

**TOWARDS THE PROTECTION OF SUCCESSION RIGHTS OF ADOPTED
CHILDREN: LIMITS OF LAW**

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FACULTY OF LAW

UNIVERSITY OF BENIN

BENIN CITY

NOVEMBER, 2025

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**A LONG ESSAY WRITTEN AND SUBMITTED TO THE FACULTY OF LAW,
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THE AWARD OF THE DEGREE OF BACHELOR OF LAWS (LL.B) OF THE
UNIVERSITY OF BENIN, BENIN CITY.**

NOVEMBER, 2025

CERTIFICATION

I, **Adaobi Christabel, ONUORA**, with Matriculation Number **LAW2002932**, hereby certify that apart from references to other persons' works which have been duly acknowledged, the entire work is a product of my research, and this project has neither in whole nor in part been presented for another degree elsewhere.

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APPROVAL

We certify that this project was written and completed by **Adaobi Christabel, ONUORA**, with Matriculation Number **LAW2002932** in partial fulfilment of the requirements for the award of a Bachelor of Laws (LL.B) degree.

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DEDICATION

I dedicate this project to every adopted child who at any point suffered discrimination and felt helpless. To all who came before me.

You are not alone.

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First and foremost, I express my deepest gratitude to God Almighty, the source of all wisdom, inspiration, and strength, for guiding me throughout this journey and granting me the grace to complete this work successfully.

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UNITED STATES

Re Estate of Ford (2004) S105508

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LIST OF ABBREVIATIONS

CAP:	Chapter
CRA:	Child Rights Act
FWLR:	Federation Weekly Law Reports
Ibid:	Same Author and Same Authority
IVF:	In-Vitro Fertilisation
JSC:	Justice of the Supreme Court
LFN:	Laws of the Federation of Nigeria
LPELR:	Law Pavillion Electronic Law Reports
NGO:	Non-Governmental Organisations
NLR:	Nigeria Law Reports
NMLR:	Nigeria Monthly Law Report
NWLR:	Nigerian Weekly Law Report
SCNJ:	Supreme Court of Nigeria Judgments

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ABSTRACT

Succinctly, adoption is the legal process of extricating a child from their natural/biological descent, and vesting them into the care/guardianship of another parent(s). In the Nigerian society, child-bearing is the hallmark of marriage, resulting in a social expectation of fruitfulness of married couples. Couples who are unable to bear children, or to the desired number, or unable to have the desired gender, couples often resort to the practice of adoption. The ensuing result is that the adopted child (adoptee) acquires a new family and parentage, distinct from his biological lineage. The process of adoption extinguishes all claims, rights and entitlements of the adoptee flowing from his biological descent. Ideally, it also earns him/her the legal status of a full-fledged child in his adopted family, with all the accompanying benefits. However, more often than not, the foregoing assertions are not practical. Adopted children are deprived of certain rights that should ordinarily enure to them, especially under customary law. Such discriminatory practice undermines section 42(2) of the 1999 Constitution (as amended). It also erodes the utility of the practice of adoption as a viable alternative to human trafficking and 'baby-selling'. Hence, this long essay investigated the succession rights of adopted children in Nigeria. To do so, the study examined the avalanche of legal frameworks outlining the rights of children in Nigeria, as well as the position of customary law on the subject. Further, we critically examined the practice of adoption in Nigeria vis-à-vis the practice of adoption in neighboring jurisdictions. It was found that there is judicial ambivalence over the succession rights of adopted children in Nigeria, and this study recommends urgent legislative reform, as well as judicial activism, to protect the succession rights of adopted children.

CHAPTER ONE

GENERAL INTRODUCTION

1.1. Background to the Study

Adoption is the voluntarily taking up another person's child and raising them as one's own, in compliance with formal laws. The Black's Law Dictionary defines adoption as 'the statutory process of terminating a child's legal right and duties towards the natural parents and substituting the same towards their adoptive parents'.¹ Nwogugu defines adoption as, 'the process that creates a parent-child relationship between the adopted child and the adoptive parents with all the accompanying rights, privileges, and responsibilities between both parties'.² The practice of adoption traces its origin to ancient Rome where it was used to facilitate power transition to males.³

The rationale for adoption varies widely amongst cultures, although most people engage in it as a substitute to natural procreation.⁴ This is especially prominent in Africa where child-bearing is the hallmark of marriage, creating an expectation of fruitfulness from couples.⁵ Consequently, couples who are unable to procreate resort to adoption to experience the joys of parenthood and fulfill societal expectations. Adoption is also utilised to complement natural procreation for those

¹ A.G. Byran, *Black's Law Dictionary* (12th edn, Thomson Reuters 2025), 58.

² E.I. Nwogugu, *Family Law in Nigeria* (3rd edn, HEBN Publishers Ltd. 2014), 333.

³ J.A. Agbonika and J.A. Agbonika, 'Adoption without Tears: Appraisal of the Legal Requirements in Nigeria and other Jurisdictions' (2021) 3(1) *American Journal of Law*, 38–60 at 40.

⁴ S.E. Kabo, 'The Concept of Child Adoption in Nigeria and the Legal Effect under the Child's Rights Act, 2003' (2022) 3(4) *Asian Journal of Multidisciplinary Research Review*, 28–45.

⁵ B.E. Effiom and Others, 'Knowledge, Attitude, and Practice Toward's Child Adoption amongst women in Calabar, Cross River State' (2021) 9(4) *International Journal of Education, Learning, and Development*, 57–67.

unable to bear their desired number or gender of children.⁶ In western climes, the practice is being used to support LGBTQ+ couples who desire to have children despite natural limitations.⁷

Adoption, especially in pluralistic legal systems like Nigeria, may occur in two forms: statutory (formal) adoption, and customary (informal) adoption.⁸ Statutory adoption refers to the practice of adoption that is carried out in conformity with the relevant laid-down legal procedures.⁹ In Nigeria, the Child's Rights Act, 2003 governs the practice of statutory adoption.¹⁰ On the other hand, customary adoption denotes an adoption-like arrangement that is executed under the applicable native law and custom.¹¹ Nigerian laws and judicial decisions give impetus to these arrangements, albeit subject to the three-way validity test of customary rules.¹²

The effect of adoption is to sever a child from their biological roots and give them a new family.¹³ This has certain legal effects, such as imposing responsibility on the adoptive parents to take care of the adopted child. This 'care' should cover custody, maintenance, supervision, and

⁶ I.E. Ohachenu, 'The Politics of Gender in Child Adoption' (2023) 6(1) *ZIK Journal of Multidisciplinary Research*, 112–131. In Nigeria, owing to gender stereotypes, male children are commonly preferred, and it is not unusual for couples to engage in the practice of adoption where they are unable to naturally give birth to a male child.

⁷ Aparna Hyanski, 'Adoption by Same-Sex Couples: Still a Taboo' (2024) 9(4) *International Journal of Novel Research and Development*, 722–732. In Nigeria, same-sex marriage is prohibited by the Same-Sex Marriage (Prohibition) Act, 2013, and section 129(c) Child's Rights Act 2003 prohibits the adoption by a single individual of a child of the opposite gender i.e. a single man cannot adopt a female child.

⁸ O.I. Tajudeen, 'Adoption Practice in Nigeria: An Overview' (2013) 1(1) *Journal of Law, Policy and Globalisation*, 7–13.

⁹ C.C. Nwabachili and C.P. Iloka, 'Adoption of Children in Nigeria: Problems and Prospects' (2023) 4(1) *African Customary and Religious Law Review*, 115–120.

¹⁰ CRA 2003, part XII (ss. 124–148).

¹¹ A.A. Omokhabi and H.M. Adebisi, 'Child adoption among Yoruba people: Legal and Traditional Procedures' (2023) 4(1) *Journal for the Child Development, Exceptionality, and Education*, 1-9. Some authors have argued for the inclusion of adoption under Islamic law into the broader subset of customary adoption, whereas others bifurcate it, arguing that Islamic law is a separate jurisprudence. In this study, both terms are fused under customary adoption, hence future references to customary adoption includes adoption under native law and custom and adoption under Islamic law.

¹² J.E. Moses and M.S. Sheka, 'An Evaluation of the Concept of Enforceability of Customary Law and its Effect in Nigerian Administration of Justice' (2021) 4(1) *Madonna University, Nigeria Faculty of Law Law Journal*, 97–115. The three tests are the repugnancy test, incompatibility test, and public policy test. See section 18(3) of the Evidence Act, 2011 (as amended).

¹³ H.O. Obi and O.C. Aduma, 'Adoption Practice under the Child's Rights Law of Anambra State' (2022) 3(1) *African Customary and Religious Law Review*, 48–54.

access to basic education, as required by the Child Rights Act, 2003.¹⁴ The adopted child is equally vested with certain duties towards his/her adoptive parents and family, such as the duty to respect them at all times and assist in times of need, and to work towards their cohesion as a family.¹⁵

Beyond these domestic obligations, the practice of adoption dovetails with succession law to vest succession (inheritance) rights on adopted children.¹⁶ This is provided for in section 141(3)-(4) of the Child Rights Act, 2003, and it is worth reproducing *ipsissima verba*:

(3) For the purposes of the devolution of the property on the intestacy of the adopter, and adopted child shall be treated as a child born to the adopter

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

a) the child or children of the adopter shall, unless the contrary intention appears, be considered as including a reference to the adopted child;¹⁷

Aduba v Aduba,¹⁸ further consolidates these provisions by protecting the succession rights of an adopted child. The facts of the case are this: the Respondent was adopted by the Appellant's natural parents in 1972. Upon the death (intestate) of the adoptive parents, the Appellants contended that the Respondent was not entitled to succeed to their properties, as he was not a legitimate family member. The Respondent sued and won, but the decision was appealed. At the Court of Appeal, Mbaba JCA (presiding), dismissed the appeal, and delivered a very didactic judgment partially reproduced below:

¹⁴ CRA 2003, s. 141(1).

¹⁵ *Ibid*, s. 19(2).

¹⁶ M.O. Ajayi, 'Re-affirming the Rights of an Adopted Child to Inherit Property under Nigerian Law: A Review of *Aduba v Aduba*' (2021) 7(1) *Tuma Law Review*, 1–16.

¹⁷ CRA 2003, s. 141(3)-(4).

¹⁸ (2018) LPELR-45756 (CA).

Where a child is adopted, he should not and cannot be left at the vice or mercy of the other beneficiaries of the estate of the adopter(s)...Once it is shown that the child was intentionally adopted and integrated into the family, and made to feel a sense of belonging by the adopting parent (s) or person (s), nobody should, or can, rise up and deny the child's (now a grown adult) share in the covering, gains, benefits or liabilities, accruing from the common patrimony or estate of the adopter (s), who adopted the child. To that extent, I do not think the Appellants would have the *vires* to reject the Respondent and strip him of the covering, protection and legacy which their parent(s) bestowed or transferred to the Respondent, by reason of his acceptance, adoption, training and nurturing as a son of the family.

In *Bassey v Ekpiken & Ors*,¹⁹ the succession rights of the 4-5th Respondents who were adopted children was affirmed. Notwithstanding the foregoing, the lived experiences of adopted children are at stark variance with the legal protections offered to them. This is exacerbated by the discriminatory practices maintained in customary adoption, which is the more popular adoption method in Nigeria.²⁰ Most customs exclude adopted children from succession to the properties of their adoptive parents, citing age-long traditions as their backbone.²¹ These customs contravene section 42 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), which prohibits discrimination.²² However, there is no judicial decision, till date, that invalidates these discriminatory, unconstitutional, and bizarre customs, hence they remain applicable.

The Obi Cubana “next of kin” incident has reignited conversations about the succession rights of adopted children in Nigeria.²³ The widely acclaimed celebrity barman is a father of five sons, four of whom are biological, and one is adopted.²⁴ Recently, the adopted son—who is also the

¹⁹ (2024) LPELR -61778 (CA).

²⁰ V.E. Onuoha and M. Attah, ‘The Right to Inherit: Illegitimacy and Constitutional Liberation in Nigeria – Just a Legal Shield?’ (2014) 36(3) *Journal of Social Welfare and Family Law in Nigeria*, 226.

²¹ *Ibid.*

²² CAP. C23, LFN 2004, s. 42.

²³ S.G. Itodo, ‘Reactions as Obi Cubana declares Biological Son ‘Next of Kin’ after Adopted Son claimed Title’ *Daily Post* (23 April 2025). <https://dailypost.ng/2025/04/23/reactions-as-obi-cubana-declares-biological-son-next-of-kin-after-adopted-son-claimed-title/> accessed 25 June 2025.

²⁴ *Ibid.*

oldest—hopped on a social media trend advertising himself as the ‘next-of-kin’.²⁵ Soon after, Obi Cubana took to his Instagram page, posting a picture of his younger (biological) son captioned, ‘next-of-kin’.²⁶ The incident reaffirms the discrimination against adopted children in succession, and the availability of legal protections.

Against this backdrop, this study examines the legal safeguards protecting the succession rights of adopted children in Nigeria. It also examines the limits of statutory protections, especially in cases of adoption under native law and Islamic law. A comparative analysis of the legal safeguards for the United States of America and Kenya as against the Nigerian legal regime will also be provided. From the comparative analysis, this study gleans insights to bolster the protection of adopted children’s succession rights in Nigeria. It also proposes reforms to bring customary adoption (including adoption under Islamic law) within the purview of statutory frameworks.

1.2. Statement of Problem

Customary adoption which is the widely practiced form of adoption in Nigeria, discriminates against the adopted child in succession matters.²⁷ These discriminatory customs are at variance with the provisions of the Child Rights Act, 2003, and even the 1999 Constitution.²⁸ However, owing to Nigeria’s legal pluralism, and the absence of any definitive judicial reprimand, they remain in force perpetuating inequity in matters of succession, to the detriment of adopted

²⁵ Ibid.

²⁶ Yewande Fasan, ‘Obi Cubana declares biological son ‘next of kin’ after adopted son’s claim’ *The Nation* (23 April 2025) <https://www.google.com/amp/s/thenationonline.net/obi-cubana-declares-biological-son-next-of-kin-after-adopted-sons-claim/amp/> accessed 25 June 2025.

²⁷ Onuoha and Attah (n20), 226.

²⁸ CRA 2003, s. 141(3) – (4); CAP. C23, LFN 2004, s. 42.

children. Whilst Nigerian courts recognise the rights of adopted children to inherit the property of their adoptive parents, most of the existing cases involve statutory adoptions.

