¹ Ibid.

large-scale survey data and official government statistics. The findings were unequivocal: the implementation of Sharia was associated with a significant decrease in infant mortality rates. This positive outcome is attributed to the detailed and protective rules that Islamic law lays down for child-rearing, which appear to foster a social and legal environment conducive to better child health. The study's results challenge simplistic narratives and suggest that, in the Nigerian context, the formal adoption of Sharia has had a tangible, life-saving effect on the most vulnerable population.

Beyond the critical metric of infant mortality, the study also uncovered improvements in several key health practices directly linked to child well-being. The research found that the introduction of Sharia was correlated with higher vaccination rates, an extended duration of breastfeeding, and increased utilisation of prenatal healthcare services.²² These findings suggest that the principles embedded within Sharia law encourage proactive and preventive health behaviours among parents. The legal framework, by specifying strict child protection laws and formalising the reciprocal duties between parents and children, may create stronger incentives for investing in a child's long-term health and development. This evidence provides a crucial counterpoint to the often-contentious debate surrounding the implementation of Sharia in Nigeria. While philosophical and legal differences with the Child Rights Act (CRA) are well-documented, the empirical data indicate that, in practice, the Sharia system has been effective in promoting specific, positive health outcomes for children. This highlights the importance of a nuanced understanding of legal pluralism, where different legal systems may achieve similar welfare goals through different philosophical and practical pathways.

Tensions and Harmonisation between the CRA 2003 and *Shari'ah*

The coexistence of the Child Rights Act (CRA) 2003 and Sharia law in Nigeria creates a complex and often contentious legal landscape, characterised by both points of convergence and significant divergence. Nigeria's legal pluralism, which includes statutory, customary, and Islamic law, means that individuals may be subject to different legal standards depending on their religion, ethnicity, and geographical location. This has led to significant challenges in the implementation of the CRA, particularly in the twelve northern states

²² Ibid.

that have adopted Sharia law. The Supreme Council of Sharia in Nigeria has openly opposed the CRA, asserting that its provisions will abolish the very basis and essence of the sharia and Islamic culture and calling for its rejection.²³ This opposition stems from fundamental philosophical and legal differences between the two systems on key issues such as adoption, child marriage, custody, and the administration of juvenile justice. While both systems aim to protect and promote child welfare, they do so from different foundational principles and with different methodologies, leading to conflicts in application and interpretation. Navigating this legal pluralism requires a nuanced understanding of both frameworks and a commitment to finding pathways for harmonisation that respect religious and cultural values while upholding the fundamental rights and well-being of the child.

Navigating Legal Pluralism in Healthcare Decisions

The coexistence of the Child Rights Act 2003 and Sharia law can be particularly challenging to navigate in the context of healthcare decisions. The fact that matters relating to children are not on the Exclusive Legislative List of the Nigerian Constitution means that both the federal government and state governments have the power to legislate on these issues. This has resulted in a situation where the CRA, a federal law, coexists with state-level laws, including Sharia law in the North. This legal pluralism creates a number of challenges for healthcare providers, who may be unsure of which legal framework to follow when making decisions about a child's medical care. It also creates challenges for parents and children, who may be subject to different legal standards depending on where they live. The potential for conflict is particularly high in cases where parental religious or cultural beliefs, often rooted in Sharia principles, clash with the child's right to health as enshrined in the CRA 2003. In such cases, the "best interest of the child" principle provides a legal standard for resolving these conflicts, but its application can be complex and contentious, particularly in a society where religious and cultural values are deeply ingrained.

Challenges in Implementing the CRA 2003 in *Shari'ah* Implementing States

The implementation of the Child Rights Act (CRA) 2003 in Nigeria's Sharia-implementing states is fraught with profound challenges,

²³Rauf

primarily stemming from the deep-seated philosophical and legal conflicts between the Act and Islamic law. The most significant barrier is the outright opposition from key religious bodies and political leaders in the North. The Supreme Council of Sharia, for instance, has been a vocal critic, arguing that the CRA's provisions are incompatible with and would "abolish the very basis and essence of the sharia and Islamic culture".²⁴ This powerful opposition has resulted in a situation where, as of 2010, only one of the twelve Sharia-implementing states had formally adopted the CRA, with resistance in the others mounting.²⁵ This lack of adoption means that millions of children in these states are not protected by the comprehensive rights and safeguards enshrined in the Act, including its crucial health provisions under Section 13. The federal structure of Nigeria, which requires states to domesticate federal laws, allows for this legal fragmentation, creating a patchwork of child protection where a child's rights depend heavily on their state of residence.