Compounding the crisis even further, the Nigerian society largely accepts this discrimination as normal as evidenced by the spate of supportive comments from Nigerians in reaction to the Obi Cubana controversy.²⁹ This situation brings to fore the importance of examining the legal protection of the succession rights of adopted children in Nigeria. It also raises concerns about the limitations of the existing legal safeguards in cases of antithetical customary practices, casting doubts on the efficacy of Nigerian laws in protecting adopted children. This problem, if unchecked, will become a vehicle for injustice flying in the face of both constitutional and statutory provisions.

1.3. Research Questions

This study is impelled and guided by the following questions:

- i. What are the existing legal protections for adopted children's succession rights in Nigeria?
- ii. What are the limits of the legal protections for adopted children's succession rights in Nigeria?
- iii. How does the legal protections for adopted children's succession rights in Nigeria, compare with the legal framework in other jurisdictions?
- iv. What are the recommendations to consolidate and extend the frontiers of the legal protections for adopted children's succession rights in Nigeria?

²⁹ Itodo (n23).

1.4. Aim and Objectives of the Study

The aim of this study is to appraise the efficacy of the existing laws in protecting the succession rights of adopted children, and suggest reforms towards a more-expansive protection. Specifically, the objectives of this study are to:

- i. Identify the existing legal protections for adopted children's succession rights in Nigeria.
- ii. Examine the efficacy of the legal protections for adopted children's succession rights in Nigeria.
- iii. Comparatively analyse Nigeria's legal protections for adopted children's succession rights vis-à-vis equivalent laws in other jurisdictions.
- iv. Propose recommendations for a more-expansive legal protection of adopted children's succession rights in Nigeria.

1.5. Scope and Limitations of the Study

The scope of this study focuses, geographically, on the Federal Republic of Nigeria, which includes the 36 states plus the FCT, although jurisdictional comparison with the U.S. and Kenya is conducted. Topically, this study is narrowed down to an examination of the protections of adopted children's succession rights in Nigeria. The study operates on the premise that customary law discriminates against adopted children in succession, however, there are a plenitude of customary laws in Nigeria and some may not be discriminatory, but assessing each customary law is outside the study's scope.

In terms of limitations, this study is limited by time, funds, and the methodological. In terms of time, this study was conducted concurrently with normal academic coursework, which creates a time strain. For funding, access to some relevant articles require a subscription fee in USD,

which is exorbitant due to budget constraints. Lastly, this study utilises a doctrinal research methodology which focuses on reviewing, analysing, and interpreting textual sources of data. Consequently, this study will not benefit from the lived insights that can be gained from interviews or survey questionnaires.

1.6. Research Methodology

As recommended by the Nigeria Association of Law Teachers (NALT) Guidelines,³⁰ this study adopts the doctrinal method of legal research. This method, unlike the empirical/socio-legal method, concentrates on identifying, evaluating/analysing, and interpreting legal doctrines within the context of social issues. This research combines analytical and comparative research approaches to appraise the efficacy of Nigeria's laws on adopted children's succession rights. In this study, primary and secondary legal sources such as statutes, case law, textbooks, and peer-reviewed journal articles would be consulted.

1.7. Chapters Analysis

This study is divided into five chapters with each chapter uniquely addressing the aim and objectives of the study. Chapter One introduces the research, provides its background, and outlines its aim, objectives, scope, limitations, significance, and methodology. Chapter Two discusses the adoption of children in Nigeria, focusing on the two forms it may take, and outlining the relevant legal framework and procedures. Chapter Three x-rays the succession rights of adopted children in Nigeria, reviewing both statutory provisions, and judicial decisions. Chapter Four compares Nigeria's legal protection for the succession rights of adopted children with the equivalent legal framework in the United States of America and Kenya. Chapter Five

³⁰ NALT, *Nigerian Association of Law Teachers (NALT) Uniform Format and Citation Guide for Legal Research Writing in Nigeria* (NALT 2021), 38-40.

proposes recommendations for a more-expansive legal protection of adopted children's succession rights in Nigeria, and concludes the research.

CHAPTER TWO

CONCEPTUAL CLARIFICATIONS, THEORETICAL FRAMEWORKS, AND LITERATURE REVIEW

2.1. Introduction

The succession rights of adopted children has been generating significant controversy in Nigeria with the dichotomy between the protections offered under the Child's Rights Act and the reality adopted children have to confront in practice when it comes to their rights to inherit the properties from their parents. This miasma is exacerbated by the interrelatedness between adoption and concepts such as fostering and guardianship, due to their shared characteristic of imputing parental responsibility on individuals without biological linkage. Consequently, this chapter is devoted to intricately examining the concepts of adoption and succession rights drawing on available literature and the wealth of case laws on the subject. It further identifies relevant theories that undergird this study and concludes with a reasoned commentary on the legitimacy of the quest for succession rights of adopted children in Nigeria, which foreshadows the next chapter.

2.2. What is Adoption

Etymologically, the word adoption hails from the conflation of two Latin words: 'ad' (to) and 'optio' (choose), meaning 'to choose'.³¹ The Oxford English Dictionary defines adoption as legally taking up another person's child and raising them up as one's own.³² The Black's Law Dictionary defines adoption as 'the statutory process of terminating a child's legal right and

³¹ Merriam-Webster Inc., *Merriam-Webster Dictionary* (18th edn, Merriam-Webster 2022), 71.

³² C. Soanes, *Oxford English Mini Dictionary* (7th edn, Oxford University Press 2007), 7.

duties towards the natural parents and substituting the same towards their adoptive parents'.³³ Nwogugu defines adoption as, 'the process that creates a parent-child relationship between the adopted child and the adoptive parents with all the accompanying rights, privileges, and responsibilities between both parties'.³⁴

Nwabachili and Iloka define adoption as 'the process whereby a person assumes the parenting of a person between the developmental period of infancy and puberty'.³⁵ Obi and Aduma define adoption as the 'statutory process of terminating a child's legal rights and duties towards their natural parents and substituting similar rights and duties towards adoptive parents'.³⁶ Omokhabi and Adebisi define adoption as 'the process of assuming parental responsibility for another person, usually a child, who has been abandoned by his or her biological or legal parents'.³⁷ Ohachenu defines adoption as a process that creates a legal family when a child's birth parents are unable/unwilling to parent.³⁸

Primary legal sources (statutes and cases) rarely provide explicit definitions of the concept of adoption, but extrapolations can be made. For instance, based on the provisions of the Child Rights Act, 2003,³⁹ adoption can be defined as the legally-sanctioned process of permanently

³³ A.G. Byran, *Black's Law Dictionary* (12th edn, Thomson Reuters 2025), 58.

³⁴ E.I. Nwogugu, *Family Law in Nigeria* (3rd edn, HEBN Publishers Ltd. 2014), 333.

³⁵ C.C. Nwabachili and C.P. Iloka, 'Adoption of Children in Nigeria: Problems and Prospects' (2023) 4(1) *African Customary and Religious Law Review*, 115–120 at 115.

³⁶ H.O. Obi and O.C. Aduma, 'Adoption Practice under the Child's Rights Law of Anambra State' (2022) 3(1) *African Customary and Religious Law Review*, 48–54 at 48.

³⁷ A.A. Omokhabi and H.M. Adebisi, 'Child adoption among Yoruba people: Legal and Traditional Procedures' (2023) 4(1) *Journal for the Child Development, Exceptionality, and Education*, 1–9 at 2.

³⁸ I.E. Ohachenu, 'The Politics of Gender in Child Adoption' (2023) 6 *ZIK Journal of Multidisciplinary Research*, 112–131, 115.

³⁹ CRA 2003, ss. 126–135.

changing a child's parentage for their best interest. This reveals that only a child,⁴⁰ and one of different parentage from the adopters,⁴¹ can be legally adopted in Nigeria. In *Ibiam v Ibiam & Anor*, the Court of Appeal defined adoption as 'the creation of a parent-child relationship by [a] judicial order between two parties who usually are unrelated'.⁴²

2.3. Classification of Adoption

Adoption has been stratified into several categories and by different authors, depending on their perspective. Famously, adoption was classified by Nwogugu into two categories, viz: statutory adoption and customary adoption.⁴³ This classification was similarly adopted by Chianu although he criticised certain features of customary adoption.⁴⁴ Onuoha and Attah also reechoed this classification in their article,⁴⁵ as well as Obi and Aduma,⁴⁶ and Omokhabi and Adebisi.⁴⁷ Yusuph identified another category of adoption, adoption under Islamic law,⁴⁸ but it has been previously held that Islamic law is not a separate jurisprudence but forms part of customary law.⁴⁹

⁴⁰ Section 128 of the Child's Rights Act 2003 provides that only a child may be adopted, and section 277 of the same Act defines a child as 'a person under the age of eighteen years', which leads to the inference that only a person under the age of 18 years can be legally adopted in Nigeria.

⁴¹ Section 131(2) of the CRA 2003 however, provides that where the adopters are a married couple comprising a parent and step parent of the child, the Court will exercise its discretion in determining whether an adoption order or a parental responsibility/residence/custody order would be appropriate.

⁴² (2017) LPELR 42028 (CA).

⁴³ Nwogugu (n4), 330.

⁴⁴ E. Chianu, *Law of Succession* (New Systems Press 2019), 270–274.

⁴⁵ V.E. Onuoha and M. Attah, 'The Right to Inherit: Illegitimacy and Constitutional Liberation in Nigeria – Just a Legal Shield?' (2014) 36(3) *Journal of Social Welfare and Family Law in Nigeria*, 226.

⁴⁶ Obi and Aduma (n6), 49.

⁴⁷ Omokhabi and Adebisi (n7), 2.

⁴⁸ A.A. Yusuph, 'Adoption under Islamic Law: Correcting Misconceptions' (2018) 9(2) *Islam and Civilisation Renewal Journal*, 189–204. <http://dx.doi.org/10.52282/icr.v9i2.121>

Uniquely, Ohachenu identifies seven types/categories of adoption, to wit: open adoption; semi-open adoption; stepparent adoption; relinquishment or agency-sponsored adoption; subsidised adoption; closed adoption, and international/inter-country adoption.⁵⁰ However, for the purpose of this study, the classification of adoption provided by Nwogugu- Statutory and Customary adoption will be used.

2.3.1. Statutory Adoption

Statutory adoption, as the name suggests, is the practice of adoption carried out in conformity with the relevant legal procedures.⁵¹ As a pluralistic legal system, Nigeria is governed by a confluence of laws, differing not just in content, but sources.⁵² At present, the sources of law in Nigeria are quadruple comprising: received English Law, customary law, legislation, and case law.⁵³ Against this backdrop, statutory adoption refers to the practice of adoption carried out within the framework of an enabling legislation. In Nigeria, the enabling legislation refers to the Child's Rights Act, 2003,⁵⁴ and its corresponding version in the respective States.

The procedure for statutory adoption is multi-faceted, beginning first with the eligibility of the child for adoption, and the adopter. Under the CRA, 2003, not every child can be adopted; the Act requires the child's parent/guardian's consent or the child must be abandoned or mistreated

⁵⁰ Ohachenu (n8), 116–117.

⁵¹ Nwabachili and Iloka (n5), 115–120.

⁵² .O. Obilade, *The Nigerian Legal System* London (Sweet and Maxwell, 1979).

⁵³ Ibid.

⁵⁴ CRA 2003.

and there is no cogent reason in the child's best interest not to be adopted.⁵⁵ Similarly, under the Act, not every person can adopt a child; a prospective adopter must be: (1) a married couple above 25 years old; (2) a married person with his/her spouse's consent; (3) a single person above 35 years old.⁵⁶

Upon satisfying the eligibility requirements outlined above, the CRA 2003 requires the prospective adopter(s) to apply for an adoption order.⁵⁷ The application must be made to the Family Court at the Magistrate or High Court level in the prescribed manner.⁵⁸ Every application must be accompanied with the prospective adopter(s) proof of age, marriage, medical fitness, and any other required information.⁵⁹ Upon receipt of the application, the Court will order an investigation to ascertain the adopter and child's suitability for adoption.⁶⁰ During this time, the child is expected to be in the prospective adopters care for a period between 3-12 months.⁶¹

Armed with insights from the report of the preliminary investigation, the Court will consider if both parties satisfy legal requirements. If satisfied, the consent of everyone whose consent is required must be given or dispensed by the court, as applicable.⁶² Thereafter, the court will consider if payment or reward of any kind has been made to facilitate the adoption process.⁶³ Thereafter, the court may order an interim adoption order or a full-blown order subject to the

⁵⁵ Ibid, s. 128.

⁵⁶ Ibid, s. 129.

⁵⁷ Ibid, s. 126.

⁵⁸ Ibid, s. 126(1).

⁵⁹ Ibid.

⁶⁰ Ibid, s. 126(2).

⁶¹ Ibid, s. 131(1)(e).

⁶² Ibid, ss. 122 & 123(a)-(b).

⁶³ Ibid, s. 123(d). Where payment is made other than what the Court approves (i.e. prohibited payment), the person(s) involved are liable to a fine of up to N30,000 or a three-year imprisonment term, or both. See section 143 of the CRA 2003.

exercise of its discretion.⁶⁴ In making an adoption order, the Act requires the best interests of the child to be primarily and paramountly considered.⁶⁵

2.3.2. Customary Adoption

Flowing from the earlier overview of Nigeria's legal system, customary adoption is unobjectionably the practice of adoption under native law.⁶⁶ The simplicity of this definition masks its ambiguity, as customary law embodies a vast collection of native laws and customs.⁶⁷ Customary laws' vastness is compounded by its flexibility which makes it not just vast in scope, but imprecise in import.⁶⁸ Summing up these assertions, Osborne CJ, in *Lewis v Bankole*, surmised that, 'one of the most striking features of West Africa native custom, to my mind, is its flexibility; it appears to have been always subject to motives of expediency'.⁶⁹

Customary adoption, according to the views of learned authors, Obi and Aduma,⁷⁰ and Ajayi,⁷¹ may be conducted formally or informally. Under formal customary adoption, the prospective adopter(s) will meet with representatives of the adoptee's family to discuss the proposed

⁶⁴ Ibid, s. 135.

⁶⁵ Ibid, ss. 126(3) & 133(c).

⁶⁶ Omokhabi and Adebisi (n7), 1.

⁶⁷ There are over 250 ethnic groups in Nigeria with various customary laws. See D.D. Sasu, 'Distribution of Ethnic Groups in Nigeria' *Statista* (12 December 2022). <https://www.statista.com/statistics/1203438/distribution-of-ethnic-groups-in-nigeria/> accessed 7 July 2025.

⁶⁸ J.E. Moses and M.S. Sheka, 'An Evaluation of the Concept of Enforceability of Customary Law and its Effect in Nigerian Administration of Justice' (2021) 4(1) *Madonna University, Nigeria Faculty of Law Law Journal*, 97–115 at 99.

⁶⁹ (1909) 1 N.L.R. 100.

⁷⁰ Obi and Aduma (n6). 49

⁷¹ M.O. Ajayi, 'Re-affirming the Rights of an Adopted Child to Inherit Property under Nigerian Law: A Review of *Aduba v Aduba*' (2021) 7(1) *Tuma Law Review*, 1–16, 8.

adoption.⁷² If the proposal is well received, the adoptee's parents will transfer all parental rights and responsibilities to the adoptive parent(s).⁷³ This is usually marked by a formal ceremony—depending on the culture—ranging from splitting traditional kolanuts to pouring out schnapps/gin.⁷⁴ Despite all this, the consanguinity/filiation between the child and his biological roots is never broken, distinguishing it from statutory adoption.⁷⁵

Informal customary adoption is largely a matter of fact, rather than adherence to any traditional native law or customary procedure. It may occur when a child is being sent to live with an economically empowered relative in the city for education or when a widow/widower or single mother/father remarries or marries, respectively, and brings their child into the new family.⁷⁶ In both cases, through time and acceptance, the child can be integrated into the family, earning the status of childhood.⁷⁷ In *Akinwande v Dogbo*, an arrangement to assume responsibility for a deceased sister's son was held to be customary adoption.⁷⁸

Another form of customary adoption, although subject to much debate, is adoption under Islamic law also known as '*kafalah*'.⁷⁹ It is presupposed that Islamic law prohibits adoption,⁸⁰ especially

⁷² Ibid.

⁷³ Ibid, 8–9.

⁷⁴ T.O. Elias, *The Nigerian Legal System* (1st edn, Routledge 1963), 311–312.

⁷⁵ Obi and Aduma (n6), 50. Recanting the writer's words, 'Customary adoption unlike statute does not permanently terminate the biological parent's right because it is believed that a child cannot be cut from its root. Indeed, no writer is yet to identify any system of customary law in Nigeria which recognizes adoption as a concept that entails a permanent and irreversible severance of the parent-child relationship'

⁷⁶ Elias (n43), 312. The former Chief Justice of Nigeria and President of the International Court of Justice stated that, 'weak or impoverished parents sometimes put their children under the care of neighbours who can bring them up properly. [Also] Adoption may result from the unequal economic position of the parties and the consequent desire of one to relieve the burden of the other'.

⁷⁷ Nwogugu (n4), 344. The author posits that the length of time and the depth of the relationship is what determines whether adoption crystallises from such arrangements.

⁷⁸ (1969) Unreported Suit No. AB/26/68 Judgment delivered on 14th July, 1969.

⁷⁹ Yusuph (n18).

⁸⁰ G. Yamini, 'Adoption and Muslim Law' (2022) 7(12) *International Journal of Novel Research and Development*, 839–844.

when considering verses 33:4-5 of the Qur'an which says: 'Allah has not made for any man two hearts inside his body...nor has He made your adopted sons your real sons...call them by their fathers; that is more just with Allah'.⁸¹ However, the foregoing verses have been interpreted as referring to pre-Islamic adoption (*al-tabanni*) and do not invalidate Islamic adoption (*kafalah*) under which orphaned/abandoned children may be integrated into a new family setting.⁸²

In all cases of customary adoption identified above, certain shared characteristics exist: temporary nature; retention of biological filiation, and non-succession. Formal and informal customary adoption and Islamic adoption do not effect a permanent, irrevocable transfer of parental rights and responsibilities. Also, in all three cases, the adopted child(ren) still retain their biological consanguinity and filiation despite changing their last name.⁸³ In formal and informal customary adoption, the adopted child is usually not entitled to succeed the adoptive parents upon death.⁸⁴ In *Olaiya v Olaiya*, the Supreme Court held that a child adopted under customary law cannot succeed their adoptive parents.⁸⁵

2.3.3. Distinction between Statutory and Customary Adoption

Statutory and customary adoption differ in both form and effect. Touching on their forms, statutory adoption takes on a formal process, guided by the provisions of the Child's Rights Act, 2003. The intending adoptive parents must apply for an adoption order to the Family Court after

⁸¹ Holy Qur'an 33:4-5.

⁸² Yusuph (n18), 191–193. In short, the passage prohibits formal adoption where the parentage link between the adopted child and their biological parents is permanently severed, but guardianship and fostering arrangements remain valid under Islamic law.

⁸³ Under Islamic law, however, the adopted child is prohibited from changing their last name. When the lineage of the adopted child is unknown, the Qur'an (33:5) enjoins the child to be recognised as a brother in the faith or *Mawalikun* (freed slaves). See Yusuph (n18), 194.

⁸⁴ Under Islamic law, there is no prohibition against the adopted child inheriting from the property of his adoptive parents, and accordingly, *wasiyyah*—which bequeaths one-third or less of the adoptive parent's wealth to the adopted child—will apply. See Yusuph (n18), 195.

⁸⁵ (2002) 12 NWLR (Pt. 782) 652 at 671.

satisfying the necessary eligibility requirements. The Court, after seeking and obtaining the needed consent, and being satisfied that the application is in the child's best interest, may then proceed to make the adoption order, either in the interim or fully. The process concludes with the inclusion of the child's name in the adoption register.

On the contrary, the form that adoption under customary law takes, is not easily discernible. Formal customary adoption is carried out through a structured process and marked my formal rites but these rites vary widely. Under informal customary adoption the form is much more ambivalent ranging from live-in arrangements to remarriage by single mothers/fathers. Adoption under Islamic law is no exception as it equally does not have a straitjacket form or method that it follows.

Moving to their effects, statutory adoption is also very distinct from customary adoption. An obvious distinction in this regard is in the creation of a parent-child relationship between the adopter(s) and the adopted child.⁸⁶ Under statutory adoption, after the grant of an adoption order, the adopted child becomes a *bonafide* legal offspring of the adoptive parents, thereby creating a parent-child relationship.⁸⁷ To solidify this relationship, the law goes as far as requiring the Chief Registrar to mark the adopted child in the Register of Births (if they have one) as 'adopted'.⁸⁸

Under customary adoption, however, a parent-child relationship may be created depending on the circumstances (length and depth) surrounding the adoption.⁸⁹ A parent-child relationship will naturally be created where a formal customary adoption was conducted, as opposed to an

⁸⁶ S.E. Kabo, 'The Concept of Child Adoption in Nigeria and the Legal Effect under the Child's Rights Act, 2003' (2022) 3(4) *Asian Journal of Multidisciplinary Research Review*, 28–45, 36–37.

⁸⁷ *Ibid.* A combined reading of sections 126 to 141 of the Child's Rights Act 2003 supports this assertion.

⁸⁸ CRA 2003, s. 142(3).

⁸⁹ Obi and Aduma (n6), 50; Nwogugu (n4), 344.

informal one.⁹⁰ Under an informal customary adoption, which is closely akin to the concepts of guardianship and fostering, the child may view the adopter as their guardian, and view themselves as wards.⁹¹ According to Nwogugu, it is the length and the depth of the relationship between the parties to an informal customary adoption that will determine whether a parent-child relationship emerges therefrom.⁹²

Another distinction is in the imposition of parental responsibilities on the adopter(s). Under statutory adoption, the adoptive parents are imputed with parental responsibilities. Section 141(1) of the Child's Rights Act, 2003 sums this up neatly by providing that:

(1) On an adoption order being made-

(a) all rights, duties, obligations and liabilities, including any other order under the personal law applicable to the parents of the child or any other person in relation to the future custody, maintenance supervision and education of the child...shall be extinguished; and

(b) there shall vest in, and be exercisable by and enforceable against the adopter-

(i) all rights, duties, obligations and liabilities in respect of the future custody, maintenance, supervision and education of the child.⁹³

Under customary adoption, this effect is similarly intended but is rarely carried out and is not enforceable against the adopters. It is not uncommon for adopters under customary adoption to neglect (wholly or partially) the welfare of the adopted child.⁹⁴ This is more prominent where the adopter has their own biological children, which may lead to preferential treatment and

⁹⁰ Ajayi (n40), 8.

⁹¹ Ibid; Omokhabi and Adebisi (n7), 1.

⁹² Nwogugu (n4), 344.

⁹³ CRA 2003, s. 141(1).

⁹⁴ B.E. Effiom and Others, 'Knowledge, Attitude, and Practice Toward's Child Adoption amongst women in Calabar, Cross River State' (2021) 9(4) *International Journal of Education, Learning, and Development*, 57-67.

discrimination.⁹⁵ Nwabachili and Iloka reported that in some cases, biological children are sent to good schools whereas adopted children are not.⁹⁶ There are also saddening reports of adopted children being required to undertake adult-level labour under terrible physical and mental conditions.⁹⁷

Another distinction is the vesting of parental rights in the adopter as the correlate of their responsibilities.⁹⁸ Under statutory adoption, the adopter is vested with parental rights over the adopted child. Section 144 of the Child's Rights Act, 2003 confirms this as it provides that an adoption order extinguishes all rights of the child's biological parent, 'including all religious rights, right to appoint a guardian and to consent or give notice of dissent to marriage'.⁹⁹ The CRA, 2003 further goes on to vest those rights on the adopter including the right to appoint a guardian and to consent or give notice of dissent in the marriage of the child, as if the child were their natural child.¹⁰⁰

There is a stark contrast to the foregoing under customary adoption, especially when the child's biological parents are still alive. Whilst the adopter(s) may influence certain decisions in the adopted child's life, monumental decisions require the child's biological parents' consent. For example, where the adopted child is set to marry customarily, the blessings of the biological

⁹⁵ V.E. Onuoha and M. Attah, 'The Right to Inherit: Illegitimacy and Constitutional Liberation in Nigeria – Just a Legal Shield?' (2014) 36(3) *Journal of Social Welfare and Family Law in Nigeria*, 226.

⁹⁶ Nwabachili and Iloka (n5), 115.

⁹⁷ Recently, a former United Nations Judge, Lydia Mugambe was sentenced to a six-year imprisonment term for forcing a younger woman to work for her as a domestic servant in the United Kingdom. Both women are of Ugandan nationality, and the reports reveal that the woman was a relation of the judge, suggesting an informal customary adoption. See M. Ofori, 'UN Judge jailed in UK after forcing woman to work as slave' *Guardian* (2 May 2025). <https://www.theguardian.com/uk-news/2025/may02/un-judge-lydia-mugambe-jailed-uk-exploitation-uganda> accessed 7 July 2025.

⁹⁸ It is adroit that for every right there are correlating responsibilities (duties), and vice versa.

⁹⁹ CRA 2003, s. 141(1)(a).

¹⁰⁰ *Ibid*, s. 141(1)(b). There is however a deliberate omission of religious rights and this is due to the prior provision of section 127 which empowers the biological parents or guardian to prescribe the child's religion, although the court is not duty-bound to enforce same.

parents is usually mandatory and the adopter(s) can only stand in proxy if the biological parents and other family members are no longer alive.¹⁰¹ Similarly, for matters of guardianship and religious upbringing, the biological parents will still have the final say over the adopters.¹⁰²

Yet another distinction between statutory and customary adoption is the prohibition of marriage between the adopter and the adoptee.¹⁰³ Section 147 of the Child's Rights Act, 2003 prohibits a marriage between an adopted child and the adopted parents.¹⁰⁴ It further prohibits a marriage between the natural (biological) offspring of the adopted parents and the adopted child.¹⁰⁵ Such marriages, if contracted will be deemed null and void as they are tantamount to incest in the eyes of the law.¹⁰⁶ A thorny issue, however, is if this provision will still be enforceable if the child is subsequently re-adopted by another adopter.¹⁰⁷

Customary law, on the other hand, is largely silent on this effect and it is not clear if marriage between the adopter and the adoptee is similarly prohibited under Nigerian native law and custom. Conversely, Islamic law is in vociferous opposition to the statutory position, and contends strongly that a valid marriage can be contracted between the adopter and the adoptee under Islamic law.¹⁰⁸ This position is hinged on the marriage of Prophet Muhammad to Zaynab

¹⁰¹ Kabo (n55), 37.

¹⁰² Ibid. However, the writer is unsure if this will apply in a case of Islamic adoption where the adopter(s) is a Muslim and the biological parents are of another religion, considering several Islamic injunctions. The same doubt exists in cases involving very strict Christians. Again, the length, depth, and purpose of the relationship as well as the socio-economic standing of the adopters vis-à-vis the biological parents or guardians, will be a moderating factor.

¹⁰³ C.P. Iloka, 'Challenges and Prospects of Child Adoption in Nigeria: A Focus on the Child's Rights Act' (2022) 6(1) *African Journal of Law and Human Rights*, 23–29 at 24, 26–27.

¹⁰⁴ CRA 2003, s. 147(1).

¹⁰⁵ Ibid.

¹⁰⁶ Ibid. Section 147(2) further imposes an imprisonment term of up to 14 years for anyone who is found liable of marrying their adopted child.

¹⁰⁷ Section 142(10) of the CRA 2003 empowers the Court to revoke an adoption order but does not outline the effects of such revocation. Therefore, will the law be once adopted always adopted? It remains to be seen.

¹⁰⁸ Iloka (n72), 27; Yusuph (n18), 194–195.

the divorced wife of his adopted son, Zayd.¹⁰⁹ On this basis, Islamic scholars have held that adoption under Islamic law does not create consanguinity, hence marriage is permitted.¹¹⁰

Finally, and as a foreshadow of the next chapter, statutory and customary adoption differ on the succession rights of the adopted child.¹¹¹ Under statutory adoption, an adopted child acquires full inheritance rights as though they were the natural offspring of the adoptive parents.¹¹² Section 141(3) of the Child's Rights Act, 2003 states that an adopted child shall be regarded as a child born to the adopter in lawful wedlock, for all intents and purposes including succession.¹¹³ Further, section 141(4) reinforces this by mandating that the adopted child shall have the same rights of inheritance under the personal law applicable to the adopter.¹¹⁴ In *Aduba v Aduba*, the Court held that an adopted child has equal rights as natural children in matters of succession.¹¹⁵ Similarly, in *Bassey v Ekpiken & Ors*, the court affirmed the right of an adopted child to inherit from the adoptive parents' estate, thereby reinforcing the equal legal status conferred by statutory adoption.¹¹⁶

Under customary law, however, the inheritance rights of an adopted child remain uncertain and are often restricted. In *Olaya v Olaya*, the Supreme Court held that a child adopted under customary law could not inherit the estate of the adoptive parents.¹¹⁷ This is largely due to the fact that customary adoption does not sever the child's biological filiation or establish full legal

¹⁰⁹ Ibid; M.T. Ladan, 'The Child's Rights Act 2003 and the Challenges of its Adoption by State Governments in the 19 Northern States' (2007) *Paper presented at the Interactive forum for Sokoto State House of Assembly Legislators, Sokoto, Nigeria*.