The core of the resistance lies in the perceived conflict between the CRA's best interest principle and the fixed, divinely-revealed sources of Sharia law. Proponents of Sharia view its principles as absolute and not subject to the subjective interpretations inherent in the best interest standard. This leads to direct clashes over specific issues like child marriage, adoption, and custody, where the CRA's provisions are seen as a direct contravention of Islamic jurisprudence. For example, the CRA's prohibition of marriage under 18 is viewed as an imposition of Western norms that ignore the Islamic definition of legal capacity based on puberty. Similarly, the Act's provisions on adoption conflict with the Islamic system of *Kafala* (guardianship), which preserves a child's lineage. These fundamental disagreements create a political and social climate where the CRA is seen not as a protective measure for children, but as an assault on religious identity and cultural autonomy. Consequently, even where elements of the CRA are not in direct conflict, the overarching opposition prevents its effective implementation, leaving children in these states vulnerable to practices that the Act was designed to eradicate and without the robust legal framework for healthcare and protection that it provides.

²⁴ *ibid.*

²⁵ L. Olurode, 'Nigeria's Child Rights Act 2003: Issues and Challenges' in J. Adesina (edn), *Social Policy in Sub-Saharan African Context* (UNRISD/Palgrave Macmillan 2007).

The Role of Nigerian Courts in Resolving Conflicts

In the face of Nigeria's complex legal pluralism, the judiciary, particularly the higher courts, plays a critical and often decisive role in resolving conflicts between the Child Rights Act (CRA) 2003 and other legal systems, including Sharia law. The courts act as the ultimate arbiters, tasked with interpreting the law and balancing competing rights and interests to arrive at a just outcome. This role is particularly crucial in healthcare, where a child's life may hang in the balance. As demonstrated in landmark cases like *Esanubor v Faweya*²⁶, the courts have consistently asserted the primacy of the child's right to life and health, even when it means overriding parental religious objections grounded in Sharia or other beliefs.²⁷ In these instances, the courts invoke the state's parent's patria jurisdiction, the inherent power of the state, to protect those who cannot protect themselves to justify intervention. This legal doctrine empowers the judiciary to step in and make decisions that are in the best interest of the child, effectively acting as a super-parent when the biological parents' decisions are deemed harmful.

The courts' approach to these conflicts is not to invalidate Sharia law wholesale but to establish a hierarchy of rights within the constitutional framework. The Nigerian Constitution guarantees both the right to freedom of religion and the right to life. The judiciary's task is to interpret how these rights interact, and it has consistently held that the right to life is paramount. This was the reasoning in the foundational case of *Medical and Dental Practitioners Disciplinary Tribunal v Okonkwo*, which established that religious freedoms are not absolute when they impinge on the rights of others or jeopardise public health.²⁸ By applying this principle, the courts create a legal pathway to resolve conflicts in a way that prioritises the most fundamental right; the right to survival. This judicial function is essential for ensuring a degree of legal consistency and for protecting the most vulnerable children from the potential harms of legal pluralism. The courts, therefore, serve as a crucial backstop, ensuring that no matter what legal system a family adheres to, the child's fundamental right to life

²⁶ (2019) LPELR 46961

²⁷ *ibid*

²⁸ *Medical and Dental Practitioners Disciplinary Tribunal v Okonkwo* (2001) 7 NWLR (Pt. 711) 206

and health will be protected under the overarching umbrella of the Nigerian state and its constitution.