¹¹⁰ Ibid.

¹¹¹ Ajayi (n40), 1-16.

¹¹² Ibid; Kabo (n55), 38-40.

¹¹³ CRA 2003, s. 141(3).

¹¹⁴ Ibid, s. 141(4).

¹¹⁵ (2018) LPELR-45756 (CA).

¹¹⁶ (2024) LPELR -61778 (CA).

¹¹⁷ (2002) 12 NWLR (Pt. 782) 652.

kinship. The adopted child is often seen as a dependent or ward, rather than a full member of the lineage, which precludes inheritance rights. In the eloquent words of Uwaifo, JSC:

The issue of adoption of a child and the consequences of it cannot be so casually disposed of by a court of law as the court below seemed to have done. No one will lightly permit a stranger to claim his or her family lineage and inheritance unless through entitlement by blood or genuine adoption. Since the respondent failed to discharge the burden of proving adoption, there can be no basis for including the said Emmanuel and Sarah as beneficiaries of the estate of Solomom Kayode Olaiya (deceased) as was done in the judgment of the trial court.

Consequently, unless a will is made in their favour, customary adoptees typically cannot inherit under native law and custom.

2.4. Meaning of Succession Rights

Otu and Nabiebu define succession rights as the legal entitlement of a person to the property, rights and obligations of another.¹¹⁸ According to Okafor, Olugasa, and Olanrewaju, succession rights are a derivative of parentage thus, succession rights, barring exceptional circumstances, are restricted to relationships between parents and children.¹¹⁹ Abonyi defines succession rights as ‘the “acquisition” of legal right in and over a property from someone or somebody by inheritance either through “descent” birth or “distribution”’.¹²⁰ The Black’s Law Dictionary defined succession rights as the ‘act or right of legally or officially taking over a predecessor’s office or duties.’¹²¹

¹¹⁸ M.T. Otu and M. Nabiebu, ‘Succession to, and Inheritance of Property under Nigerian Laws: A Comparative Analysis’ (2021) 62(2) *European Journal of Social Sciences*, 50–63.

¹¹⁹ L. Okafor, O. Olugasa, and O. Olanrewaju, ‘Conceptual and Theoretical Framework of Inheritance Rights of Women and Children in South-Eastern Nigeria’ (2023) 3(1) *Redeemer’s University Nigeria, Journal of Jurisprudence & International Law*, 129–141.

¹²⁰ A.U. Abonyi, ‘Right of Succession over Property Inherited by a Childless Woman from Her Father: Comparing the Law in India and Nigeria’ (2023) 8(1) *COOU Law Journal*, 137–146.

¹²¹ Garner (n3), 1171

According to Chianu, there are two types of succession—testate and intestate succession—and understanding them is crucial to enforcing succession rights. Testate succession occurs where the deceased person, commonly referred to as the testator, makes a valid Will before their demise. The validly executed Will identifies the beneficiaries of the devolution of property as well as the administrators/executors of the deceased's estate. It also prescribes the mode of distributing the deceased's estate and this must be upheld as far as is legal. The Will, alongside the relevant laws for its interpretation and enforcement are the basis of succession rights under testate succession.

The second type of succession in Nigeria is intestate succession where a person dies without leaving behind a valid Will. It encompasses both cases where no Will was executed *ab initio* and cases where the executed Will contravenes legal rules. Where a person dies intestate in Nigeria, the distribution of their estate is governed by statutory, customary, and religious laws. Statutes such as the Marriage Act and the Administration of Estates law will apply, subject to the deceased's marital status. Where the deceased married solely under custom or religion, customary law or religious law will apply, thereby influencing succession rights.

2.5. Theoretical Framework

There are several theories that underscore the conflict in the succession rights of adopted children and three have been chosen to undergird this study, viz: social capital theory, afrocentric theory, and the feminist legal theory.

2.5.1. Social Capital Theory

Social Capital Theory was popularised by sociologists Pierre Bourdieu, James Coleman, and later Robert Putnam.¹²² The theory posits that social networks, relationships, and norms of trust and reciprocity create value and facilitate cooperation within societies.¹²³ In relation to the succession rights of adopted children, social capital highlights how familial and societal connections shape access to inheritance and belonging. This study uses the theory to examine how social structures and cultural perceptions of kinship affect the recognition of adopted children's rights, revealing how limited social capital can perpetuate exclusion in inheritance matters.

2.5.2. Afrocentric Theory

Afrocentric Theory, developed by Molefi Kete Asante in the 1980s, emphasizes viewing social issues from an African-centered perspective.¹²⁴ It challenges Eurocentric frameworks by promoting African values, traditions, and experiences as the foundation for understanding African realities.¹²⁵ The theory posits that justice and identity should be interpreted within African cultural contexts. In this study, Afrocentric Theory is relevant as it situates the succession rights of adopted children within African customary laws and kinship systems. It will be used to analyze how indigenous values, rather than colonial legacies, influence the recognition or denial of inheritance rights to adopted children.

2.5.3. Feminist Legal Theory

¹²² M. van Bakel and S. Horak, 'Social Capital Theory' In K. Hutchings, S. Michailova, and A. Wilkinson (eds.), *A Guide to Key Theories for Human Resource Management Research* (Edward Elgar Publishing 2024), 261–267. <https://doi.org/10.4337/9781035308767.ch33>

¹²³ Ibid.

¹²⁴ M.K. Asante, *Afrocentricity: The Theory of Social Change* (African American Images 2003).

¹²⁵ Ibid.

Feminist Legal Theory emerged in the 1970s through the works of scholars like Catharine MacKinnon and Carol Smart.¹²⁶ It critiques how laws and legal systems often reflect patriarchal values that perpetuate gender inequality.¹²⁷ The theory posits that legal norms should be re-examined to promote fairness, inclusivity, and social justice for marginalized groups. In this study, it is relevant because inheritance and family laws often embody gendered and patriarchal biases that affect both women and adopted children. The theory will be used to explore how legal reforms can dismantle discriminatory structures and ensure equal succession rights for adopted children.

2.6. Legitimacy of the Quest for Succession Rights by Adopted Children

The quest for succession rights by adopted children has been legitimised by both statutory provisions and judicial decisions, although certain ambiguities remain. Section 141(3) of the Child's Rights Act, 2003 states that an adopted child shall be regarded as a child born to the adopter in lawful wedlock, for all intents and purposes including succession.¹²⁸ Further, section 141(4) reinforces this by mandating that the adopted child shall have the same rights of inheritance under the personal law applicable to the adopter.¹²⁹ In *Aduba v Aduba*, the Court held that an adopted child has equal rights as natural children in matters of succession.¹³⁰ Similarly, in *Bassey v Ekpiken & Ors*, the court affirmed the right of an adopted child to inherit from the

¹²⁶ R. West, 'Women in the Legal Academy: A Brief History of Feminist Legal Theory' (2018) 87 *Fordham Law Review*, 978–1003.

¹²⁷ *Ibid.*

¹²⁸ CRA 2003, s. 141(3).

¹²⁹ *Ibid.*, s. 141(4).

¹³⁰ (2018) LPELR-45756 (CA).

adoptive parents' estate, thereby reinforcing the equal legal status conferred by statutory adoption.¹³¹

2.7. Conclusion

This chapter has thoroughly explored the concepts of adoption and succession rights in Nigeria by delving into their legal meaning and typology. While Chapter One provided a broad overview, this chapter laid the foundation for a deeper legal understanding by grounding the discussion in scholarly opinions, statutory provisions, legal definitions, and judicial interpretations. Further, the chapter identified and discussed three theories that undergird this study—social capital theory, afrocentric theory, and feminist theory. Finally, the chapter examined the legitimacy of the quest for succession rights by adopted children as a foreshadow of the full-blown exploration in the subsequent chapter.

¹³¹ (2024) LPELR -61778 (CA).

CHAPTER THREE

SUCCESSION RIGHTS OF ADOPTED CHILDREN IN NIGERIA

3.1. Introduction

Adopted children, as established in the previous chapter, are entitled to certain rights, as a derivative of their new parentage.¹³² One of such rights is succession, which refers to the legally regulated devolution of the property of a deceased person.¹³³ Property in this context encompasses real and personal property, as well as intangible properties like titles, choses, and intellectual property.¹³⁴ In Nigeria, the succession rights of adopted children are guaranteed under statutory adoption, covering both testate and intestate succession cases.¹³⁵ However, the position differs greatly under customary adoption in Nigeria, as most customary rules discriminate against adopted children in succession.¹³⁶

Exploring this nuance further, statutory adoption in Nigeria refers to an adoption process that complies with the laid-down legal procedure.¹³⁷ Such an adoption would comply with the requirements outlined in sections 124 to 148 of the Child's Rights Act, 2003.¹³⁸ It would be evidenced by an unconditional court-issued adoption order as well as an entry in the Adopted Children Register.¹³⁹ Section 141 of the Child's Rights Act, 2003 affirms the succession rights of

¹³² A.A. Agbonika and J.A. Agbonika, 'Adoption without Tears: Appraisal of the Legal Requirements in Nigeria and other Jurisdictions' (2021) 3(1) *American Journal of Law*, 38–60. See: Section 2.4 above.

¹³³ M.T. Otu, 'Succession to, and Inheritance of Property under Nigerian Laws: A Comparative Analysis' (2021) 62(2) *European Journal of Sciences*, 50–63.

¹³⁴ *Ibid.* Section 2 of the Property and Conveyancing Law (PCL) 1959 defines property as 'including anything in action, and any interest in real, or personal property'.

¹³⁵ Child's Rights Act 2003, s. 141(3) & (4).

¹³⁶ M.O. Ajayi, 'Re-affirming the Rights of an Adopted Child to Inherit Property under Nigerian Law: A Review of *Aduba v Aduba*' (2021) 7(1) *Tuma Law Review*, 1–16.

¹³⁷ C.C. Nwabachili and C.P. Iloka, 'Adoption of Children in Nigeria: Problems and Prospects' (2023) 4(1) *African Customary and Religious Law Review*, 115–120.

¹³⁸ CRA 2003, ss. 124–148.

¹³⁹ *Ibid.*, ss. 130 & 142.

an adopted child under testacy and intestacy.¹⁴⁰ Several judicial decisions have also rubber-stamped this provision, with the most recent being the case of *Bassey v Ekpiken*.¹⁴¹

On the flipside, customary adoption in Nigeria, in formal cases, observes traditional rites, or may be inferred from certain situations.¹⁴² Where traditional rites are performed, they vary per ethnic group, but must essentially involve the biological parents' or guardian's consent.¹⁴³ In informal cases, situations such as indigence or death of the natural parents, or live-in arrangements may translate to adoption.¹⁴⁴ In any case, customary adoption in Nigeria is generally reticent about vesting succession rights in an adopted child.¹⁴⁵ This view was confirmed by Uwaifo JSC in *Olaiya v Olaiya*,¹⁴⁶ holding that succession rights do not extend to customarily adopted children.

Nigeria's dyadic adoption system and the conflicting rules inherent in both, create uncertainty over the succession rights of adopted children. Whereas the law is clear on the succession rights of children adopted statutorily, those adopted customarily may lack such rights. Worst still, the judiciary is enmeshed in this miasma, as their recent judgments are delimited to cases of statutory adoption. With no definitive legal protection and no directly relevant judicial decision, children adopted under customary law are deprived of succession. This double-standard flies in

¹⁴⁰ Ibid, s. 141(3) & (4).

¹⁴¹ (2024) LPELR -61778 (CA).

¹⁴² H.O. Obi and O.C. Aduma, 'Adoption Practice under the Child's Rights Law of Anambra State' (2022) 3(1) *African Customary and Religious Law Review*, 48–54 at 49.

¹⁴³ *Plange v. Plange* (1977) IGLR 312. In this case, the Ghanaian Court of Appeal, per Justice Sowah, held that parental/family consent is a prerequisite for a valid customary adoption.

¹⁴⁴ T.O. Elias, *The Nigerian Legal System* (1st edn, Routledge 1963), 311–312.

¹⁴⁵ Nwabachili and Iloka (n6), 115.

¹⁴⁶ (2002) 8 NWLR (Pt. 782) 652 at 671. Quoting Uwaifo JSC's words, 'No one will lightly permit a stranger to claim his or her family lineage and inheritance unless through entitlement by blood or **genuine** adoption' (emphasis mine). This implies that adoption under customary law is not genuine adoption.

the face of constitutional safeguards against discrimination,¹⁴⁷ as well as international human right treaties and charters.¹⁴⁸

This chapter is devoted to expounding the points already distilled above, beginning with a clarification on what succession rights entail. Thereafter, it expounds on the succession rights of adopted children in Nigeria under both statutory and customary forms of adoption, highlighting the limits of the existing legal protection in Nigeria.

3.2. Meaning of Succession Rights

Simply put, succession rights refer to the legal entitlement of a person to the property, rights and obligations of another.¹⁴⁹ It is a derivative of parentage thus, succession rights, barring exceptional circumstances, are restricted to relationships between parents and children.¹⁵⁰ It is worthy of note that succession rights generally lie in abeyance and are only enforceable upon the deceased's demise.¹⁵¹ Succession rights are historically credited to the biblical injunction in Proverbs 13:22 that says, 'a good man leaveth an inheritance'.¹⁵² However, succession rights are not only applicable to Christians, as they feature in both Islamic law and secular legal systems.

There are two types of succession—testate and intestate succession—and understanding them is crucial to enforcing succession rights. Testate succession occurs where the deceased person,

¹⁴⁷ Constitution of the Federal Republic of Nigeria (as altered), 1999, CAP. C23, LFN 2004, s. 42.

¹⁴⁸ UN General Assembly, *Universal Declaration of Human Rights*, UNGA Res 217 A (III) (10 December 1948) (UDHR), arts. 2 & 7; International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR), arts. 2(2) & 10(3); African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (ACHPR), arts. 2, 18(3), & 19.

¹⁴⁹ M.T. Otu and M. Nabiebu, 'Succession to, and Inheritance of Property under Nigerian Laws: A Comparative Analysis' (2021) 62(2) *European Journal of Social Sciences*, 50–63.

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.*, 50.

¹⁵² Proverbs 13:22 (King James Version).

commonly referred to as the testator, makes a valid Will before his demise.¹⁵³ The validly executed Will identifies the beneficiaries of the devolution of property as well as the administrators/executors of the deceased's estate. It also prescribes the mode of distributing the deceased's estate and this must be upheld as far as is legal. The Will, alongside the relevant laws for its interpretation and enforcement are the basis of succession rights under testate succession.

The second type of succession in Nigeria is intestate succession where a person dies without leaving behind a valid Will. It encompasses both cases where no Will was executed *ab initio* and cases where the executed Will contravenes legal rules. Where a person dies intestate in Nigeria, the distribution of their estate is governed by statutory, customary, and religious laws. Statutes such as the Marriage Act¹⁵⁴ and the Administration of Estates law will apply, subject to the deceased's marital status. Where the deceased married solely under custom or religion, customary law or religious law will apply, thereby influencing succession rights.

It is expedient to outline what forms of property can be succeeded to, or better put, what succession rights encompasses. Succession rights cover all forms of property (real and personal), interests, rights, and obligations owned by the deceased before death. Explicating further, succession rights include real property such as land and houses, and personal property like vehicles, jewelry, and money. It also covers intangible property and choses in action such as shares, patents, intellectual property (IP) rights, and debts recoverable. The case of *Ideozu v Ochoma* revealed that succession rights further includes rights and obligations like customary titles and priesthood.¹⁵⁵

¹⁵³ Otu and Nabiebu (n18), 51.

¹⁵⁴ Marriage Act CAP. M6, LFN 2004.

¹⁵⁵ (2006) 4 NWLR (pt. 970) 364.

3.3. Succession Rights of Adopted Children under Statutory Adoption

Rehashing the points stated earlier, the succession rights of statutorily adopted children is very clear, such that once a valid statutory adoption has been proven, then the provisions of section 141(3)-(4) of the Child's Rights Act, 2003, come into operation. Section 141(3) and (4) provide that:

(3) For the purposes of the devolution of the property on the intestacy of the adopter, an adopted child shall be treated as a child born to the adopter

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

(a) the child or children of the adopter shall, unless the contrary intention appears, be considered as including a reference to the adopted child,¹⁵⁶

This position has been given judicial affirmation in more cases than one, beginning with the case of *Aduba v Aduba*.¹⁵⁷ The facts and ruling in this case have been outlined previously, and it is unnecessary to repeat them *in extenso*. Summarily, the Court held that a statutorily adopted child is entitled to succeed to the property of his adoptive parents. Additionally, the Court distinguished the case of *Olaiya v Olaiya*¹⁵⁸ from the present case, creating the research problem underpinning this study.

The recent case of *Basse v Ekpiken*¹⁵⁹ reinforced the decision reached by the Court of Appeal in *Aduba v Aduba*.¹⁶⁰ Therein, the Appellant alleged that he was the first son of late Madam Affiong Nyong Basse, having been customarily adopted.¹⁶¹ He further alleged that he was

¹⁵⁶ CRA 2003, s. 141(3)-(4).

¹⁵⁷ (2018) LPELR-45756 (CA).

¹⁵⁸ (2002) 12 NWLR (Pt. 782) 652.

¹⁵⁹ (2024) LPELR-61778 (CA)

¹⁶⁰ (2018) LPELR-45756 (CA).

¹⁶¹ The customary adoption referred to by the Appellant was a strange practice where the deceased and her sister married his biological mother for their elder brother who was the deceased's father. Consequently, he was the child of his mother and his two Aunts (who were both barren).

entitled to succeed to her estate by virtue of Efik customary rules of succession. On the contrary, the Respondents denied the Appellants claim, and counterclaimed, *inter alia*, that the 4th and 5th Respondents were the lawfully adopted children of the deceased. The 4th and 5th Respondents tendered court adoption orders in proof of their adoption claims.

The Court of Appeal upheld the ruling of the trial court that the Appellant was not the deceased's adopted child. Consequently, the Letter of Administration over the estate of the deceased that was wrongly issued to the Appellant, was revoked. The Court of Appeal further held that the 4th and 5th respondents were the legally adopted children of the deceased. The reasoning of the Court of Appeal per Aliyu JCA, was on this wise:

With regards to the claim of the Appellant that the 4th and 5th Respondents are not validly adopted children of late Madam Affion Nyong Bassey, it is observed that Appellant contradicted his position against the 4th and 5th Respondents.... A person cannot be allowed to approbate and reprobate at the same time. In any event, the evidence on record is clear that late Madam Affiong Nyong Bassey adopted and acknowledged the 4th and 5th Respondents as her children and that fact... entitled them to her estate.¹⁶²

For that reason, the 4th and 5th Respondents were held to be entitled to inherit the estate of the deceased. The Court of Appeal relied on the cases of *Duru v Duru* and *Aduba v Aduba*, in reaching this decision.

3.4. Succession Rights of Adopted Children under Customary Adoption

The succession rights of children adopted under customary law is the meat of this study, and like meat, it requires dissecting. On customs, the law in Nigeria, pursuant to section 16 to 18 of the Evidence Act, 2011 (as amended),¹⁶³ is that they are facts, the existence of which must be proven unless judicially noticed. Furthermore, their enforceability hinges on a three-way test captured in

¹⁶² (2024) LPELR-61778 (CA) at 51–53, paras, D–F.

¹⁶³ Evidence Act 2011, ss. 16–18.

section 18(3) to the effect that they will not be enforced when contrary to public policy, repugnant to natural justice, equity and good conscience, and(or) incompatible with any law for the time being in force.¹⁶⁴

The succession rights of adopted children under customary law, as customs reveal, and as judicial decisions confirm, is not clear-cut. Although informative, it is not helpful to examine the succession rights of adopted children under various customs because it varies widely between customs,¹⁶⁵ and like has already been noted, customs, except when judicially noticed, are purely a matter of fact.¹⁶⁶ Quoting Enabulele and Bazuaye, ‘the existence and validity of customs is one thing, their enforceability by the court is another’.¹⁶⁷ This study is concerned with the latter, hence decided cases on the succession rights of adopted children will be examined.

The first case is *Olaiya v Olaiya*,¹⁶⁸ which purportedly laid-down the rule that children adopted under customary law are not entitled to succeed to the property of their adoptive parents. In that case, the Appellant, Remilekun Olaiya, was the biological child of the deceased, Solomon Olaiya, born out of wedlock. She appealed the decision of the High Court of Lagos State where, *inter alia*, the Court granted a declaration that:

the plaintiff along with the children of Solomon Olaiya (deceased) viz:

- (i) Emmanuel Olaiya
- (ii) Sarah Olaiya
- (iii) Remilekun Olaiya

¹⁶⁴ Ibid, s. 18(3). The last test (i.e incompatibility) is enshrined in the various state High Court laws e.g. High Court of Lagos State, s. 26.

¹⁶⁵ H.O. Obi and O.C. Aduma, ‘Adoption Practice under the Child’s Rights Law of Anambra State’ (2022) 3(1) *African Customary and Religious Law Review*, 48–54 at 49–50.

¹⁶⁶ Evidence Act 2011, ss. 16–18.

¹⁶⁷ A.O Enabulele and B.B. Bazuaye, ‘Validity and Enforceability of Customary Law in Nigeria: Towards a Correct Delimitation of the Province of the Courts’ (2019) 63(1) *Journal of African Law*, 79–104. <https://doi.org/10.1017/SOO2185531800030X>

¹⁶⁸ (2002) 12 NWLR (Pt. 782) 652.

are the exclusive beneficiaries of the estate of the deceased.

The Plaintiff (now the 1st Respondent) referred to in the court declaration was Cornelia Olaiya, the wife of the deceased. The marriage between herself and the deceased did not produce biological offspring hence the children (excepting Remilekun) were allegedly adopted. The Appellant contended that the 1st Respondent failed to prove the adoption of the two children (Emmanuel and Sarah). Resultantly, she argued that they were not entitled to be declared as beneficiaries of the estate of her deceased father. The Court of Appeal struck out the case on the basis of a preliminary objection, leading to a further appeal.

At the Supreme Court, the question of the validity of the adoption of the two children came up for determination. It is instructive to note, and quite surprising even, that the term ‘customary adoption’ was never mentioned in the case. Matter-of-factly, the word ‘customary’ does not even occur once throughout the 24 pages of the judgment of the apex court. From whence then, was the inference reached that the court precluded a child adopted under customary law from succession rights? To answer this question, it is important to set out *in extenso*, the ruling of Uwaifo, JSC in the case:

A half-hearted effort was made by the plaintiff to give evidence of the so-called legal and valid adoption.... This cannot be evidence of legal and valid adoption under the applicable Law. The Adoption Law of Lagos State (Cap.5) which came into force on 21st September, 1968 was the only applicable Law on adoption in Lagos at the material time. It has not been shown that the said adoption of Emmanuel and Sarah was done under that Law. If that had been so, the best evidence would have come from the Adopted Children Register established under section 16 of that Law.¹⁶⁹

This ruling is what birthed the conclusion that statutory adoption is the only form of adoption recognised by the courts. Consequently, customary adoption was not recognised by the court for the purpose of determining the successors of a deceased person. Whether this conclusion reached

¹⁶⁹ Ibid, 675, paras. B–C.

was the actual intention of the Supreme Court, is highly questionable due to the fact that the 1st Respondent never contended that the children were adopted customarily; she just stated that they were adopted, without more. Notwithstanding the foregoing, the conclusion had come to stay, that the case of *Olaiya v Olaiya* disinherited children adopted customarily.

This position was reviewed in *Aduba v Aduba*¹⁷⁰ where it was believed to have been overturned due to the ruling of Mbaba JCA that:

Once it is shown that the child was intentionally accepted and integrated into the family, and made to feel a sense of belonging by the adopting parent(s) or person(s), nobody should or can rise up to question the good gesture of the adopting parent(s) or person(s), and deny the child (now grown adult) share in the covering, gains, liabilities, accruing from the common patrimony or estate of the adopter(s) or person(s) who adopted the child.

That *Aduba's* case overturned the ruling in *Olaiya v Olaiya* is highly doubtful because of the doctrine of judicial precedents.¹⁷¹ Also, as in *Olaiya's* case, there was no contention whatsoever that the 1st Respondent in *Aduba's* case was adopted customarily. Instead, the case revolved around an imperfect statutory adoption that was coagulated by numerous positive acts by the adoptive parents. So, the correct view is that *Aduba's* case distinguished *Olaiya's* case to the extent that positive actions may evidence adoption. It did not provide a blanket rule that children adopted under customary law would be automatically entitled to succession rights.

The case of *Bassey v Ekpiken*,¹⁷² presents the greatest recognition of the succession rights of children adopted under customary law. In that case, the 4th and 5th Respondents counter-claimed, at the lower court, that they were the lawful children of the deceased, having been adopted by her,

¹⁷⁰ (2018) LPELR-45756 (CA).

¹⁷¹ *Abacha v Fawehinmi* (2000) 6 NWLR (Pt. 660) 228 at 317, paras. D–E. Therein, the Supreme Court held per Achike JSC that, ‘By the time-honoured doctrine of precedent as it operates in Nigeria and all common law countries, the decision on a given issue of law handed down by the apex court, which for us in Nigeria is the Supreme Court, is not only superior but binds all subordinate courts, including all courts exercising appellate jurisdiction.’

¹⁷² (2024) LPELR-61778 (CA).

and thus they were entitled to succeed to her estate upon her demise. However, only the 4th Respondent was adopted under statutory law; the 5th Respondent was adopted under native law and custom. Thus, the 4th Respondent relied on an adoption order, whereas the 5th Respondent relied on positive acts by the deceased.

The lower court evaluated both evidence, and held that the 5th Respondent joining the suit evidenced consent to the adoption. Furthermore, the Court relied on the ruling in *Aduba's* case where it was held that evidence showing the child's acceptance and integration would suffice to prove adoption for succession cases. In the case, the trial court found that the inclusion of the 5th Respondent's name as the deceased's child in the program for the funeral, and the trust document written by the deceased during her lifetime, were all positive acts proving the 5th Respondent's acceptance and integration by the deceased.

Premised on the foregoing, the trial court held that the 5th Respondent was, for all relevant purposes, the deceased's child. The Court of Appeal upheld this ruling, adding that it would violate section 42 of the Constitution of the Federal Republic of Nigeria (CFRN), 1999 (as amended),¹⁷³ to hold otherwise. From this case, it can be inferred that children adopted under customary law are entitled to succession rights, when:

1. They consent to the adoption.
2. It is shown that they were intentionally accepted, integrated into the family, and made to feel a sense of belonging by the adopting parent(s).

Bassey's case is also useful to extrapolate the situations when children adopted under customary law may be denied succession rights. The situations would be, when:

¹⁷³ CAP. C23, LFN 2004, s. 42.

1. The alleged adopted child is unable to prove the existence of the custom under which they were purportedly adopted;
2. There are no positive acts of the adoptive parents, during their lifetime, showing the child's acceptance, integration and belongingness, and
3. In the absence of 2, the extended family of the adoptive parent(s), after their demise, do not recognise the alleged customary adoption of the child via oral or documentary evidence, implicitly or explicitly.

3.5. Challenges to the Succession Rights of Adopted Children in Nigeria

1. **Customary Law:** The first and most obvious hindrance to the succession rights of adopted children in Nigeria is certain discriminatory customary practices. As was noted in Chapter Two, adoption under customary law neither effectively severs biological ties nor creates a parent-child relationship. Consequently, a child under customary law is usually denied the right to succeed to the property of the adoptive parents. This may not be the case in all customs in Nigeria, but it is true for the major ethnic groups. Under Yoruba customary law, adopted children are not generally entitled to succession rights, and where they are, as in *Administrator General v Tuwase*,¹⁷⁴ they are not accorded with full rights.¹⁷⁵ Under Igbo customary law, an adopted child would be entitled to succeed the property of the adoptive parents depending on the procedure of adoption i.e., formal or informal customary adoption.¹⁷⁶ In Hausaland, adoption is not commonplace, and at present, no academic literature evidences the existence of

¹⁷⁴ (1946) 18 NLR at 88.