Harmonising and Reconciling the Best Interest Principle with *Maqasid al-Shari'ah*

Despite the significant philosophical and legal divergences between Nigeria's Child Rights Act (CRA) 2003 and Sharia law, a pathway to harmonisation may lie in a deeper, more nuanced reconciliation of their core principles. The central challenge is to bridge the gap between the CRA's secular, subjective best interest of the child standard and the divinely-grounded, objective framework of *Maqasid al-Shari'ah* (the objectives of Islamic law). A key insight from comparative legal scholarship is that these two frameworks are not necessarily mutually exclusive but can be seen as complementary pathways to achieving the same ultimate goal: the welfare and protection of the child. A foundational study on the topic concludes that *Shari'ah* fully recognizes the right of children to health as part of the *Maqasid al-Shari'ah* and explicitly notes that the "best interest" principle can be seen as a modern articulation of the Islamic legal maxim of *Maslaha* (public interest or welfare).²⁹ This perspective suggests that the two systems, while different in their epistemology, share a common objective. Harmonisation, therefore, would not require the abandonment of either system but rather a process of dialogue and interpretation to find common ground and develop a unified approach that respects both religious values and international human rights standards.

A crucial step towards harmonisation is to reframe the debate from one of conflict to one of convergence. The "best interest of the child" principle, while often seen as a Western import, can be interpreted through the lens of *Maqasid al-Shari'ah*. The core objectives of the Sharia such as preserving life, intellect, lineage, and religion, are, in essence, a detailed blueprint for what is in a child's best interest. A child's life and health are protected by *hifz al-nafs*, their education and cognitive development by *hifz al-aql*, their family and identity by *hifz al-nasl*, and their moral and spiritual upbringing by *hifz al-din*. Therefore, a decision made in accordance with the *Maqasid* is, by definition, in the child's best interest. This reconciliation requires a shift

²⁹AA Oba, 'The Best Interests of the Child in the Islamic Law of Nigeria' *International Journal of Law in Context* (2010) 6(2) 259.

in perspective, moving away from a rigid, literalist interpretation of the law towards a more purposive approach that focuses on the ultimate goals of the Sharia. If it is demonstrated that the CRA's principles are not alien to Islamic thought but are, in fact, consistent with its higher objectives, it may be possible to build trust and reduce the opposition to the Act in Sharia-implementing states.

This reconciliation also requires a more flexible interpretation of the "best interest" principle itself. Rather than viewing it as a purely subjective standard, it can be understood as an objective assessment of what is necessary to fulfil the Maqasid for a particular child in a specific context. This would involve a holistic evaluation of the child's needs, taking into account their physical, mental, and spiritual well-being, as well as their social and cultural environment. This approach is consistent with the Islamic legal maxim of *maslaha*, which requires a careful consideration of the public interest and the avoidance of harm. It is possible to create a more robust and culturally resonant standard for child welfare that can bridge the gap between the CRA and Sharia law via grounding the "best interest" principle in the objective and comprehensive framework of the Maqasid al-Shari'ah. This would not only facilitate the implementation of the CRA in northern Nigeria but also enrich the global discourse on children's rights through incorporation of the wisdom and insights of the Islamic legal tradition.

Conclusion

The Nigerian experience demonstrates that legal pluralism need not be a zero-sum contest. Empirical child-mortality gains in Shari'ah states validate the protective potency of the Maqasid, while CRA jurisprudence supplies a judicial override that safeguards vulnerable minors against extreme interpretations. Beyond the critical metric of infant mortality, the study also uncovered improvements in several key health practices directly linked to child well-being. This work has shown that the Supreme Council of Sharia in Nigeria has openly opposed the CRA, asserting that unequivocally, that its provisions will abolish the very basis and essence of the Shari'ah and Islamic culture" and calling for its rejection. This opposition stems from fundamental philosophical and legal differences between the two systems on key issues such as adoption, child marriage, custody, and the administration of juvenile justice. It is clear that both systems aim to protect and

promote child welfare, the concurrence emanates from different foundational principles and with different methodologies, leading to conflicts in application and interpretation. The research has also demonstrated that Shari'ah emphasises extended duration of breastfeeding, and increased utilisation of prenatal healthcare services. It suggests that the principles embedded within Shari'ah law encourages proactive and preventive health behaviours among parents. Future reforms should therefore operationalise complementarity rather than supremacy between the two legal systems.