¹⁷⁵ R.A. Onuoha, 'Discriminatory Property Inheritance under Customary Law in Nigeria: NGOs to the Rescue' (2008) 10(2) *The International Journal of Not-for-Profit Law* 1.

¹⁷⁶ C.P. Onuorah and others, 'The "Not-Our-Gene Syndrome": Perceptions of Child Adoption in Igbo Culture of Southeastern Nigeria' (2025) 6(1) *African Journal of Religion Philosophy and Culture*, 233–255. <http://dx.doi.org/10.31920/2634-7644/2025/v6n1a13>

adoption in Hausa custom. Aggregating the foregoing, it is clear that customary law is a major hindrance to the succession rights of adopted children. Thankfully, judicial activism as seen in cases such as *Aduba v Aduba*¹⁷⁷ and *Bassey v Ekpiken*¹⁷⁸ is progressing to mitigate this challenge.

2. Islamic Law: As was noted in Chapter Two, the Holy Qur'an (33:5) prohibits adoption in the formal, legal sense of the word.¹⁷⁹ Under Islamic law fostering and guardianship arrangements are valid, and children adopted thereunder are entitled to succeed their foster parents/guardians. However, this is an unpopular opinion, reported, at present, by only one author, although in an international peer-reviewed journal article.¹⁸⁰ Other texts on Islamic adoption do not corroborate this finding, rather they affirm that adoption is entirely prohibited in Islam.¹⁸¹ As a result, adoption is scarcely practiced by Islam adherents, and even when it is, succession rights is not a feature. Notably, no case has come before the courts in Nigeria, yet, involving the succession rights of a child adopted under Islamic law, and so it is unclear whether the courts will be progressive as in *Aduba's* case and *Bassey's* case. However, recently, the Court of Appeal held that Islamic law is different from customary law in matters of marriage and inheritance,¹⁸² hence it is unlikely that the court will interpret the rulings in *Aduba's* case and *Bassey's* case as a binding precedent in a case involving the succession rights of children adopted under Islamic law.

¹⁷⁷ (2018) LPELR-45756 (CA).

¹⁷⁸ (2024) LPELR-61778 (CA).

¹⁷⁹ Holy Qur'an 33:4-5.

¹⁸⁰ A.A. Yusuph, 'Adoption under Islamic Law: Correcting Misconceptions' (2018) 9(2) *Islam and Civilisation Renewal Journal*, 189–204. <http://dx.doi.org/10.52282/icr.v9i2.121>

¹⁸¹ G. Yamini, 'Adoption and Muslim Law' (2022) 7(12) *International Journal of Novel Research and Development*, 839–844.

¹⁸² *Fatima Ayodele Adekunle & 2 Ors v Maryam Ahmad* (2025) CA/ABJ/S/891/20243.

- 3. Non-Implementation of Child’s Rights Act, 2003:** Another challenge to the succession rights of adopted children is the non-implementation of the Child’s Rights Act, 2003 by states. The CRA, 2003, as legislation on a subject matter outside the exclusive and concurrent legislative lists, is not automatically binding on each state in line with the principle of federalism. Consequently, each state is required to, through its House of Assembly, enact the Act as law, giving it binding force—this process is called domestication. As of September, 2025, this had been done by all the states in the Federation, although 11 state are yet to gazette the law. Despite domestication, which took some states 20 years,¹⁸³ the implementation of the respective child rights/child protection laws has been lethargic. The singular fact that the laws have not even been gazetted in some states is proof enough that it is not being taken seriously. In the Northern states, where domestication took decades, it has been observed that implementation is lagging.¹⁸⁴ All of this combines to ultimately hinder the succession rights of adopted children in Nigeria as it is these laws that provide a legal foundation for the adoption of children under statute, and also entitles the children so adopted to inheritance.
- 4. Lack of Uniformity in Applicable Laws:** As was noted earlier, this study lies at the intersection of child rights and succession, hence laws on both subjects are relevant to this study. For succession purposes, the governing legal framework is the Wills Act,

¹⁸³ In Kano, Bauchi, Adamawa, and Gombe, it took 20 years to domesticate the Act. See: UNICEF, ‘UNICEF Applauds Kano State for Enacting Child Protection Law, Calls for Effective Implementation’ *UNICEF* (8 June 2023). See also: R. Oyewole, ‘Bauchi domesticates Child Right Act, signs 2024 budget into law’ *The Guardian* (29 December 2023). <https://guardian.ng/news/bauchi-domesticates-child-right-act-signs-2024-budget-into-law/> accessed 23 September 2025.

¹⁸⁴ Editor, ‘UNICEF Urges Kano State Government to Implement Child Protection Law’ *Pulse Time* (27 May 2025). <https://pulsetime.com.ng/2025/05/27/unicef-urges-kano-state-government-to-implement-child-protection-law/> accessed 23 September 2025.

1837,¹⁸⁵ the Wills Law of the various states, the Administration of Estates Act, 1991,¹⁸⁶ and the Administration of Estates Laws of the various states. Under the Wills Act, 1837 there is no definition of a child for the purpose of the distribution of estate. However, under the Administration of Estates Act, 1991, a child or issue, for succession purposes was defined as:

A child whose paternity has been acknowledged in accordance with the Customary Law applicable in the State, a child adopted whether before or after the commencement of this Law in pursuance of an adoption Order made under any statute in force in Nigeria or in any other country, a child *en ventre sa mere* at the death, and a child legitimated by Law.¹⁸⁷

The Wills Law of Lagos State, 1990,¹⁸⁸ provides a different definition of a child for succession purposes, thus:

A child whose paternity has been acknowledged in accordance with the Customary Law applicable in the State, a child adopted whether before or after the commencement of this Law in pursuance of an adoption order made under the Adoption Law, Cap. A5 of Laws of Lagos State, and a child legitimated under the Legitimacy Law Cap. L65, Laws of Lagos State.¹⁸⁹

These omissions, conflicting definitions, and the exclusion of children adopted under customary law, imperil the succession rights of adopted children.

5. Conflicting Judicial Pronouncements: The existence of conflicting judicial decisions is another challenge to the actualisation of succession rights by adopted children. For instance, in *Olaiya v Olaiya*,¹⁹⁰ the Supreme Court held that statutory adoption is the only valid adoption in Nigeria. However, in *Aduba's case* and *Bassey's case*,¹⁹¹ the

¹⁸⁵ Wills Act 1837.

¹⁸⁶ Administration of Estates Act 1991.

¹⁸⁷ *Ibid*, s. 58(2).

¹⁸⁸ CAP. W2, Laws of Lagos State 1990.

¹⁸⁹ *Ibid*, s. 26.

¹⁹⁰ (2002) 12 NWLR (Pt. 782) 652.

¹⁹¹ (2018) LPELR-45756 (CA); (2024) LPELR-61778 (CA).

Court of Appeal recognised customary adoption for the purpose of succession rights. Patently, both cases are conflicting and the doctrine of judicial precedents dictates that the decision of the Supreme Court being a higher court in the hierarchy of courts remains binding on the lower courts, including the Court of Appeal, and consequently the decisions of the Court of Appeal, except distinguished, are not valid. Exacerbating the problem further, since the case of *Olaiya v Olaiya*,¹⁹² the Supreme Court has not revisited the question of whether adoption under customary law is valid for succession purposes.

6. **Inadequate Legislative Framework:** This challenge speaks to the Child's Rights Act, 2003, which is the overarching legal framework on child's rights in Nigeria. Under the Act, as has been reviewed earlier, there are detailed provisions governing the process of adoption and its effects.¹⁹³ However, the Act is inadequate as it does not recognise adoption under customary law, which is more prevalent in Nigeria. This gap breeds the exclusion of children adopted under customary law from rights enjoyed by their statutory counterparts, including, but not limited to, succession rights. Had the Child's Rights Act, 2003, provided for the recognition of children adopted under customary law, these exclusions would not have occurred, and this study would never have been written. Also, the failure to explicitly recognise a child adopted under customary law as a child/issue under the Administration of Estate Act and Laws and the Wills Act and Laws hinders their rights to inherit the property of their adoptive parents. Quoting Ogundare JSC, 'the British recognised the efficacy of customary law in the lives of the people and thus did not discard it. They allowed it to exist side by side with the

¹⁹² (2002) 12 NWLR (Pt. 782) 652.

¹⁹³ Child's Rights Act 2003, ss. 126–135.

received common law and statute’; legislative drafters in this present epoch must do the same and more, by recognising customary adoption, subject to the usual validity tests.

- 7. Social Stigma and Family Resistance:** A final challenge, as is evident in the three major cases reviewed herein, is the social stigma and family resistance that adopted children face, which may in turn, prevent or limit their rights to succession. The first case, *Olaiya v Olaiya*, involved a challenge by the only biological child of the deceased, Remilekun Olaiya, of the validity of the adoption of her purportedly adopted siblings, Emmanuel Olaiya and Sarah Olaiya. In *Aduba v Aduba*, the case was brought by the biological children of the deceased parents against the adopted Respondent, with whom they had lived with for over 20 years. Finally, in *Bassey and Ekpiken*, the case was initiated by the nephew of the deceased against her two adopted children, to whose adoption he admitted. These sets of facts allude to the biblical passage that ‘a man’s foes are the members of his own household’.

3.6. Conclusion

In conclusion, this chapter set out to examine the succession rights of adopted children in Nigeria, using a bifurcated approach. It resolved to explain what succession rights entail under testate and intestate succession, and what can be succeeded. It also aimed to unearth the succession rights of children adopted under statute, drawing on legal provisions and judicial interpretations. Furthermore, it looked to discover the succession rights of children adopted under native law and custom, based on decided cases. Finally, it sought to highlight the various challenges that militate against the succession rights of adopted children in Nigeria. Pertaining to the meaning and scope of succession rights, this chapter revealed that it is a legal entitlement to another's property as a corollary of kinship by parentage or marriage. It also noted that

succession may be testate—where the deceased makes a valid disposition of their property before their demise—or intestate—where a valid disposition is lacking—with different laws governing each. It finally noted that succession rights extends beyond the usual real property (realty) such as lands and houses, to encompass personal property, intangible property, interests, rights, and obligations owned by the deceased during his lifetime.

CHAPTER FOUR

**COMPARATIVE ANALYSIS OF THE SUCCESSION RIGHTS OF ADOPTED
CHILDREN IN NIGERIA, USA, AND KENYA**

4.1. Introduction

Adoption is a legal process that creates a filial relationship between persons who are not connected by blood.¹⁹⁴ The effect is to create a parent-child relationship with all its accompanying rights and responsibilities.¹⁹⁵ One of these rights, which has been exhaustively examined in the previous chapter, is the right to inherit the adoptive parent's property upon their demise. However, given the importance of property, the sacrosanctity of blood relations,¹⁹⁶ and the discriminatory tendencies of individuals, this position has been hotly contested in Nigeria, with split opinions on the succession rights of adopted children.

In this Chapter, the comparative analysis of Nigeria, U.S., and Kenya adopted children succession rights is stratified into five sections: the first section underscores the importance of the comparative analysis and outlines the chapter's layout; the second section examines the succession rights of adopted children in the U.S., at the federal level, drawing on statutory provisions and judicial decisions; the third section duplicates the second, but focusing on Kenya; the fourth section cohesively extricates lessons for Nigeria from the analysis of the succession rights in both jurisdictions of comparison, foreshadowing the recommendations that will be proposed in Chapter Five; the fifth section recapitulates the discussion and concludes the chapter.

¹⁹⁴ C.C. Nwabachili and C.P Iloka, 'Adoption of Children in Nigeria: Problems and Prospects' (2023) 4(1) *African Customary and Religious Law Review*, 115–120.

¹⁹⁵ E.I. Nwogugu, *Family Law in Nigeria* (3rd edn, HEBN Publishers Ltd. 2014), 333.

¹⁹⁶ This sacrosanctity was especially emphasised in Uwaifo JSC's judgment in *Olaiya v Olaiya* (2002) 8 NWLR (Pt. 782) 652 at 671, where he stated that, 'No one will lightly permit a stranger to claim his or her family lineage and inheritance unless through entitlement by **blood** or genuine adoption' (emphasis mine).

4.2. Succession Rights of Adopted Children in the USA

The United States (U.S.) operates a federal system in which matters of adoption and succession fall primarily under state jurisdiction.¹⁹⁷ Consequently, each of the fifty states are empowered to enact their own laws to regulate adoption, inheritance, and probate procedures.¹⁹⁸ However, to promote coherence, federal laws exist such as the Adoption and Safe Families Act (ASFA), 1997,¹⁹⁹ the Multiethnic Placement Act (MEPA), 1994,²⁰⁰ and the Adoption Assistance and Child Welfare Act (AACWA), 1980²⁰¹ amongst others. Equally of relevance is the Uniform Probate Code (UPC),²⁰² which is however not a law *per se* but a model for state laws on succession.

Pertaining to the succession rights of adopted children, the UPC provides in section 2-118, that for the purpose of intestate succession, a parent-child relationship exists between an adoptee and the adopter(s).²⁰³ This statutory declaration forms the cornerstone of the doctrine of complete substitution. The adopted child becomes, for all intents and purposes, the legal child of the adoptive parents, and not of the biological parents. The rule operates both ways: the adopted child may inherit from the adoptive parents, and the adoptive parents may inherit from the child.

However, the Code recognizes certain exceptions, as stated in Section 2-119(b), which reads:

¹⁹⁷ A. Pollitto and others (eds.), ‘Annual Review of Gender and the Law Adoption and Foster Care’ (2024) 25(6) *The Georgetown Journal of Gender and the Law*, 303–336.

¹⁹⁸ *Ibid.*

¹⁹⁹ Pub L No 105-89, 111 Stat 2115 (1997).

²⁰⁰ Pub L No 103-382, 108 Stat 4056 (1994).

²⁰¹ Pub L No 96-272, 94 Stat 500 (1980).

²⁰² (1969, rev 2019) 8 ULA (Pt I).

²⁰³ *Ibid.*, § 2-118.

A parent-child relationship does not exist between an adoptee and an individual who was the adoptee's parent before the adoption unless:

- (1) otherwise provided by [court order or] law other than this [code]; or
- (2) the adoption:
 - (A) was by the spouse of a parent before the adoption;
 - (B) was by a relative or the spouse or surviving spouse of a relative of a parent before the adoption; or
 - (C) occurred after the death of a parent before the adoption.²⁰⁴

This provision ensures that where a step-parent adopts a child, the legal bond with the remaining biological parent is preserved for inheritance purposes. Thus, the adopted child may still inherit from that biological parent while also enjoying full inheritance rights in the adoptive family.

Section 2-122 of the Code also preserves the doctrine of equitable adoption,²⁰⁵ also known as adoption by estoppel, which is a judicially created principle that protects children who were never formally adopted but were treated as such by the would-be adoptive parents.²⁰⁶ Under this doctrine, if a person undertook to adopt a child, entered into an adoption agreement, or represented the child to the world as their own, yet failed to complete the legal process, the court may, for inheritance purposes, recognise the relationship as though the adoption had been finalised.²⁰⁷ Equitable adoption does not create all legal incidents of parentage, but it prevents unjust results by allowing the child to inherit from the foster or putative adoptive parent's estate.

The laudable U.S. statutory framework on the succession rights of adopted children is complemented by stringent judicial enforcement, in a plethora of cases, most famous of which is

²⁰⁴ Ibid, § 2-119(b).

²⁰⁵ Ibid, § 2-122. Explicitly, it provides that, 'This subpart does not affect the doctrine of equitable adoption'.

²⁰⁶ M.J. Higdon, 'When Informal Adoption Meets Intestate Succession: The Cultural Myopia of the Equitable Adoption Doctrine' (2008) 43 *Wake Forest Law Review* 223–281.

²⁰⁷ Ibid. This doctrine was most clearly elucidated in *Re Estate of Ford* (2004) S105508 (Supreme Court of California), where the Claimant, Terrold Bean lived with the decedent for around 18 years a foster child and thus argued that he was equitably adopted. The trial court, Appeal Court, and California's Supreme Court denied the claim, holding that although the relationship was long-standing and familial, there was no "clear and convincing" evidence that Ford ever expressed an intent to adopt Bean or publicly treated him as a son. Consequently, Bean could not qualify as an equitably adopted child for purposes of intestate succession under California's Probate Code.

Re Estate of Heard.²⁰⁸ Therein, the testatrix, Emma C. Heard, died in 1939 leaving a will dated 1935 which created a trust for her son John (income to him for life, then to his “lawful issue, if any” by right of representation; if none, then to testatrix’s cousin May Cummings and her issue). John later adopted a child, John III, in 1950 (after the will and after the testatrix’s death). The sole issue was whether the term “lawful issue” of John in the will included the adopted child, thus giving John III rights under the trust instead of the Cummings’ issue.

The California Supreme Court held that under existing statutes the adopted child was included as “lawful issue,” because California policy treated adopted children the same as natural children, and the term “issue” in the will should be construed in harmony with that policy.²⁰⁹ The court affirmed the order instructing the trustee to pay income to the adopted child John III. The order was affirmed. Through these statutory frameworks and judicial enforcement, U.S. law achieves near-total parity between adopted and biological children. Adoption is not seen as a second-tier filial relationship but as a complete legal transformation that establishes a permanent familial bond that carries with it all attendant legal consequences, including the right of succession.

The American approach to adoption and succession rights is grounded in the constitutional and policy commitment to equality, family integration, and child welfare.²¹⁰ Adoption statutes and probate laws are shaped by the overarching *best interests of the child* principle, which guides

²⁰⁸ (1957) 49 Cal 2d 514 (Supreme Court of California).

²⁰⁹ *Ibid*, Carter J held thus, ‘We cannot suppose that wills are made in a vacuum; that the status of an adopted child being the same as a biological offspring, which is the public policy of the state, may be completely ignored, or that it was ignored by a testator when making a will any more than he may be said to ignore many other rules of law and public policy. When he has not said anything about “adopted” children using that word or the equivalent, the court in seeking his intent is in fact endeavoring to ascertain what his wishes would be if adopted children were called particularly to his mind. Lacking that, the court must assume, unless a contrary intent is expressed, that he intended that his will would fit it and be compatible with the general body of the law and public policy. Otherwise the court is left with little if any basis for interpreting the instrument.’

²¹⁰ D.D. Meyer, ‘The Constitutionality of “Best Interests” Parentage’ (2006) 14 *William & Mary Bill of Rights Journal*, 857–881.

courts and legislatures in determining the rights and responsibilities of adoptive families.²¹¹ The U.S. legal system rejects any hierarchy between biological and adopted children, emphasizing that adoption creates a “real” family, not a secondary or substitute one. This position aligns with the public policy goal of eliminating discrimination based on birth status, a principle traceable to the Equal Protection Clause of the Fourteenth Amendment.²¹²

At the policy level, adoption law reform in the U.S. has been influenced by social and psychological research emphasizing that adopted children thrive best when fully integrated into their adoptive families.²¹³ The legislative intent underlying the Uniform Probate Code (UPC) reflects this understanding.²¹⁴ The UPC’s commentaries explicitly state that the Code aims to “create a permanent and legal relationship between the adoptive parent and the adoptee” with all rights, including inheritance, attaching automatically. It also aims to ensure that succession rights are not subject to differential treatment or discretionary judicial interpretation once an adoption is finalized.

This philosophical orientation also reflects the American legal culture’s commitment to *formal equality* that persons in like circumstances should be treated alike. The adoption process, being a judicial act that terminates prior parental rights and creates a new familial bond, produces a status identical in law to that of biological parentage. Consequently, any statutory or testamentary attempt to differentiate adopted from biological children may be subject to constitutional scrutiny. Courts have occasionally invoked the Equal Protection Clause to strike

²¹¹ Ibid.

²¹² US Const amend XIV. The amendment guarantees that no state shall ‘deny to any person within its jurisdiction the equal protection of the laws.’ This is widely known as the equal protection clause.

²¹³ A. Bussiere, ‘The Development of Adoption Law’ (1998) 3(1) *Adoption Quarterly*, 3–25.

²¹⁴ 1969, rev 2019) 8 ULA (Pt I).

down state laws that sought to restrict adopted children's inheritance rights, reasoning that such discrimination bears no rational relationship to a legitimate state interest.

Furthermore, the American Bar Association and child welfare advocates have long endorsed the principle that adoption serves both private and public purposes: it secures the child's welfare while promoting social stability through legally recognized family structures. By guaranteeing succession rights, the law reinforces the permanence of the adoptive bond and prevents the marginalization of adopted children within their new families. This integration of child welfare, equality, and family integrity represents one of the most coherent philosophical foundations of U.S. family law.

From a comparative perspective, the U.S. framework provides a valuable reference point for jurisdictions grappling with the reconciliation of statutory law and customary conceptions of lineage, such as many African states. The American experience demonstrates that a clear statutory articulation of equality, coupled with consistent judicial enforcement, can normalize the adoptive relationship in both law and social consciousness. By integrating inheritance rights into the broader philosophy of child welfare and family integrity, the U.S. legal system provides an instructive model of how adoption can be both a protective and emancipatory institution.

4.3. Succession Rights of Adopted Children in Kenya

The legal regime governing adoption and succession in Kenya is shaped by both statutory law and constitutional principles. The Law of Succession Act (LSA), 2012²¹⁵ and the Children Act

²¹⁵ CAP. 160 Laws of Kenya.

(CA), 2022²¹⁶ form the principal sources of law, while the Constitution of Kenya (2010) provides overarching guarantees of equality, dignity, and the best interests of the child.²¹⁷ Article 27 of the Constitution enshrines the right to equality and non-discrimination,²¹⁸ while Article 53(1)(e) provides that:

- (1) Every child has the right—
 - (e) to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not; and...²¹⁹

Furthermore, Kenya’s legal system operates within a plural framework that accommodates both statutory and customary law.²²⁰ This duality means that while the LSA 2012 and CA 2022 provide modern legal protections, the application of customary succession rules based on patrilineal lineage continues to influence outcomes. The law therefore seeks to reconcile these tensions, progressively aligning family and succession law with constitutional norms and international child rights instruments such as the Convention on the Rights of the Child (CRC),²²¹ and the African Charter on the Rights and Welfare of the Child (ACRWC).²²²

4.3.1. Statutory Provisions Governing Succession Rights of Adopted Children In Kenya

Section 205 of the Children’s Act 2022 provides the interpretive key to understanding succession rights of adopted children in Kenya. It provided that:

²¹⁶ CAP. 586, Laws of Kenya.

²¹⁷ The Constitution of Kenya 2010

²¹⁸ Ibid, art. 27.

²¹⁹ Ibid, art. 53(1)(e).

²²⁰ A. Gitahi, ‘Legal Pluralism in Kenya’ (2025) *SSRN Electronic Journal*, 1–7. <https://dx.doi.org/10.2139/ssrn.5227700>

²²¹ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC). Kenya ratified the Convention on July 30, 1990. See: G.O, Odongo, ‘The Post-2020 Jurisprudence on Children’s Rights under the Kenyan Constitution’ (2022) 22(2) *African Human Rights Law Journal*, 426–450. <http://dx.doi.org/10.17159/1996-2096/2022/v22n2a5>

²²² African Charter on the Rights and Welfare of the Child (adopted 11 July 1990, entered into force 29 November 1999) OAU Doc CAB/LEG/24.9/49 (1990). Kenya ratified the ACRWC ON July 25, 2000. See Odongo (n34).

- (1) Where at any time after the making of an adoption order the adopter or the adopted child or any other person dies intestate in respect of any movable or immovable property, the property shall devolve in all respects as if the adopted child were a biological child of the adopter.
- (2) The provisions of subsection (1) shall not apply to any property which is subject to a settlement or an entailed interest under a disposition made before the date of the adoption order in accordance with the law of succession.
- (3) In any disposition of movable or immovable property made, whether by instrument inter vivos or by will, including a codicil, at the date of an adoption order—
 - (a) any reference, whether express or implied, to the child or children of the adopter shall be construed as, or as including, a reference to the adopted child;
 - (b) any reference, whether express or implied, to the child or children of the adopted child's natural parents or either of them shall be construed as not being or as not including, a reference to the adopted child; and
 - (c) any reference, whether express or implied, to a person related to the adopted child in any degree shall be construed as a reference to the person who would be related to him or her in that degree if he or she were the child of the adopter.²²³

These provisions are reinforced by the provisions of section 17 of the Children Act, 2022, which states that:

- (1) Every child shall have the right to inherit property in accordance with the Law of Succession Act.
- (2) Subject to the Law of Succession Act—
 - (a) every child shall be entitled to equal treatment and protection, and to the benefit of the law; and
 - (b) no person shall disinherit or cause a child to be disinherited on any grounds, including age, origin, sex, religion, creed, custom, language, opinion, conscience, colour, birth, health status, pregnancy, social, political, economic or other status, race, disability, tribe, residence or local connection.
- (3) A person who contravenes subsection (2) or otherwise deprives a child of any property or benefit accruing to the child under or by virtue of the law relating to inheritance commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding two years or to a fine not exceeding five million shillings, or to both.
- (4) In addition to the penal sanctions prescribed in subsection (3), the child shall be entitled to full restitution or the property of benefit accruing to the child.

²²³ CAP. 586, Laws of Kenya, s. 205.

- (5) The provisions of subsections (3) and (4) shall apply without prejudice to the provisions of section 45 of the Law of Succession Act.
- (6) The action contemplated in subsection (4) may be brought by a duly constituted next friend or by any other person in accordance with Article 22 of the Constitution.²²⁴

Read together, these provisions mean that an adopted child in Kenya is fully entitled to succession rights as though he/she were a biological child. Furthermore, the deprivation of an adopted child of his succession rights constitutes a civil offence punishable by imprisonment, fine, or both. This stands to deter discrimination cases.

The philosophical foundation of Kenya's approach lies in the constitutional principle of substantive equality and the best interests of the child doctrine. By ensuring that adopted children inherit from adoptive parents, the law affirms the permanence of the adoptive relationship and prevents social marginalization. Article 53(2) of the Constitution declares that "a child's best interests are of paramount importance in every matter concerning the child."²²⁵ Inheritance is one such matter.

This approach also fulfills Kenya's international obligations under the UN Convention on the Rights of the Child (1989), Article 21 of which urges States Parties to "recognize that the best interests of the child shall be the paramount consideration" in adoption proceedings, and under the African Charter on the Rights and Welfare of the Child (1990), which mandates equal treatment of all children irrespective of their status. Yet, persistent cultural attitudes continue to challenge this vision. In some communities, property devolution is still viewed through the lens of lineage and clan continuity, limiting the perceived legitimacy of adopted children. The challenge for policymakers and courts is to reconcile these traditional beliefs with the

²²⁴ Ibid, s. 17.

²²⁵ The Constitution of Kenya 2010, art. 53(1).

constitutional imperative of equality. The ongoing modernization of family law—including the 2022 Children Act—marks a significant step in that direction.

4.4. Lessons for Nigeria

The challenge of securing succession rights for adopted children in Nigeria lies in the country's plural legal structure, where customary law, statutory law, and received English law coexist uneasily. While the Child's Rights Act (CRA) 2003 provides a uniform framework for the welfare and protection of children, adoption law remains fragmented across states, each applying its own regional enactment, such as the Adoption Law of Lagos State or the Adoption Law of Anambra State. Moreover, the Administration of Estates Law and the Wills Law do not clearly define the status of an adopted child. As a result, the legal position of adopted children under Nigerian succession law is uncertain and often dependent on the particular region or the personal law of the deceased. Lessons from the United States and Kenya demonstrate that this uncertainty can be resolved through constitutional clarity, statutory coherence, and judicial assertiveness in promoting equality.

4.4.1. Harmonising Statutory and Customary Law

Kenya's experience offers a clear example of how statutory law can be harmonised with customary norms without undermining cultural identity. The Law of Succession Act (Cap 160) integrates adoption and inheritance under a single legal regime, while Article 2(4) of the Constitution voids any customary rule inconsistent with equality. Nigeria can emulate this by expressly codifying in its federal and state succession laws that an adopted child shall, for all purposes of inheritance, be regarded as the legitimate child of the adopter. This would bring the statutory framework in line with the spirit of the Child's Rights Act 2003, which already

recognizes the best interests of the child as paramount. Furthermore, Nigerian courts could adopt the Kenyan model of purposive constitutional interpretation, where the best interest of the child and equality principles override discriminatory customary norms. Such harmonization would gradually erode the patriarchal notions that view inheritance as a matter reserved for biological lineage.

4.4.2. Constitutional Entrenchment of Equality

The United States and Kenya both demonstrate the transformative potential of constitutional equality guarantees. In the U.S., the Equal Protection Clause under the Fourteenth Amendment has been invoked to strike down discriminatory inheritance laws, while in Kenya, Article 27 of the 2010 Constitution prohibits any form of discrimination, including that based on birth or family status. Nigeria's Constitution of 1999 (as amended) guarantees equality before the law under Section 42, but courts have been reluctant to interpret this broadly in matters involving family or customary law. A stronger constitutional jurisprudence—one that interprets Section 42 together with the best interest of the child principle in the CRA—could close this gap. Judicial recognition that adopted children are entitled to equal treatment under inheritance law would align Nigeria with contemporary human rights standards and fulfil its obligations under the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.

4.4.3. Clarifying Statutory Provisions on Adoption and Succession

A major lesson from both the U.S. and Kenya is the necessity of statutory clarity. The Uniform Probate Code (UPC) in the U.S. explicitly defines the rights of adopted children under intestate succession, while Kenya's Law of Succession Act incorporates adoption into its definition of

“child.” In contrast, Nigeria’s Adoption Laws (which are largely regional) and the Administration of Estates Law operate in isolation, leading to interpretive uncertainty. For instance, while the Lagos State Adoption Law confers on the adopter “all rights and obligations” as if the child were born in lawful wedlock, the corresponding inheritance statutes do not reiterate this equivalence. Nigeria should therefore enact a harmonized federal law that links adoption and inheritance explicitly. The law should provide that upon the making of an adoption order, the adopted child acquires the same legal status as a biological child of the adopter for all purposes, including intestate and testate succession.

4.4.4. Promoting Uniform Adoption Legislation

The fragmentation of adoption law in Nigeria undermines legal certainty and equal protection. In the U.S., adoption laws were standardized through the Uniform Adoption Act, while Kenya’s Children Act 2022 consolidated all matters relating to children under a single statute. Nigeria could adopt a similar model by enacting a National Adoption and Child Welfare Code, to be domesticated by the states but maintaining uniform standards. Such legislation would prevent discrepancies between states—where, for example, an adoption recognized in Lagos might not automatically carry equal weight in the East or North. A uniform system would also streamline judicial interpretation, facilitate better record-keeping, and protect adopted children from being excluded on technical grounds.

4.4.5. Strengthening Judicial Interpretation

Judicial activism has been pivotal in both the U.S. and Kenya in ensuring that adopted children enjoy equal inheritance rights. Decisions such as *In re Estate of F.M. (Deceased)* [2018] eKLR and *Rono v Rono* [2005] eKLR demonstrate how courts can interpret statutory provisions in light

of constitutional equality. Nigerian courts can adopt a similar purposive approach, treating adoption as creating a complete and permanent legal relationship that includes inheritance. Even in the absence of explicit statutory reform, courts could interpret the term “child” in the Administration of Estates Law and the Wills Law to include an adopted child, as is consistent with the intent of the Adoption Laws. Such interpretive consistency would protect children from the arbitrary exclusion that now arises under customary systems that prioritize blood descent.

4.4.6. Enhancing Public Awareness and Cultural Acceptance

Beyond formal law, cultural attitudes toward adoption significantly affect its social legitimacy. In many Nigerian communities, adoption is perceived as an act of charity rather than the creation of a permanent filial bond. This perception often leads to the exclusion of adopted children from family property, especially where customary inheritance prevails. Kenya’s experience demonstrates that social change is possible through sustained education and legal enforcement. The integration of adoption into mainstream child welfare and family law in Kenya has helped normalize the concept of non-biological parentage. Nigeria could advance similar public education campaigns, emphasizing that adoption is not merely social but also legal parenthood. Religious and traditional leaders should be engaged as partners in this process to promote wider acceptance.

4.4.7. Integrating International and Regional Standards

Nigeria’s obligations under international law provide additional guidance. Articles 3 and 21 of the Convention on the Rights of the Child (CRC), and Articles 19 and 20 of the African Charter on the Rights and Welfare of the Child (ACRWC), require that all children be treated equally before the law and that adoption be governed by the child’s best interests. Both Kenya and the

U.S. have domesticated these principles through clear legislative incorporation. Nigeria can do the same by explicitly referencing these international instruments in its adoption and succession laws. Incorporating such provisions would enhance the interpretive power of courts and align Nigeria with its human rights obligations, ensuring that every adopted child enjoys full inheritance rights without discrimination.

The lessons from the United States and Kenya converge on one central theme: the need for a coherent, rights-based approach to adoption and succession in Nigeria. A uniform national law linking adoption and inheritance, supported by constitutional interpretation and judicial activism, would bring clarity and justice to an area long marked by uncertainty. By harmonizing customary and statutory norms, empowering courts to enforce equality, and promoting societal acceptance of adoption as genuine parenthood, Nigeria can ensure that the promise of the Child's Rights Act 2003 is realized in practice. Adoption must not merely create emotional ties but must also secure the legal and economic future of every child who becomes part of a new family.

4.5. Conclusion

The comparative insights from the United States and Kenya illuminate a path forward: constitutional interpretation grounded in equality, statutory reform to integrate adoption and inheritance, and judicial assertiveness to invalidate discriminatory practices. Nigeria, by contrast, remains at a transitional stage. Despite the protective intent of the Child's Rights Act 2003, the fragmentation of adoption laws across states and the absence of clear statutory linkage between adoption and succession perpetuate uncertainty. Customary law continues to exert significant influence, often limiting the inheritance rights of adopted children. This contradiction has not

been settled by the existing judicial decisions such as *Aduba v Aduba*²²⁶ and *Bassey v Ekpiken*²²⁷ which, on a cursory glance, appear to favour the succession rights of adopted children under customary law, but on deeper examination take away the same right with ambiguous evidentiary thresholds.²²⁸ This problem is exacerbated by Nigeria's legally pluralistic nature which combines the influence of both statutory frameworks and customary laws.²²⁹ Thus, whilst statutory provisions²³⁰ and constitutional guarantees²³¹ appear to protect the succession rights of adopted children, customary law, in most parts, provides that succession must occur strictly between blood relations.²³²

The recognition of adopted children as full heirs is both a legal and moral imperative. It affirms the dignity of the child, strengthens family stability, and aligns national law with global standards of justice. For Nigeria, the task ahead is not merely legislative amendment but a broader transformation of legal consciousness, one that sees adoption not as an exception to kinship but as a legitimate and complete expression of parenthood. The full realization of succession rights for adopted children will mark a decisive step toward a more equitable and humane legal order, where every child, irrespective of origin, can claim an equal place within the family and the law.

²²⁶ (2018) LPELR-45756 (CA).

²²⁷ (2024) LPELR-61778 (CA).

²²⁸ In *Aduba's* case, Mbaba JCA held that, '**Once it is shown that the child was intentionally accepted and integrated into the family, and made to feel a sense of belonging by the adopting parent(s) or person(s),** nobody should or can rise up to question the good gesture of the adopting parent(s) or person(s), and deny the child (now grown adult) share in the covering, gains, liabilities, accruing from the common patrimony or estate of the adopter(s) or person(s) who adopted the child' (emphasis mine). However, the learned Justice failed to elucidate what acts would show that the child was intentionally accepted, integrated, and made to feel a sense of belonging. Would payment of the child's tuition fees suffice? Or is just inclusion in the program for the adoptive parent(s) funeral as in *Bassey's* case?

²²⁹ A.O. Obilade, *The Nigerian Legal System* London (Sweet and Maxwell, 1979).

²³⁰ Child's Rights Act (CRA) 2003, s. 141.

²³¹ Constitution of the Federal Republic of Nigeria (CFRN), 1999 (as amended), s. 42.

²³² R.A. Onuoha, 'Discriminatory Property Inheritance under Customary Law in Nigeria: NGOs to the Rescue' (2008) 10(2) *The International Journal of Not-for-Profit Law* 1.

CHAPTER FIVE

RECOMMENDATIONS AND CONCLUSION

5.1. Summary of Findings

Findings made during the course of this research underpins the necessity for review of both adoption laws and societal attitude towards the rights of adopted children. This study found that under customary law and practice, adoption is not a commonly used term. Instead, guardianship is the more frequently used term to describe the legal relationship between a guardian and a ward. Customary adoption can be carried out through either a formal or informal process, and the two concepts have distinct differences under the law. The study also identified the features or characteristics of customary adoption, which include a legal relationship, permanence, parental rights and responsibilities, and termination. Finally, the study discussed closely related concepts such as family acknowledgement and disownment, which can have implications for succession rights.

This study also found that Nigeria's adoption laws were largely influenced by municipal legislation rather than common law. The Adoption Law of 1965 was the first statutory recognition of adoption in Nigeria, followed by other states with similar laws. The Child Rights Act of 2003 established a legal framework for child rights, including adoption. However, despite the robust legal and institutional frameworks in place, the implementation of child rights faces

significant challenges. The Act mandates that both state and federal governments must build and sustain a service specifically tailored to address the requirements of adopted children, as well as their parents, guardians, and adoptive parents. However, these provisions have not been put into effect, resulting in the perpetuation of illicit activities such as child trafficking and unauthorized adoption.

The study also found that the court can issue an adoption order only under specific circumstances, and the individuals eligible for adoption are restricted to married couples, individuals over the age of 35, and individuals of the same gender as the child being adopted. This study reviewed two judicial decisions related to adoption in Nigeria. The first case reviewed was the case of *Olaiya v Olaiya*, which dealt with the issue of the validity of customary adoption. The court inadvertently held that customary adoption is not recognized under Nigerian law and that only statutory adoption is valid. The court emphasized the importance of following the legal procedure for adoption under the Child Rights Act of 2003, which includes proving adoption by *adoption register*. The second case was *Aduba v. Aduba* which dealt with the issue of the succession rights of statutorily adopted children. The court held that the rights of a statutorily adopted child to inherit from his adoptive parents are not affected by customary practices. The case of *Bassey v Ekpiken* was also examined where the decision in *Aduba v Aduba* was upheld.

In the comparative analysis, this study found that the United States and Kenya have adopted various legal frameworks to address the inheritance rights of adopted children, ensuring equitable treatment. In the US, adopted children generally enjoy the same inheritance rights as biological children, reflecting a commitment to equality and fairness. In Kenya, the legal landscape is shaped by cultural traditions and colonial legacies, but the Kenyan Children Act, 2022 ensures that adopted children are accorded full succession rights

5.2. Recommendations

Premised on the above findings, it is recommended as follows:

1. **Enhanced Implementation of Existing Laws:** Given the gaps in implementation of the Child Rights Act of 2003, it is imperative that both federal and state governments in Nigeria improve their efforts to enforce these provisions actively. This includes the establishment and regular auditing of services specifically tailored for the needs of adopted children and their families to prevent illicit practices such as child trafficking and unauthorized adoptions.
2. **Public Enlightenment on the statutory requirements and processes of legal adoption** through community outreach programs and educational campaigns. This would help to clarify the distinction between customary and statutory adoption, and reinforce the importance of adhering to the legal procedures to safeguard the rights of all parties involved.
3. **Legislative Reforms:** To address the dissonance between customary practices and statutory law, particularly in terms of inheritance rights and the recognition of customary adoptions, comprehensive legislative reforms are recommended. These reforms should aim to harmonize traditional practices with modern legal principles, ensuring that adoption laws are culturally sensitive yet equitable and just.
4. **Judiciary Activism:** Enhanced activism for the judiciary on the complexities of adoption laws, focusing on the distinction and interaction between customary and statutory adoptions. This will aid in more informed and equitable judicial decisions that respect both cultural heritages and contemporary legal standards.

5. International Benchmarking: Given the comparative analysis with other jurisdictions like the United States, Kenya, and Nigeria should consider international best practices and possibly adopt models that have successfully integrated customary practices with statutory laws in the context of adoption and inheritance rights.

6. Comparative Legal Studies: Further research could explore a broader range of jurisdictions to understand different legislative frameworks for adoption and their impacts on children's rights globally. This would provide a more comprehensive understanding of how diverse legal systems balance traditional practices and modern legal requirements.

7. Longitudinal Impact Studies: Studies assessing the long-term effects of adoption on children within the Nigerian context, comparing those adopted through statutory means versus customary practices, could provide deeper insights into the efficacy and emotional impact of these legal frameworks.

8. Customary Law Codification: Research could explore the potential benefits and challenges of codifying customary laws related to adoption. This would help to standardize practices and ensure greater consistency in how customary adoptions are handled legally across Nigeria.

9. Socio-Cultural Impact Assessment: Studies that investigate the socio-cultural implications of statutory and customary adoptions on Nigerian society would help identify cultural resistances and facilitate the development of culturally appropriate adoption practices.

10. Policy Impact Evaluation: Further research is needed to evaluate the effectiveness of policies implemented to safeguard adopted children's rights in Nigeria. This includes

studying the implementation challenges at the federal and state levels and proposing solutions to enhance policy effectiveness.

5.3. Contribution to Knowledge

This study contributes to existing knowledge by offering a comparative legal analysis of adoption and succession rights across Nigeria, the United States, and Kenya, highlighting the gaps between customary and statutory frameworks. It clarifies the legal uncertainties surrounding customary adoption in Nigeria and its implications for inheritance rights, while emphasizing the importance of harmonizing traditional norms with contemporary child welfare principles. By integrating doctrinal analysis with socio-legal perspectives, the research advances understanding of how cultural and legal systems interact in shaping the rights of adopted children and proposes pathways for equitable legal reform.

5.4. Area of Further Studies

Future studies should examine the long-term psychosocial and economic outcomes of adopted children under both statutory and customary regimes in Nigeria. Comparative research could also explore how other African countries have successfully reconciled indigenous customs with statutory adoption frameworks to strengthen child protection. Empirical studies assessing the effectiveness of post-adoption monitoring systems and the impact of judicial interpretation on adoption cases would provide valuable insights. Additionally, interdisciplinary research involving law, sociology, and psychology could enrich understanding of societal attitudes toward adoption and their influence on the realization of children's rights.

5.5. Conclusion

This study has provided critical insights into the legal intricacies, and societal implications of adoption in Nigeria and the complexities of customary practices which remains pervasive especially in relation to the right of inheritance of adopted children. It underscores the need for a harmonious legal framework that respects cultural values while upholding the rights and welfare of children.

Unless strict enforcement of regulatory laws, judicial activism, and public enlightenment are prioritized, adoption practices in Nigeria and adequate protection of the rights of adopted children will remain jaundiced.

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